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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of decision : November 15, 2018

+ **W.P.(C) 8704/2017 with CM No.35693/2017 (stay)**
(Arising out of the order passed in OA 2712/2016)

NORTH DELHI MUNICIPAL CORPORATION Petitioner
Through: Mr. Gaurang Kanth, Advocate
with Ms. Biji Rajesh, Ms. Eshita
Baurah and Mr. Diwanker Sethi,
Advocates.

versus

SANTOSH KUMAR SHARMA AND ORS. Respondents
Through: Mr. Vijay Sharma and
Ms.Swagati, Advocate for R-1.
Mr. Arun Bhardwaj, CGSC with
Mr.Shashwat Sharma and
Mr.Nikhil Bhardwaj and
Ms.Gauraan, Advocates for UOI.
Mr. Kumar Rajesh Singh,
Standing Counsel for EDMC/R-
5.
Mr. Abhaya K. Behera,
Advocate.

+ **W.P.(C) 637/2018 with CM APPL. 2760/2018 (for stay)**
(Arising out of the order passed in OA 4066/2016)

NORTH DELHI MUNICIPAL CORPORATION Petitioner
Through: Mr. Gaurang Kanth, Advocate
with Ms. Biji Rajesh, Ms. Eshita
Baurah and Mr. Diwanker Sethi,
Advocates.

versus

DR. RAM NARESH SHARMA AND ORS. Respondents
Through: None.

+ **W.P.(C) 644/2018 with CM APPL. 2806/2018 (for stay)**
(Arising out of the order passed in OA 4189/2016)

NORTH DELHI MUNICIPAL CORPORATION Petitioner
Through: Mr. Gaurang Kanth, Advocate
with Ms. Biji Rajesh, Ms. Eshita
Baurah and Mr. Diwanker Sethi,
Advocates.

versus

DR. SATYA PRAKASH HARIT AND ORS. Respondents
Through: None.

+ **W.P.(C) 9461/2018 with CM APPL. 36734/2018**
(Arising out of the order passed in OA 4192/2016)

NORTH DELHI MUNICIPAL CORPORATION Petitioner
Through: Mr. Gaurang Kanth, Advocate
with Ms. Biji Rajesh, Ms. Eshita
Baurah and Mr. Diwanker Sethi,
Advocates.

versus

DR. SANTOSH SHARMA AND ORS. Respondents
Through: Mr. Arun Bhardwaj, CGSC with
Mr. Shashwat Sharma and
Mr. Nikhil Bhardwaj and
Ms. Gauraan, Advocates for UOI.
Mr. Arun Bhardwaj, CGSC with
Mr. Abhishek Khanna, Govt.
Pleader for R-2 & 3.

Mr. Manish Verma, Adv. for
respondent.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE A. K. CHAWLA

J U D G M E N T

VIPIN SANGHI, J. (ORAL)

1. The petitioner-North Delhi Municipal Corporation ('NDMC') has preferred the present writ petitions to assail the common order dated 24.08.2017 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('the Tribunal') in

- (i) OA No.2712 of 2016, in respect whereof W.P.(C) No. 8704/2017 is preferred;
- (ii) OA No. 2771 of 2016, (no writ preferred);
- (iii) OA No. 2946 of 2016, (no writ preferred);
- (iv) OA No. 4066 of 2016, in respect whereof W.P.(C) No. 637/2018 is preferred;
- (v) OA No. 4189 of 2016, in respect whereof W.P.(C) No. 644/2018 is preferred;
- (vi) OA No. 4192 of 2016, in respect whereof W.P.(C) No.9461/2018 is preferred.

2. The said original applications had been preferred by Ayurvedic doctors serving with the NDMC, except original applicant No.2 Dr.Pratibha Sharma, who was serving as an Ayurvedic Doctor with the East Delhi Municipal Corporation ('EDMC'). She is impleaded as respondent No.2 in W.P.(C) No.2712/2016.

3. The retirement age of the General Duty Medical Officer (GDMO) of the Central Health Scheme (CHS), Dentists, and Doctors covered under AYUSH which included Ayurvedic doctors, was 60 years. The Government of India, Ministry of Health and Family Welfare issued order dated 31.05.2016, whereby, the age of superannuation of the Specialists of Non-teaching and Public health sub-cadres of CHS and GDMOs of CHS was raised to 65 years with immediate effect. The NDMC adopted the said order by issuing the Office Order dated 30.06.2016. The aforesaid order dated 31.5.2016, obviously, related to Allopathic Doctors working with the CHS.

4. The Ayurvedic doctors and other medical professionals of other streams such as Dentists, Unani Homeopathy etc. clamored for similar treatment. It was clarified by the Ministry of Health and Family Welfare on 30.8.2016 vide an Office Memorandum, that the order dated 31.5.2016 was applicable to GDMOs of CHS i.e. the Allopathic Doctors. Departments/ Ministries/State Governments/Autonomous institutions were left to take their own decisions - with the approval of their respective competent authorities, regarding the applicability of the said Ministerial decision to enhance the age of superannuation of doctors to 65 years as per their requirements and circumstances. Consequently, the Ayurvedic Doctors etc. were viewed as not covered by the order dated 31.5.2016. This led to the filing of the aforesaid original applications. As noticed above, all the applicants - who are seven in number, except Dr.Pratibha Sharma, were serving as Ayurvedic Doctors with the NDMC, whereas, Dr.Pratibha Sharma was serving with the EDMC. The Tribunal by the impugned order held that

the action of the Government in treating the Allopathic Doctors/ GDMOs under the CHS preferentially vis-a-vis the applicants was *ultra vires* the Constitution of India, being violative of Article 14 of the Constitution.

