Item No.5

IN THE HIGH COURT OF MANIPUR
AT IMPHAL

WP(C) No. 208 of 2020

Hemam Jamuna Devi

....Petitioner

-Versus-

Union of India & 2 Ors.

....Respondents

BEFORE

HON'BLE MR. JUSTICE LANUSUNGKUM JAMIR

Order

22.07.2020

Heard Mr. BP. Sahu, learned senior counsel for the petitioner. Also heard Mr. S. Suresh, learned ASG for the respondent No. 1 and Mr. M. Devananda, learned counsel appearing on behalf of respondent Nos. 2 & 3/ RIMS.

By this writ petition, the petitioner is challenging the Order dated 01.05.2020 by which the petitioner on attaining the age of 60 years on 30.04.2020 was to function as faculty member till she attains the age of 65 years in terms of the Ministry of Health & Family Welfare (Nursing Section) Order No. Z.28015/27/2007-N dated 28.06.2010 read with FIR 56(bbb).

Mr. S. Suresh, learned ASG, on instructions, has produced a Letter dated 20.07.2020 written by the Under Secretary to the Government of India, Ministry of Health & Family Welfare which is reproduced hereinbelow:

"No.U.12025/10/2020-NE
Government of India
Ministry of Health and Family Welfare
(N.E. Section)

Nirman Bhawan, New Delhi

Dated: 20th July, 2020

To,

Shri Sarangthem Suresh, Assistant S.G.
(email: sureshsarangthem@yahoo.com)

Subject: WP(C) No. 208 of 2020 filed by Hemam Jamuna devi Vs Union of India & Ors. Filed before the Manipur at Imphal.

Sir,

I am directed to refer to your e-mail dated 17th July, 2020 on the subject mentioned above and to say that the Order No. A.28015/27/2007-N dated 28th June, 2010 of the Ministry of Health & Family Welfare enhancing the age of superannuation of nursing teaching faculty with M.Sc. in Nursing from 60 to 65 years is applicable to the institutions of the autonomous organizations like RIMS.

2. The matter relating to the enhancement of age of superannuation of nursing teaching faculty to 65 years in the RIMS is under consideration in the Ministry. As and when a decision is taken in the matter it would have prospective effect and could not be extended to the applicant who has already reached the existing age of superannuation of 60 years on 30.04.2020.

Yours faithfully,

(Manoj Kumar Singh)
Under Secretary to the Government of India
Tele No. 23061521"

Similarly, Mr. M. Devananda, learned counsel appearing for the RIMS, has also produced another Letter dated 20.07.2020 written by the Under Secretary to the Government of India, Ministry of Health & Family Welfare and addressed to the Director, Regional Institute of Medical Sciences (RIMS), Imphal, which is also reproduced hereinbelow:

"No.U.12025/10/2020-NE
Government of India
Ministry of Health and Family Welfare
(N.E. Section)

Nirman Bhawan, New Delhi

Dated: 20th July, 2020

To,

The Director,
Regional Institute of Medical Sciences (RIMS) Imphal

Subject: WP(C) No. 208 of 2020 filed by Hemam Jamuna Devi Vs Union of India & Ors. filed before the Manipur at Imphal.

Sir,

I am directed to refer to your e-mail dated 17th July, 2020 on the subject mentioned above and to say that as per this Ministry's Letter No. U.12025/64/2008-N dated 05.11.2009, the post of Professor cum Principal, is a faculty post. Besides, guidelines of the Indian Nursing Council, to open B.Sc.(N) College of Nursing, stipulates that Principal cum Professor is a teaching faculty. So the averments that Professor cum Principal, College of Nursing, RIMS is not a faculty post may not be tenable before the Court.

2. The Order No. Z.28015/27/2007-N dated 28th June, 2010 of the Ministry of Health & Family Welfare enhancing the age of superannuation of nursing teaching faculty with M.Sc. in Nursing from 60 to 65 years is applicable to the Central Government nursing institutions. These orders are not automatically applicable to the institutions of the autonomous organizations like RIMS.

3. The matter relating to the enhancement of age of superannuation of nursing teaching faculty to 65 years in the RIMS is under consideration in the Ministry. As and when a decision is taken in the matter it would have prospective effect and could not be extended to the applicant who has already reached the existing age of superannuation of 60 years on 30.04.2020.

4. However, it has been observed that RIMS vide their Order dated 1st May, 2020 has already allowed the petitioner to function as faculty member, till she attains the age of 65 years in terms of order dated 28th June, 2010. Her continuation of service as faculty member, College of Nursing, RIMS Imphal is subject to the final decision of the Ministry in the matter and excess payment to her, if any, shall be refunded to the institute by her either by adjustment against future payments due to her

or other otherwise. This has been done without the approval of the Ministry. Her engagement may be discontinued forthwith.

5. The applicant has directly approached the Hon'ble High Court without availing the relief from the Court of first instance, the Central Administrative Tribunal. The High Court is an appellate court. Her petition is liable to be dismissed on this ground.

6. The above facts may please be suitably incorporated in the counter reply to be filed before the High Court. The counter affidavit may be got vetted from the Govt. counsel before filing.

Yours faithfully,

(Manoj Kumar Singh)
Under Secretary to the Government of India
Tele No. 23061521"

Mr. BP. Sahu, learned senior counsel for the petitioner, submits that the Letters both dated 20.07.2020 written by the Under Secretary to the Government of India, Ministry of Home & Family Welfare has been written only to defeat the interest of the petitioner.

This Court is not impressed by the submission forwarded by the learned senior counsel for the petitioner.

A perusal of the Letters both dated 20.07.2020 clearly indicates that the enhancement of age of superannuation of Nursing Teaching Faculty to 65 years in the RIMS is still under consideration in the Ministry. Further, the Order dated 28.06.2010 of the Ministry of Health & Family Welfare enhancing the age of superannuation of Nursing Teaching Faculty with M.Sc. in Nursing from 60 to 65 years is applicable to the Central Government nursing institution and are not automatically applicable to the institution of the autonomous organization like RIMS. This would clearly indicate that the impugned Order dated 1st May, 2020 by the Deputy Director (Admn.), RIMS allowing the petitioner to function as faculty member till the petitioner attains the age of 65 years is without any basis.

Accordingly, writ petition is dismissed.

Furnish a copy of this Order to the learned counsel for the parties through their respective e-mails.

JUDGE

joshua

WAIKHOM TONEN MEITEI

Digitally signed by WAIKHOM TONEN MEITEI
Date: 2020.07.22 14:17:36 +05'30'