

FMA 1283 of 2022

with

IA No. CAN 1 of 2022

Mirza Afazuddin & Anr.

Vs.

Union of India & Ors.

Mr. Samiran Mandal

Mr. Abhinaba Dan

... For the Appellants

Mr. Tapan Kumar Mukherjee, Ld. AGP

Mr. Somnath Naskar

... For the State Respondents

Mr. Asit Kumar Das

... For the Union of India

1. We have heard the learned counsel appearing for the parties.
2. The policy decision of the Government dated 3rd March, 2020 regarding the retirement age of the contractual employees was the subject matter of challenge in the writ petition.
3. The appellants have been appointed as Senior Tuberculosis Laboratory Supervisor (in short STLS) in terms of an advertisement which mentions the age limit for the said post between 35 to 62 years as on 31st December, 1999 from which it is apparent that a person who is 35 years of age can apply and is permitted to work upto the age of 62 years. Similar is the case as that of the Senior Tuberculosis Treatment Supervisor.

4. The petitioner no. 1 was engaged as a Senior Tuberculosis Laboratory Supervisor for Tuberculosis unit as Jangipur S.D Hospital. It appears that a subsequent to the said appointment notice inviting application for the same posts dated 16th March, 2005, the upper age limit was prescribed as 60 years for all posts. The petitioner no. 2 appears to have been engaged as TB Health Visitor (TBHV) by an order dated 23rd August, 2005 issued by the Secretary, District Health & Family Welfare Samiti, Murshidabad.

5. It appears that the petitioners have been working as contractual employees upon renewal of service till the attaining the age of 60 years. Subsequent Memorandum dated 6th February, 2014 issued by the Government of West Bengal, Directorate of Health Services, the petitioners were permitted to continue upto the maximum age of 65 years. The Government cannot alter such service condition to their detriment and the Government should be directed to engage them till the attaining the age of 65 years.

6. Learned counsel appearing for the appellants has relied upon the Memorandum dated 11th February, 2015 to show that they have an enforceable right to continue upto the age of 65

Years, which has, however, arbitrarily withdrawn by the order dated 3rd March, 2020. It is argued that they have been appointed in terms of advertisements published in the year 1999 and 2005 and they were continued in their respective position till the attaining the age of 60 years. The Government has completely disregarded the two memoranda dated 6th February, 2015 and 11th February, 2015 by which they have enhanced the age limit upto 65 years.

7. Indisputably, 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. The memoranda would show that there is no definite assurance on behalf of the Government that the contractual employees will be allowed to continue till the age of 65 years. The contract was renewed from time to time. The Government has stated the reason for determining the retirement age of contractual employees upto 60 years in the order dated 3rd March, 2020. It says that “the upper age limit of all contractual employees under National Health Mission is hereby fixed maintaining parity with the retirement age of

Regular employees under State Government.” Learned counsel appearing for the appellants, has argued that they are not receiving all the benefits of the regular employees and as such, the determination of the age of retirement at 60 years in order to bring parity is arbitrary. We are not convinced with the argument made by the appellants. The Government has taken a policy decision based on its past experience and it is also having a financial implication. Moreover, it appears that the age limit for the aforesaid post was varied from time to time and finally the Government has decided on 3rd March, 2020 that all other contractual posts the retirement age should be 60 years, which is in parity with the retirement age of the regular employees. The Court should be extremely careful and circumspect in interfering with the policy decision of the Government unless it is arbitrary or irrational or illegal. Since we are of the view that a reason has been given by the authority concerned for fixing the upper age limit of all contractual employees and it falls within the exclusive domain of the Government, we are not interfering with the said policy decision. We are of the view that the learned Single Judge was justified in not granting any relief to the writ

petitioners.

8. The appeal fails and is accordingly dismissed.

In view of dismissal of the appeal, nothing remains to be decided in the application for stay being CAN 1 of 2022 and the same is accordingly dismissed.

However, there shall be no order as to costs.

9. Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)

