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HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 762 of 2013**

Dr. Pramod Singh S/o Late Krishna Pal Singh, Aged About 59 Years
R/o D-4, Shanti Nagr, Shankar Nagar Road, Police Station Shankar
Nagar, Raipur, District Raipur, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Principal Secretary, Department Of Health And Family Welfare, D.K.S. Bhawan, Mantralaya, Raipur, District Raipur, Chhattisgarh
2. The Commissioner Health Services, Directorate, Raipur, Chhattisgarh

---- Respondents**WPS No. 2121 of 2013**

Dr. Bhupat Singh Sarva S/o Anand Ram Sarva Aged About 61 Years
Aishwarya Residency, House No. 28, Telibandha, P.S. Telibandha,
Raipur, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Principal Secretary, Department Of Health And Family Welfare, D.K.S. Bhawan, Mantralaya, Raipur, District Raipur, Chhattisgarh
2. The Commissioner Health Services, Directorate, Raipur, Chhattisgarh

---- Respondents**WPS No. 2282 of 2013**

Dr. A.K. Kulshrestha S/o Shri R.P. Kulshrestha Aged About 59 Years
Presently Posted As Joint Director (Ayurveda), Directorate Of
Ayurveda, Yoga And Naturopathy, Unani, Siddha And Homoeopathy
(AYUSH), Raipur, R/o 15, Ramhridray Krishna Sakha Society,
Rohnipuram, Police Dindayal Upadhyay Nagar, Raipur, District
Raipur, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through The Principal Secretary, Department Of Health And Family Welfare, Zero Point, New Mantralaya, Police Station Mandir Hasaud, Raipur, Chhattisgarh
2. The Directorate, Department Of Ayurveda, Yoga And Naturopathy, Unani, Siddha And Homoeopathy (AYUSH), Through The Director, Old Nurses Hostel, Behind Old Mantralaya, Police Thana Gol Bazar, Raipur, District : Raipur, Chhattisgarh

---- Respondents

WPS No. 4886 of 2012

Dr. P.K. Bondriya S/o Late M.C. Bondriya Aged About 60 Years,
Presently posted as Deputy Director (Ayurved) (In-Charge Controller,
Drugs Testing Lab And Research Centre) Raipur, Chhattisgarh, R/o
F-1, Ayurvedic College Campus, Police Station Saraswati Nagar,
Raipur, Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh, Through The Principal Secretary, Department Of Health And Family Welfare, D.K.S. Bhawan, Mantralaya, Police Station Gol Bazar, Raipur, District Raipur, Chhattisgarh
2. The Directorate Ayurved Yog Evam Prakritik Chikitsa, Unani Siddha Evam Homeopathy (Ayush) Through The Director Police Station Gol Bazar Raipur, District : Raipur, Chhattisgarh

----Respondents**WPS No. 4673 of 2012**

Dr. Rajkumar Rajmani S/o Late P.L. Rajmani Aged About 59 Years
Presently posted as Director, State Institute Of Health And Family
Welfare Raipur, R/o D.D. Nagar, Near Ghari Chowk P.S. Deendyal
Upadhyay Nagar, Raipur, Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh, Through the Principal Secretary Department Of Health And Family Welfare, D.K.S. Bhawan, Mantralaya, Raipur, Police Station Gol Bazar, District Raipur, Chhattisgarh
2. The Commissioner Health Services, Directorate Raipur, P.S. Gol Bazar, District Raipur, Chhattisgarh

---- Respondents

For Petitioners	:	Mr. Jitendra Pali, Advocate along with Mr. Pranjal Shukla, Advocate
For State	:	Mr. Shashank Thakur, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****11/07/2018**

1. The petitioners herein have questioned the notice of retirement issued by the respondent No.1 intimating the petitioners that they would be retiring from the service on their attaining the age of 60 years.

2. The petitioners in WPS No. 762/2013, 2282/2013, 4886/2012 & 4673 of 2012 had filed the writ petitions, while they were in service and the petitioner in WPS No. 2121/2013 had filed the writ petition after he was superannuated by the department crossing the age of 60.
3. The contention of the petitioner is that the State Government, in between has by way of an amendment brought to the **“Chhattisgarh Civil Servant (Age of Superannuation) Act of 1967”** amending the provisions, has enhanced the age of retirement for the medical officers to 62 and while doing so the State Government also amended the Rule 56 of the Fundamental Rules, wherein it was held that the Doctors who were working as medical officers shall be superannuating at the age of 62.
4. Pending the petition before this Court, the State Government further amended the Act of 1967 referred to above and enhanced the age of superannuation to 65 from 62. The petitioners herein also have accordingly amended the writ petitions and have sought for the relief of permitting to remain in services till the age of 65.
5. It is the contention of the petitioner that the act on the part of the respondents in retiring the petitioners at the age of 60 is discriminatory and is also in violation of the provisions of Fundamental Rules 56 and the same deserves to be set-aside. According to the petitioners, there is no difference so far as the cases of the petitioners are concerned, when compared to the case of the medical officers working in the State. According to the petitioners, the Fundamental Rules itself specifies the medical officers to retire at the age of 62 and the respondents could not have therefore issued a

notice of retirement against the petitioners retiring them at the age of 60.

