

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(S) No. 209 of 2021

1. Dr. Rabindra Nath Prasad, aged about 66 years, son of Late Bihari Singh, resident of Kushwaha Tola, Block Road, Barharwa, P.O. and P.S. Barharwa, District Sahibganj.

2. Dr. Kapildeo Ram, aged about 64 years, son of Late Jadunath Ram, resident of Village & P.O. Borio, District Sahibganj.

3. Dr. Ram Prasad Gupta, aged about 61 years, son of Late Nandlal Gupta, resident of At. E-303, Harihar Estate, Kusum Vihar, Road No.4, Morabadi, P.O. Morabadi, P.S. Bariatu, District Ranchi.Petitioners

Versus

1. The State of Jharkhand.

2. The Principal Secretary, Schedule Caste, Schedule Tribe, Minority and Other Backward Classes, Welfare Department, Govt. of Jharkhand, having its office at Project Building, Dhurwa, P.O. and P.S. Dhurwa, District Ranchi.

3. The Principal Secretary, Planning and Finance Department, Govt. of Jharkhand, having its office at Project Building, Dhurwa, P.O. and P.S. Dhurwa, District Ranchi.

4. The Principal Secretary, Personnel, Administrative Reforms and Rajbhasha Department, Govt. of Jharkhand, having its office at Project Building, Dhurwa, P.O. and P.S. Dhurwa, District Ranchi.

5. The Secretary, Health, Medical Education and Family Welfare Department, Govt. of Jharkhand, having its office at Nepal House, Doranda, P.O. and P.S. Doranda, District Ranchi. Respondents

With

W.P.(S) No. 489 of 2021

1. Dr. Girish Chandra Prasad, aged about 67 years, son of Late Bhagwan Prasad, resident of Laxmi Niwas, Krishnapuri, Road No.-1, Chutia, Ranchi, P.O. Krishnapuri, P.S. Chutia, District Ranchi.

2. Dr. Shambhu Nath Bhagat, aged about 66 years, son of Sri Bhagwat Prasad Bhagat, resident of Goldag Patti, P.O. & P.S. Nath Nagar, District Bhagalpur.

... .. Petitioners

Versus

1. The State of Jharkhand.

2. The Principal Secretary, Schedule Caste, Schedule Tribe, Minority and Other Backward Classes, Welfare Department, Govt. of Jharkhand, having its office at Project Building, Dhurwa, P.O. and P.S. Dhurwa, District Ranchi.
3. The Principal Secretary, Planning and Finance Department, Govt. of Jharkhand, having its office at Project Building, Dhurwa, P.O. and P.S. Dhurwa, District Ranchi.
4. The Principal Secretary, Personnel, Administrative Reforms and Rajbhasha Department, Govt. of Jharkhand, having its office at Project Building, Dhurwa, P.O. and P.S. Dhurwa, District Ranchi.
5. The Secretary, Health, Medical Education and Family Welfare Department, Govt. of Jharkhand, having its office at Nepal House, Doranda, P.O. and P.S. Doranda, District Ranchi. Respondents

**With
W.P.(S) No.507 of 2021**

Dr. Umesh Nandan Prasad Srivastava, aged about 68 years, son of Late Jai Mangal Prasad Srivastava, resident of Parn Kutir, Sharda Colony, Power House Road, Chutia, P.O. and P.S. Chutia, District Ranchi. ... Petitioners

Versus

1. The State of Jharkhand.
2. The Principal Secretary, Schedule Caste, Schedule Tribe, Minority and Other Backward Classes, Welfare Department, Govt. of Jharkhand, having its office at Project Building, Dhurwa, P.O. and P.S. Dhurwa, District Ranchi.
3. The Principal Secretary, Planning and Finance Department, Govt. of Jharkhand, having its office at Project Building, Dhurwa, P.O. and P.S. Dhurwa, District Ranchi.
4. The Principal Secretary, Personnel, Administrative Reforms and Rajbhasha Department, Govt. of Jharkhand, having its office at Project Building, Dhurwa, P.O. and P.S. Dhurwa, District Ranchi.
5. The Secretary, Health, Medical Education and Family Welfare Department, Govt. of Jharkhand, having its office at Nepal House, Doranda, P.O. and P.S. Doranda, District Ranchi. Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Petitioners : Mr. Saurabh Shekhar, Adv.