5. The Tribunal held that the applicants were entitled to similar treatment in regard to service conditions, including the age of retirement, as made applicable to doctors (GDMOs) working under the CHS. Consequently, it was held that the applicants would also be entitled to benefit of enhancement of age of superannuation in terms of the Governmental decision dated 31.05.2016, and the petitioner was directed to allow the Ayurvedic doctors to continue to serve till the age of 65 years. It was further directed that in case any applicant has retired at the age of 60 years, he/she shall be reinstated into service till he/she completes the age of 65 years.

6. While the NDMC preferred the present petitions to assail the said decision, another significant development took place after passing of the impugned order. On 24.11.2017, the Ministry of Ayurvedic, Yoga and Naturopathy, Unani, Siddha and Homeopathy (AYUSH), Government of India, issued an order whereby it was communicated that the President was pleased to enhance the age of superannuation of AYUSH doctors under the Ministry of AYUSH, and working in CHS dispensaries and hospitals, to 65 years w.e.f. 27.09.2017, i.e., the date of approval of the Union Cabinet. It was further directed that the doctors shall hold the administrative posts only till the date of attaining the age of 62 years and thereafter, their service shall be placed in non-administrative positions. This Ministerial order was adopted by the

NDMC. This position becomes clear on perusal of the averments made by the petitioner in CM No.24717/2018 in W.P.(C) 8704/2017. In para 6, the petitioner NDMC has stated that in view of the Notification dated 24.11.2017, the petitioner NDMC is extending the age of superannuation w.e.f. 26.09.2017. It is clarified by Mr. Kanth, learned counsel for the petitioner NDMC that the said averment does not relate to respondent No.2 Dr. Pratibha Sharma in W.P.(C) 8704/2017, who was working with the EDMC, and petitioner NDMC had no jurisdiction over the said Ayurvedic Doctor.

7. What, therefore, transpires is that even though the Government of India initially did not extend its policy decision to enhance the retirement age of allopathic doctors to other medical streams, such as Ayurvedic doctors subsequently, it has taken the decision on 24.11.2017 to enhance the age of retirement of those doctors who are covered by AYUSH (which includes the Ayurvedic doctors, as well as those practising Unani, Homeopathy etc.) The subsequent decision dated 24.11.2017 has been made effective only from 27.09.2017. Pertinently, the NDMC has followed suit, and the said Governmental decision has been adopted by it. Thus, those Ayurvedic doctors of the NDMC who fall in the window before 31.05.2016 and 26.09.2017 are left out from getting the benefit of the enhancement of age of retirement, while those retiring on or after 27.09.2017 would get the benefit of the retirement age enhancement to 65 years.

8. So far as the claim of respondent No.2 Dr. Pratibha Sharma is concerned, in our view, she stands on different footing, inasmuch as, the EDMC has not adopted the Governmental decision dated 24.11.2017 to

enhance the age of retirement of doctors covered by AYUSH to 65 years. However, so far as the other private respondents in the aforesaid writ petitions who are all Ayurvedic doctors serving with the NDMC are concerned, in equity we are not inclined to exercise our discretionary jurisdiction under Article 226 of the Constitution to interfere with the impugned order for the reason that they happen to be those unfortunate employees, who attained the age of 60 years during the said window of 31.05.2016 to 26.09.2017 and are denied the benefit of enhanced retirement age only on that basis. Those Ayurvedic doctors, who continued to remain in service on or after 27.09.2017, have been extended the benefit of their age of retirement being raised like the other Allopathic doctors (GDMOs) to 65 years. Qua the said private respondents, the present petitions are accordingly dismissed.

9. So far as the case of respondent No.2 Dr. Pratibha Sharma in WP(C) 8704 of 2017 is concerned, we find that she is an employee of EDMC and apparently the EDMC has not adopted the Government Resolution dated 24.11.2017. The present petition [WP(C) 8704 of 2017] has been preferred by the NDMC. Therefore, in the present petition, respondent No.2 Dr. Pratibha Sharma need not have been impleaded as a party respondent, since the NDMC has no concern with her. Therefore, we need not go into the correctness of the relief granted to Dr. Pratibha Sharma-respondent No.2 in the present petition and so far as her claim is concerned, we leave it open to the EDMC to deal with her case in the manner it considers appropriate.

10. We, therefore, dismiss these petitions, subject to our observation qua Dr. Pratibha Sharma.

11. In view of the dismissal of the writ petitions, we direct the NDMC to make payment of the arrears of salary and allowances to those of the respondent-doctors, who continued to serve with the NDMC even after attaining the age of 60 years and who are still in employment with NDMC, within four weeks from today and to continue to make payment of their salary and other allowances in future punctually till they superannuate at the age of 65 years. However, it is made clear that respondents shall not be assigned any administrative duties in terms of the Governmental decision.

VIPIN SANGHI, J

A. K. CHAWLA, J

NOVEMBER 15, 2018

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