

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.24557 of 2016
Date of decision: 08.05.2019**

Dr. Kamla Singh

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Rishab Lohan, Advocate,
for Mr. R.N. Lohan, Advocate,
for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

Ritu Bahri, J.

Petitioner is seeking a writ in the nature of certiorari quashing the memo/letter dated 24.11.2016 (Annexure P-13), whereby she is to retire on attaining the age of 58 years and notification dated 21.11.2016 (Annexure P-14), whereby extension from 58 to 65 years is to be given only for doing clinical duties, which is in contravention of the Haryana Civil Medical (Group A) Rules, 2014. Petitioner is further seeking quashing of the notification dated 21.11.2016 (Annexure P-14), wherein it has been incorporated that all the doctors will cease to hold administrative posts of Deputy Chief Medical Officer, Chief Medical Officers, Civil Surgeons, Directors, Additional Director Generals, Director General or any other equivalent post on attaining the age of 58 years and they will be assigned only clinical duties.

Petitioner was appointed as HCMS-II in the pay scale of Rs.2000-3500 plus usual allowances vide order dated 03.01.1989. She was posted as

Medical Officer, Community Health Centre, Tosham (Bhiwani). Thereafter, on the recommendations of the HPSC, the petitioner was appointed as HCMS-1 (Group-A) on direct recruitment basis in the pay scale of Rs.4100-5300 plus usual allowances vide order dated 13.07.1996 and was posted as Senior Medical Officer (SMO), Community Health Centre, Narnaund, Hisar. Thereafter, she was promoted to the post of Deputy Director (SS) in the pay scale of Rs.13,500-17250 + NPA + Rs.200/- Special Pay and other allowances admissible from time to time vide order dated 29.12.2006. Vide order dated 23.08.2012 (Annexure P-1), petitioner was further promoted to the post of Director, Health Services in the pay scale of Rs.37400-67000-PB4GP-9500+NPA and other allowances. She was further promoted to the post of Additional Director General, Health Services, Haryana vide order dated 20.12.2013 (Annexure P-2). Vide order dated 29.03.2016 (Annexure P-4), the petitioner was promoted to the post of Director General, Health Services, Haryana.

Learned counsel for the petitioner has placed on record copy of order dated 28.08.2008 (Annexure P-5) issued by the PGIMER, Chandigarh, notification dated 30.05.2014 (Annexure P-6) issued by Government of West Bengal and notification/resolution dated 28.06.2014 (Annexure P-7) issued by the Government of Odisha, whereby age of superannuation of Medical Officers/Doctors have been enhanced from 58 years. Keeping in view these notifications, Ministry of Health & Family Welfare, Government of India vide order dated 31.05.2016 (Annexure P-8) enhanced the age of superannuation in respect the specialists of Non-Teaching and Public Health sub-cadres of Central Health Services (CHS) and General Duty Medical Officers of CHS to 65 years. Government of

Assam has also enhanced the retirement age of Doctors from 60 to 65 years vide notification dated 30.07.2016 (Annexure P-10). Similarly, vide notification dated 30.09.2016 (Annexure P-11), Government of National Capital Territory of Delhi has also enhanced the age of superannuation of Doctors to 65 years. In the State of Haryana on account of shortage of doctors, Health Department, Haryana sent a proposal for enhancing the retirement age of doctors, which was approved by the Council of Ministers in its meeting held on 15.11.2016. In this regard, Governor of Haryana issued order dated 21.11.2016 (Annexure P-12), which was published in the Haryana Govt. Gazette dated 21.11.2016 (Annexure P-14).

