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

+ **W.P.(C) 421/2018**

SOUTH DELHI MUNICIPAL CORPORATION AND ANR.

..... Petitioners

Through: Mr. Ravi Kant Jain, Advocate.

versus

DR AJAY KUMAR SAREEN AND ANR. Respondents

Through: Mr. Manish Verma, Advocate for R-1.
Mr. Ashwani Bhardwaj with Ms.
Kavita Rawat, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
% **24.10.2019**

W.P.(C) 421/2018, CM APPL. 1791/2018 (stay) and CM APPL. 1793/2018 (additional documents), CM APPL. 25908/2019

1. CM APPL. 25908/2019 is an application filed by Respondent No.1 pointing out that the issue raised in the present petition by the South Delhi Municipal Corporation ('South DMC') stands covered against it by the decisions of this Court in two other connected matters involving the East Delhi Municipal Corporation ('East DMC') [W.P.(C) 4524/2019] and the South DMC itself [W.P.(C) 1776/2018].

2. As far as W.P.(C) 1776/2018 is concerned, the South DMC had challenged in the said petition an order dated 5th September, 2017 passed by

the Central Administrative Tribunal (CAT) Principal Bench in OA No.2503/2017. The issue involved was the extension of the age of retirement AYUSH medical practitioners (i.e. practitioners of ayurveda, homeopathy, unani, siddha and other forms of Indian medicine) from 62 to 65 years, at par with allopathic doctors.

3. While dismissing W.P.(C) 1776/2018 by its order dated 27th March, 2019 the Division Bench of this Court noted that earlier the CAT had in an order dated 24th August, 2017 in ***Dr. Santosh Kumar Sharma v. Union of India*** ruled in favour of the AYUSH medical practitioners, and held that they too were entitled to the benefit of retiring at the age of 65 years on par with allopathic doctors. Against the said order of the CAT, the North Delhi Municipal Corporation ('North DMC') had filed W.P. (C) 8704/2017. The said writ petition was dismissed by the Coordinate Bench of this Court on 15th November, 2018. Likewise, several writ petitions including W.P.(C) 637/2018, 644/2018 9461/2018 and 610/2018 were dismissed. Consequently, W.P.(C) 1776/2018 was also dismissed by the Coordinate Bench.

4. Turning now to W.P.(C) 4524/2019 by the East DMC, here again, this Court by its order dated 13th April, 2019 declined to stay the impugned order of the CAT and directed the East DMC to implement the said order and extend the benefit of increase in retirement age to the Respondent therein who was an Ayurvedic doctor.

5. In the present petition, Respondent No.1, who was a Dental Surgeon

working with the South DMC superannuated on 30th June, 2017 upon completing the age of 60 years. The CAT has in the impugned order dated 15th September, 2017 in OA No. 3240/2017 followed its earlier judgment in ***Dr. Santosh Kumar Sharma v. Union of India*** and held that the Respondent would be deemed to be in service till he attained the age of 65 years and also be entitled to wages for the period he remained out of service.

6. It will be noticed at this stage that while issuing notice in the present petition on 17th January, 2018, this Court noted that W.P.(C) 8704/2017 against the decision in the ***Dr. Santosh Kumar*** case was pending. Although this Court on the first date i.e. 17th January 2018, did not grant a stay of the impugned order, it did so on the subsequent date i.e. 2nd April 2018.

7. The Petitioners have not been able to provide any justification for denying the Respondent the benefit of the judgments referred to earlier. Indeed, as a dental surgeon his case can be no different from any allopathic doctor.

8. Consequently, the Court affirms the impugned order of the CAT. As a result, the Respondent will now be allowed to resume duties as a Dental Surgeon with the Petitioner. He is directed to report for duty at the South DMC on 1st November, 2019.

9. The Court clarifies that for the period that the Respondent has not worked, he will not be entitled to any pay or allowances. The period during which he was out of service will, however, be treated as his having continued in service and will also taken into account for the purposes of fixation of his

pension upon superannuation.

10. The pension already received by the Respondent will be adjusted against 50% of the monthly salary that will be paid hereafter till fully adjusted.

11. As far as the other retiral benefits already paid to the Respondent viz., the General Provident Fund, the Gratuity and the Leave Encashment, the Respondent will return the said amounts to the Petitioner by cheque not later than 1st November, 2019.

12. The petition is disposed of in the above terms. The applications are also disposed of.

13. Order *dasti* under the signature of the Court Master.

S. MURALIDHAR, J.

TALWANT SINGH, J.

OCTOBER 24, 2019

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