For the Respondents : Mr. Ratnesh Kumar, SC(L&C)-I
: Mr. Praveen Akhauri, SC (M)-I

: Mr. Shubham Mishra, AC to SC(M)II

CAV on:- 09/07/2024

Pronounced on:-24/09/2024

Heard learned counsel for the parties. Since all these writ applications involves common issue; as such all were heard together and being disposed of by this common judgment

2. Initially, these writ applications were preferred for a direction upon the respondents authorities to forthwith enhance the age of superannuation of these petitioners from 60 years to 65 years on the ground that the recommendation of 6th Pay Revision Commission, which has been adopted by the Government of Jharkhand on 15.09.2008; whereby, the committee has recommended that all the doctors should be treated at par for the purpose of pay and allowance and service conditions and also on the ground that the Allopathic Doctors in the state of Jharkhand have already been given the benefit of enhancement in the age of superannuation from 60 to 65 years vide circular dated 23.07.2011 and the petitioners may be permitted to discharge their duties till they attain the age of 65 years.

The petitioners by way of interlocutory application being I.A. No. 427 of 2021, has further prayed of quashing of limited portion of resolution dated 08.01.2021; whereby a decision has been taken to

enhance the age of Ayush Doctors from 60 to 65 years with a stipulation that it will be having effect prospectively.

3. The brief fact of the case as per the pleadings is that the petitioners are Ayush Medical Officers, in the department of health and their joining and retirement are as under:-

S. no	Case.no	Petitioner	Date of appointment	Date of retirement	Attains 65 years on
1.	W.P.(S) No. 209 of 2021	Petitioner No. 1	14.12.1983	30.06.2014	30.06.2019
		Petitioner No. 2	15.12.1983	30.01.2016	30.01.2021
		Petitioner No. 3	07.12.1987	30.09.2019	30.09.2024
2.	W.P.(S) No. 489 of 2021	Petitioner No.1	16.08.1986	31.01.2014	31.01.2019
		Petitioner No. 2	08.06.1986	31.07.2015	31.07.2020
3.	W.P.(S) No. 507 of 2021	Petitioner	02.02.1977	31.08. 2012	31.08.2017

These petitioners have come to the State of Jharkhand after final allocation of their cadre in the anticipation that there cannot be any alteration in their service conditions amongst the Doctors, who remained in the existing State of Bihar, as contained in section 73 of the Bihar Re-Organization Act, 2000.

The 6th Central Pay Commissions Report has been adopted by the State of Jharkhand on 15.09.2008 and the Ayurvedic Doctors have been given at par treatment with the Allopathic Doctors. Hence, it has been

contended by the petitioners that in view of the fact that by virtue of circular issued by State of Jharkhand dated 23.07.2011, the age of superannuation has been enhanced from 60 to 65 years with respect to Allopathic Doctors under the Jharkhand Health Services; the Ayurvedic Doctors like the petitioners have also become eligible to be given enhancement in the age of superannuation from 60 to 65 years; however, after a lapse of almost ten years; such decision has been taken by the respondent- State of Jharkhand; that too, by giving its effect prospectively; and thus directly affecting these petitioners.

4. The State of Jharkhand vide notification dated 15.09.2008 had decided to accord equal status to the Allopath Doctors and Ayurvedic Medical Officers. However, the respondents took a decision to enhance the retirement age of only Allopathic Doctors and not touched the Ayurvedic Medical Officers. Further fact reveals that during the pendency of these writ applications, the petitioners have come to know that the government have come up with resolution dated 08.01.2021; whereby the age of Ayush Doctors have been enhanced but the said resolution has been given effect to prospectively.

It has been contended that this needs to be corrected. The petitioners are effective parties for the reason that they have already retired. But, as far as their consideration under the resolution dated 08.01.2021 is concerned; the enhancement as per the judgement of this court has been allowed in view of the fact that the Central Government has already undertaken this exercise and the State of Jharkhand has undertaken to implement the Central Service Conditions. This also includes age enhancement w.e.f. 28.02.2009.

5. Learned counsel for the petitioners submits that in the State of Bihar, recommendation of 6th Central Pay Commission has already been adopted vide notification dated 30.07.2015 by the Finance Department, by the virtue of which the Ayurvedic Doctors have already been given at par treatment with the Allopathic doctors; whereby they have been given the benefit of enhancement in the age of superannuation from 60 to 65 years but, in a highly arbitrary and illegal manner, the service condition of the petitioners, who came to the State of Jharkhand, has greatly been altered by not giving them the benefit of enhancement in age from 60 to 65 years, which is contrary to the statutory provision as contained in Section 73 of the Bihar Re-organization Act, 2000. In support of his contention, he

has cited the case of ***Jyotish Chandra Singh & others v. State of Jharkhand*** which has been decided by this Court in *W.P.(S) No. 4071 of 2017*, wherein this Court has held at para-8 that the doctors of two services, i.e. Allopathic and Ayush; are to be treated at par in all respects.

6. Learned counsel further submits that similar matter has already been decided by this Court in *W.P.(S) No. 342 of 2014* in the case of ***Dr. Girish Chandra Prashad and Another v. State of Jharkhand***; whereby the petitioner therein belonging to the same department and holding to the same post had preferred writ petition for enhancement of age from 60 to 65 years. The matter was duly considered by this Court and direction has been issued upon the respondents to pass appropriate order for age enhancement in accordance with law.

