

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3852 of 2011

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Ramesh Chandra Jha aged about 61 years S/O Sri Chandrachur Jha Resident of Village - Cheria Bariarpur, P.S. Cheria Bariarpur, District - Begusarai Presently Working as Professor in the Department of Surgery, Government Ayurvedic Medical College, Patna

.... Petitioner

Versus

1. The State of Bihar Through Its Secretary cum Commissioner Department of Health Education (Deshi Chikitsa) and Family Welfare, Govt. of Bihar, Patna
2. The Principal Secretary, Department of Health Education (Deshi Chikitsa) and Family Welfare, Govt. of Bihar, Patna
3. The Director (Indigenous Medicine), Health Department, Govt. of Bihar, Patna
4. The Principal Secretary, Department of Finance Bihar, Patna
5. The Secretary, University Grants Commission, Bahadur Sah Jaffar Marg, New Delhi-110002 through Union of India.
6. The Secretary, C.C.I.M, New Delhi
7. The Principal, Govt. Ayurvedic Medical College and Hospital, Patna

.... Respondents

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Appearance:

For the Petitioner/s : Mr. N.K.P. Sinha and
Mr. Satish Kumar, Advocates.

For the Respondent/s : Mr. Gyan Shankar, AC to GP 2.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 31-01-2018

Heard learned counsel for the petitioner and learned counsel representing the State.

2. Petitioner in the present case has sought a writ of mandamus directing the respondents to declare the age of retirement of Ayurvedic College Teachers in view of the recommendation of the University Grants Commission as well as to implement the regulation of the University Grants Commission issued on 30th June, 2010 as



well as the norms laid down by the C.C.I.M. dated 22.02.2010 by which it was decided to consider the eligibility of teaching staff for Ayurveda, Unani and Siddha Colleges upto 65 years. Petitioner also prayed for a direction upon the respondents to allow him to work on the post of Professor during the pendency of this Writ Application and with a further direction to pay the petitioner the amount equivalent to be paid after retirement as a pension till the disposal of the case.

3. The petitioner has been made to retire on 28.02.2011 on attaining the age of 62 years. It is the case of the petitioner that he has been made to retire early because the State failed to issue any separate notification with regard to the age of superannuation in terms of the UGC regulations and CCIM norms for AYUSH teachers. He has relied upon a letter dated 22.02.2010 (Annexure-1) issued under signature of the Secretary, Central Council of Indian Medicine (CCIM) by which the Health Secretary of all the State Governments, Director of ISM of all State Governments, Registrar of Universities having Faculty of Indian Medicine and Principal of all Ayurveda, Unani and Siddha Colleges were informed that considering the lack of availability of teaching staff, it has been decided to consider the eligibility of teaching staff for Ayurveda, Unani and Siddha Colleges upto 65 years. It has further been stated that the age upto 65 years is considerable for the teachers of Ayurveda, Unani and Siddha



Colleges.

4. It appears that during the pendency of this Writ Application an another Writ Application bearing CWJC No. 9653 of 2011 and other analogous matters came to be heard by a co-ordinate bench of this Court and upon hearing, those Writ Applications were disposed of vide order dated 14.02.2012.

5. A Letters Patent Appeal bearing **LPA No. 852 of 2012 (State of Bihar & Ors. Vs. Dr. Radha Krishna Chaudhary)** and other analogous L.P.As were disposed of vide judgment and order dated 28.01.2016 directing that the doctors of the cadre of Bihar Health Service should be allowed to retire on completion of 65 years w.e.f. 28.01.2011 itself. This judgment of the Hon'ble Division Bench of this Court has been challenged before the Hon'ble Supreme Court vide **SLP (Civil) CC No. 24758-24765/16 (The State of Bihar & Ors. Vs. Radha Krishna Chaudhary & Ors.)**. The Hon'ble Supreme Court has not granted stay of the judgment of this Court.

6. In the Supplementary Counter Affidavit filed on behalf of the respondent no. 2, the Additional Director, Health Services, Bihar, Patna has categorically submitted in Paragraph 7 that in compliance of the order dated 26.04.2017 passed in M.J.C. No. 1674/2012, the Health Department vide its Memo No. 243(3) dated 22.05.2017 has issued a conditional order of extension of age of



superannuation to the doctors who retired between 28.01.2011 to 22.12.2011, subject to final outcome of SLP (Civil) CC No. 24758-24765/2016. In the Supplementary Counter Affidavit, no distinction has been made out in respect of the case of the present petitioner.

7. The petitioner in the present case was made to retire w.e.f. 28.02.2011 whereas the respondent no. 2, in his affidavit, has accepted the fact that the benefit of extension of age of superannuation has been granted to those who retired between 28.01.2011 to 22.12.2011, subject to the final outcome of the S.L.P. If it is so, this Court does not find any reason to say as to why the same benefit will not be allowed to the petitioner by the State in terms of its own litigation policy. The petitioner, in the opinion of this Court, would be entitled to the same benefits which have been conferred upon those who were similarly situated to the petitioner and were made to retire between 28.01.2011 to 22.12.2011, i.e., the date when the Finance Department had issued the notification extending the age of retirement from 62 years to 65 years.

8. In the above said view of the matter, the respondents are directed to consider the case of the petitioner in the same terms and on the same line as have been done in the case of similarly situated persons. The respondents are also obliged to provide all such benefits, though subject to the condition as has been imposed by them in



respect of others, to the present petitioner as well. An appropriate order in this regard must be passed within a period of two months from the date of receipt / production of a copy of this order.

9. The Writ Application is allowed to the extent indicated here-in-above.

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	01.02.2018
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