As per petitioner, the above said notification dated 21.11.2016 (Annexure P-14) suffers from illegality and arbitrary condition that the doctors will only perform clinical duties during the extended services beyond the age of 58 years. Grievance of the petitioner is against the memo dated 24.11.2016 (Annexure P-13), whereby option has been sought as to if, she is willing to serve after the age of 58 years or not. She is also seeking to quash condition Nos. (vii), (ix) and (xi) mentioned in the notification dated 21.11.2016 (Annexure P-14), which are reproduced as under:-

“(vii) Health Department will issue separate orders for suitably re-designating the doctors who may be re-employed or whose services are extended beyond 58 years for performing clinical duties in Haryana in accordance with this policy.

xxx xxx

(ix) In case, a doctor does not wish to work in clinical capacity upon attaining the age of 58 years, he/she will have the option to seek voluntary retirement at the age of 58 years with full pension.

xxx xxx

(xi) Health Department will devise appropriate proforma for monitoring the performance of doctors performing clinical duties after the age of 58 years. For administrative purposes the normal hierarchy of the hospital/institution will continue to work as such. The performance of

doctors beyond 58 years as recorded in the appropriate proforma will be forwarded by the institutional head to the office of DG, on periodic basis, on the basis of which their annual confidential report etc. will be written. No person junior to them will write the ACR. If no senior person is available in the supervisory hierarchy, the CS Health and HM will be the Reporting and Reviewing Authority. The ACR however, will be written on the basis of the performance report received.”

As per short reply filed in the shape of affidavit of Additional Chief Secretary to Government of Haryana, Health Department, Chandigarh, policy decision dated 21.11.2016 is applicable on all the members of Haryana Civil Medical Service (HCMS). As per Rule 143 of the Haryana Civil Services Rules, 2016, age of retirement of every Government employee is 58 years, except four categories of employees namely, (i) Disabled employees having minimum degree of disability of 70% and above, (ii) Blind employees, (iii) Group 'D' employees and (iv) Judicial Officers. This rule further provides that no Government employee shall be retained in service after attaining the age of superannuation, except in public interest and in exceptional circumstances, without the approval of the Council of Ministers. It is further stated that the Health Department was facing acute shortage of doctors for treating patients in various Government run Medical Institutions. Various policies have been considered or framed from time to time for increasing the number of doctors in the State. One of the matter under consideration was to re-employ the doctors, who have already retired from service and also to conditionally extend the services of the retiring doctors for performing clinical duties. After due consideration of the matter, the Government of Haryana, at the level of Council of Ministers, decided to create an exception to the Rule 143 in the public interest by allowing re-employment of retired doctors who were below the

age of 65 years and for giving an option to the serving doctors for providing clinical services to the patients after attaining the superannuation age of 58 years.

Keeping in view the above fact, conditions have been imposed in Rule 143 of the Haryana Civil Services Rules, 2016 that the doctors can give their options for working beyond the age of 58 years for performing clinical duties. Otherwise, they will be retired at the age of 58 years with full pension. It is further clarified that retirement age of all the doctors in the Haryana Civil Medical (Group A) Rules, 2014 is governed by Rule 143 of Haryana Civil Services Rules, 2016, as per which, notification dated 21.11.2016 (Annexure P-14) has been issued. The petitioner cannot claim, as a matter of right that she wants to continue work on Administrative side after attaining the age of 58 years.

After hearing learned counsel for the parties, this petition deserves to be dismissed. The retirement age of the petitioner is governed by Rule 143 of the Haryana Civil Services Rules, 2016, which provides that exceptions can be carried out in public interest. Accordingly, the Council of Ministers decided to create an exception to the Rule 143 in public interest keeping in view that there was acute shortage of doctors in the State of Haryana. Extension of service beyond the age of 58 years has been given only to provide clinical facility to the patients. Further, as per notification dated 21.11.2016 (Annexure P-14), extension is to be granted to those doctors, who are below the age of 65 years and the re-employment should not be for less than one year. The extension is being given for the purpose of treating the patients. In this backdrop, the doctors will cease to hold Administrative posts of Deputy Chief Medical Officer, Chief Medical

Officers, Civil Surgeons, Directors, Additional Director Generals, Director General or any other equivalent post on attaining the age of 58 years and they will be assigned only clinical duties. The extension has been granted keeping in view the public interest. Petitioner has option to get retirement at the age of 58 years in case, she does not want to serve on clinical side.

In view of the above, no ground is made out to interfere in the impugned order/notification.

No merits.

Dismissed.

08.05.2019
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No