Learned counsel contended that even the Patna High Court has held that the benefits of retirement age enhancement have been granted to Allopathic Medical Officer, and on this basis if the same benefit is not granted to indigenous doctors, it would result in violation of Article 14 & 16 of Constitution of India.

He further submits that the Government of India has already approved the age enhancement of Central Health Service Doctors to 65 years, and in that

respect since the State of Jharkhand has already resolved to adopt Central Service conditions, the case of enhancement of the age of the present petitioners should also be considered.

7. It has been submitted that during the pendency of the present writ petition the government came up with resolution dated 08.01.2021, whereby the age of Ayush Doctors has been enhanced; however, the resolution has been given effect to prospectively and this needs to be corrected pursuant to the resolution dated 28.02.2009 adopted by State of Jharkhand; whereby the service condition prescribed by the Central Government, wherein the Ayurvedic Medical Officers' retirement age has already been declared as to be 65 years, will be applicable on the counterpart State employees.

The cut-off date that has been fixed as 08.01.2021, i.e. the date of issuance of resolution, excludes the petitioners from getting the benefit of enhancement of age of retirement of 60-65 years as they have already retired prior to 2021. The Ayush Doctors should also be granted the benefit of age of enhancement, w.e.f. the year 2011 when the Allopathic Doctors have been granted the same. Therefore, there should be retrospective application of the resolution dated 08.01.2021.

8. He lastly contends that the petitioners have been put to disadvantageous position by forcing them to retire at the age of 60 years, which is alteration in the service conditions of the petitioners, which is contrary to section 73 of Bihar Re-organization Act, 2000 and thus, the action of the respondent authorities is otherwise highly arbitrary and illegal and violates the fundamental rights of the petitioners as guaranteed under Article 14 of Constitution of India.

9. Learned counsel for the respondents submits that the enhancement in the age of retirement of the Medical Officer of Dental and Medical Education cadre from 60 to 65 years have made effective from the date of issuance of the Resolution. Likewise, the enhancement at the age of retirement of the Allopathic Medical Officers in the State Services from 60 to 65 years has also been decided to be made effective from the date of issuance of resolution and has not been made applicable retrospectively.

Similarly, vide Resolution No. 05(20) dated 08.01.2021, the retirement age of Ayush doctors has been enhanced from 60 to 65 years and has been made effective from the date of issuance of the Resolution. Further, the relief as sought for in the main writ petitions stands redressed/allowed in terms of the Resolution date

08.01.2021. The relief sought for by way of I.A No. 427 of 2021 for quashing of the portion of the resolution dated 08.01.2021, to the effect that the resolution be given effect to retrospectively from 28.02.2009 may be rejected.

It has been further submitted that these petitioners are not entitled for said relief as it is the policy decision and making the resolution retrospective would entail unnecessary financial burden on State's exchequer. As such, these writ petitions have got no merit and same deserves to be dismissed.

10. Having heard learned counsel for the parties and after going through the documents available on record and the averments made in the respective affidavits, the question that arises for consideration in the present writ petitions is; *whether the resolution dated 08.01.2021 be given effect to retrospectively from 23.07.2011 as sought for by the petitioners by way of I.A No. 427 of 2021?*

11. It appears from record that the State of Jharkhand has adopted by its resolution dated 28.02.2009, that the service condition prescribed by the Central Government will be applicable on the counterpart State employees. By this rationality, the age of the Ayurvedic Medical Officers should have been enhanced to 65 years, in accordance with the Central Government

decision, wherein the age of retirement of Ayurvedic Medical Officers has already been declared to be 65 years *[Refer the extract of the resolution dated 28.02.2009, Annexure 6 (Series)]*.

In spite of the above-mentioned resolution dated 28.02.2009, the benefit of the same had not been accorded to the Ayurvedic Medical Officers and their retirement age had not been enhanced to 65 years, till the resolution dated 08.01. 2021.

12. It further transpires that the 6th Central Pay Commission's report had been adopted by the State of Jharkhand on 15.09.2008; by way of which the Ayurvedic Doctors have been given at par treatment with the Allopathic Doctors and by issuance of the circular on 23.07.2011, the Allopathic Doctors have been given the benefit of enhancement in the age of superannuation from 60 to 65 years by making necessary modifications in Rule 73 of the Jharkhand Service Code. However, in contempt of the said report, the age of superannuation of Ayurvedic Doctors had not been enhanced from 60 to 65 years till 2021.

