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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 4894 of 2022

Mirza Afazuddin & Anr.
Vs.
Union of India & Ors.

Mr. Amal Baran Chatterjee, Sr. Advocate,
Mr. Samiran Mondal,
Mr. Abhinaba Dan
.... For the petitioners.

Mr. Asit Kumar De
... For Union of India.

Mr. Tapan Kumar Mukherjee, Sr. Advocate,
Ms. Saheli Mukherjee
... For the State.

The District Magistrate and the Chairman, District Tuberculosis (TB) Control Society, Murshidabad, published an advertisement in the year 1999, inviting application for contractual appointment of Senior Tuberculosis Laboratory Supervisor (STLS), Senior Tuberculosis Treatment Supervisor and Lab. Technician. In the said advertisement, the age limit for STLS was 35 to 62 years (as on 31st December, 1999). In view of such stipulation it is apparent that a person who is of 35 years of age can apply and is permitted to work upto the age of 62 years. Similarly, in case of Senior Tuberculosis Treatment Supervisor the age was upto 62 years (as on 31st December, 1999). This gives an indication that a person upto 62 years was permitted to be engaged. In case of Lab. Technician, the minimum age for applying is 20

years while the maximum age is 35 years (as on 31st December, 1999).

The petitioner no.1 was engaged as a STLS for Tuberculosis unit at Jangipur S.D. Hospital. By an office order dated 14th January, 2000, issued by the Member Secretary, District TB Control Society, Murshidabad. From the record (at page 17 of the writ petition) it appears that a subsequent notice inviting application for the same posts dated 16th March, 2005, the upper age limit is 60 year for all posts. The petitioner no.2, as appears from the document annexed to the writ petition was engaged as TB Health Visitor (TBHV) by an order dated 23rd August, 2005, issued by the Secretary District Health & Family Welfare Samiti, Murshidabad.

Admittedly, the engagement/appointment of the petitioners was on contractual basis for a maximum period of one year. The petitioners say that their contractual employment has been renewed from time to time and are continuously working at their engaged/appointed posts. The petitioners say that in terms of the two advertisements under which the petitioners entered into the employment contract it is not clear till which age they are permitted to work. The advertisement for the 1999 speaks of 62 years while the 2005 advertisement says that they will be permitted to continue till the age of 60 years. Subsequently, a

memorandum dated 6th February, 2014 was issued by the Government of West Bengal, Directorate of Health Services by and under which the petitioners were permitted to continue upto the maximum age of 65 years. This was followed by another memorandum dated 11th February, 2015 which also permitted the petitioners to work upto 65 years. The petitioners say that by virtue of the two memoranda respectively dated 6th February, 2014 and 11th February, 2015, the maximum age limit till which the petitioners were entitled to work has been enhanced upto 65 years. In view of fixing and refixing the age as aforesaid the petitioners say that they are at a loss and are unable to correctly know till up to which age they are permitted to work. This intransparency and arbitrariness in the government policy is not permissible. The petitioners, however, say that in view of the last memorandum dated 11th February, 2015, they should be allowed to continue upto 65 years. By an office order dated 3rd March, 2020, issued by the Executive Director, West Bengal Health & Family Welfare Samiti, the petitioners say that the maximum permissible age to work has been reduced to 60 years for all persons engaged under all contractual posts. The petitioners say that they have entered into the employment contract initially under the advertisements published in the year 1999 and 2005. The petitioners have continued since then. While in continuation, the two memoranda respectively dated 6th February, 2015 and

11th February, 2015 have enhanced the age limit upto 65 years. The maximum permissible age of the petitioners, therefor, cannot now be reduced to 60 years in terms of the office order dated 3rd March, 2020. The petitioners also say that on proper interpretation of the order dated 3rd March, 2020 it will appear that the order is operational prospectively and not with the retrospective effect. Any contractual employee engaged/appointed after 3rd March, 2020 shall be governed by the said office order dated 3rd March, 2020. Since the petitioners entered into the employment contract prior to the issuance of the order dated 3rd March, 2020, the said order has no manner of application in the case of the petitioners. The petitioners, therefor, are entitled to work till upto 65 years.

A report has been filed by the State respondent to which an exception has also been taken by the petitioners.

After hearing the parties and considering the materials on record, I find that the interpretation sought to be advanced by the petitioners are untenable. It is correct that the petitioners under the two advertisements published in the year 1999 and 2005 were permitted to work upto the maximum age of 62 years and then 60 years which was subsequently enhanced to 65 years in 2015 but the contract was never till the petitioners attained the age of 60 years or 65 years. The contract was year to year. Even if the year to year contract has been

continuously renewed it does not make the tenure of the contract between the petitioners and the employer for a fixed period upto 62 years or 60 years. Similarly, with the issuance of two memoranda respectively dated 6th February, 2014 and 11th February, 2015, the maximum age to work was enhanced upto 65 years but does not also make the contract of employment upto 65 years. The petitioners were only permitted to work upto 65 years till the said two memoranda were in operation. The order dated 3rd March, 2020 has been passed in supersession of all previous orders, circulars, notifications, memoranda, operating in the field. It is, therefor, clear that the maximum age limit with regard to any contractual post is 60 years after 3rd March, 2020. The contract in respect of the petitioners being year to year contract with the conclusion of the contract which was in subsistence as on 3rd March, 2020 if renewed has to be on the basis of the order dated 3rd march, 2020. Therefor, if the petitioners have not attained the maximum age of 60 years were entitled to work till the contract was in subsistence. Any fresh contract which will come into operation after 3rd March, 2020 shall be governed by the order dated 3rd March, 2020 and, as such, the petitioners were permitted to work till they attain 60 years since they are not permitted to the contractual employment after 3rd March, 2020 on having attained the age of 60 years by that time. Even assuming without admitting the interpretation

sought to be given by the petitioners that the order dated 3rd March, 2020 is prospective in nature then also such contention does not come in aid of the case of the petitioners as any fresh contract after 3rd March, 2020 shall be governed by the provisions of the said order. That apart, the fixation of maximum age limit of employment is a policy matter, the interference to which is on limited ground which is absent in the case of the petitioners.

In the aforesaid facts and circumstances, the writ petition is disposed by holding that the petitioners are not entitled to be engaged on contractual basis upon attaining the age of 60 years subsequent to issuance of the order dated 3rd March, 2020. Nothing further, therefor, remains to be adjudicated.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Arindam Mukherjee, J.)