6. It was further the contention of the petitioners that the explanation (1) brought inserted in the Chhattisgarh Fundamental Rules 56 itself would make this very clear in as much as the explanation of the Medical Officer clearly includes all those officers, who have initially being appointed as medical officers or medical specialists, but have subsequently being appointed to an administrative post by way of promotion or otherwise, would also be treated as a medical officer for the purpose of determining of age of superannuation.
7. The counsel for the petitioners at this juncture refers to the judgment of the Division Bench of Madhya Pradesh High Court in the case of “**Dr. Kantilal Sahu & Anr. v. State of Madhya Pradesh & Ors.**” in WP No. 5237/2012, decided on 17.01.2013. According to the petitioners the said judgment passed by the Division Bench of the Madhya Pradesh High Court was under *pari materia* provision, which is applicable in the State of Madhya Pradesh. The petitioners therein are those officers, who were appointed along with the petitioners in the erstwhile State of Madhya Pradesh, but the petitioners happen to be allotted the State of Chhattisgarh, on account of which they stand denied of the benefit, which otherwise is now being given in the State of Madhya Pradesh. He further submits that the order of Division Bench of the Madhya Pradesh High Court also was put to test before the Hon’ble Supreme Court. The Hon’ble Supreme Court in Special Leave to Appeal No. 13697/2013 has dismissed the SLP on 18.10.2013 and as such the judgment has

attained its finality. The petitioners pray for applying the same analogy, the present petitions also be allowed and disposed of.

8. The State counsel appearing for the respondents though opposes the petitions on the ground of the nature of duties exercised by the medical officers and the petitioners, who were discharging the administrative duties and were also holding administrative post and were not discharging the duties of a medical officer. However the State counsel fairly accepts the fact that the judgment of the Madhya Pradesh High Court, which further was affirmed by the Hon'ble Supreme Court, has been passed under ***pari materia*** provision of law in the State of Madhya Pradesh and who also does not dispute the fact that the petitioners before the State of Madhya Pradesh were the persons who were appointed along with the petitioners.
9. Given the aforesaid factual matrix of the case, this Court is inclined to follow the decision of the Madhya Pradesh High Court in the case of "Dr. Kanti Lal Sahu" (supra) wherein the Madhya Pradesh High Court taking into consideration the provisions of the Fundamental Rules 56 as also the explanation (1) of the said Fundamental Rules 56 has in paragraph No. 7 & 8 has held as under:

"7. We have considered the matter and we find that the petitioners' case is squarely covered by both the Amending Acts of 2007 and 2011 since the Amending Acts extend the age of retirement initially to 62 years and then to 65 years in respect of all members of the Madhya Pradesh Public Health Service appointed to a post mentioned in Schedule-I to the Madhya Pradesh Public Health and Family Welfare (Gazetted) Service Recruitment Rules, 1988. Since the petitioners were so

appointed to a medical post mentioned in Schedule-I as Chief Medical & Health Officer, they are entitled to retire at the age of 65 years as determined by the Madhya Pradesh Shaskiya Sevak (Adhivarshiki-Ayu) Adhiniyam, 1967 as amended by Amending Acts of 2007 and 2011. In these circumstances, it is not necessary to consider the question of vires of the Rules.

8. The writ petition is allowed. The age of superannuation of the petitioners will be 65 years and they shall be entitled to work till that age in accordance with law. It is not disputed that petitioner No.2 has been made to retire on 31st May, 2012 during the pendency of this petition. He shall be entitled to reinstatement. The respondents are directed to reinstate the said petitioner in service within four weeks from today. The said petitioner shall be entitled to all consequential benefits as if he was in service. The rule is made absolute in the above terms."

10. In view of the authoritative decision passed by the Division Bench of the Madhya Pradesh High Court and the same also being confirmed by the Hon'ble Supreme Court, this Court is of the opinion that the petitioners herein also since they are identically placed, would also be entitled for similar benefits. Accordingly the writ petitions deserve to be and are allowed. The impugned notices of retirement stand set-aside/quashed and it is held that the petitioners would be treated to be in service till they attained the age of 65 and in case if the petitioners have crossed the age of 65, they shall be entitled for notional fixation of their salary and other allowances which they would have otherwise got and they remained in employment till they attained the age of 65 minus the benefits which they have received.

However, the petitioners shall be entitled for the entire monetary benefits so far as the retiral benefits including the revision of pension and the pensionary benefits are concerned.

11. Needless to mention here that pursuant to the interim order granted by this Court, if the petitioners have crossed their age of superannuation till attaining the age of 65, their retiral dues would be made on the actual benefits that they have received. So far as the persons who have superannuated before filing of the writ petition, they would be entitled for the notional benefits from the date they were retired till they attained the age of 65. However they would also be entitled for the actual benefits i.e. the monetary benefits of their retiral dues payable to them including the gratuity, pension and any other dues which they were entitled for.

12. All these writ petitions accordingly stand allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge

Ved