13. Thus, it can safely be easily inferred that they have suffered unequal treatment on account of the same as the petitioners were also eligible to be given enhancement in the age of superannuation with respect

to the circular dated 23.07.2011 but in spite of lapse of more than 10 years i.e. till 08.01.2021, no decision in respect of the same was taken by the respondent authorities in spite of repeated representations having been made by the petitioners. This has deprived the petitioners from the benefits arising out of the increase in age of superannuation for a long period of time for the reason that they were forced to retire at an early age of 60 years thus, robbing them of the retirement benefits which they would have otherwise acquired had their age of superannuation been increased to 65 years.

14. It is also evident from record that the petitioners have come to the State of Jharkhand after allocation of their cadre in anticipation that there cannot be any discrimination in the service conditions of the Ayurvedic Doctors with that of the Ayurvedic doctors who remained in the State of Bihar but in the highly arbitrary and illegal manner, the service condition of the petitioners have been altered by not giving them the benefit of enhancement in age from 60 to 65 years, while the doctors who are in the existing State of Bihar have already been given the said benefit which thereby is contrary to the statutory provision as contained in section 73 of the Bihar Re-organization Act, 2000.

15. These facts clearly indicates that there has indeed been alteration in the service conditions of the Ayurvedic Doctors after their allocation in the State of Jharkhand from the State of Bihar, as their age of superannuation has not been increased from 60 to 65 years till 08.01.2021; which is discriminatory and arbitrary on their part, thereby, violating the fundamental principles and essence of Article 14 enshrined in the Constitution of India.

16. Similar issue was raised in the case of **Dr. Girish Chandra Prasad** (supra), whereby the petitioner therein belonging to the same department and holding the same post had preferred writ petition for enhancement of age for 60 to 65 years. The matter was duly considered by this Court and direction has been issued upon the respondents to consider the case and pass appropriate order for age enhancement in accordance with law.

17. In yet another case, i.e. the case of **Jyotish Chandra Singh & others** (supra), this Court has held that the government itself had issued a notification dated 15.09.2016, whereby decision has been taken by the State of Jharkhand that the two cadres, i.e. Allopath and Ayush health services have been accorded the equal status and as such, now the plea taken by the

respondents that the age of superannuation of the Ayush Doctors cannot be enhanced from 60 to 65 years; is not justified.

18. In furtherance of these judgments, the respondents have published one resolution dated 08.01.2021, whereby, it was notified in the para-4 of resolution, that the respondents are in agreement of the judgment that the doctors of the two services are to be treated at par and thus, the Ayush Doctors will have the age of retirement as 65 years, but as the petitioners content, its applicability has been limited from the date of issuance of the resolution, i.e. 08.01.2021 and this has been put to challenge in I.A No. 427 of 2021.

19. This court is of the opinion that the petitioners are right in contending that the age of superannuation from 60 to 65 years via resolution dated 08.01.2021, should be given effect to retrospectively from 23.07.2011; whereby and where under the Allopathic Doctors have been given the benefit of enhancement in the age of superannuation from 60 to 65 years. Denying them the benefits of increase in the age of superannuation from 60 to 65 years, for such prolonged years had violated their fundamental rights guaranteed under Article 14 of the Constitution of India as they have suffered unequal treatment and heavy loss due to non-increment in the

age of their retirement. They have been forced to retire at the age of 60 years while the Central Health Services Doctors and Allopathic Doctors were enjoying the benefits of the increased retirement age which is highly discriminatory, unfair, unequal, unreasonable and against the principles of Natural Justice.

20. In this regard reference may be made in the case of ***North Delhi Municipal Corporation v. Dr. Ram Naresh Sharma & others***, reported in **(2021) 17 SCC 642**, wherein it has been held in para-22 & 23 as under:

“The common contention of the appellants before us is that classification of AYUSH doctors and doctors under CHS in different categories is reasonable and permissible in law. This however does not appeal to us and we are inclined to agree with the findings of the Tribunal and the Delhi High Court that the classification is discriminatory and unreasonable since doctors under both segments are performing the same function of treating and healing their patients. The only difference is that AYUSH doctors are using indigenous systems of medicine like ayurveda, unani, etc. and CHS doctors are using allopathy for tending to their patients. In our understanding, the mode of treatment by itself under the prevalent scheme of things, does not qualify as an intelligible differentia. Therefore, such unreasonable classification and discrimination based on it would surely be inconsistent with Article 14 of the Constitution. The Order of AYUSH Ministry dated 24-11-2017 extending the age of superannuation to 65 years also endorses such a view. This extension is in tune with the Notification of Ministry of Health and Family Welfare dated 31-5-2016.”

“The doctors, both under AYUSH and CHS, render service to patients and on this core aspect, there is nothing to distinguish them. Therefore, no rational justification is seen for having different dates for bestowing the benefit of extended age of superannuation to these two categories of doctors. Hence, the order of AYUSH Ministry [F. No. D. 14019/4/2016-E-I (AYUSH)] dated 24-11-2017 must be retrospectively applied from 31-5-2016 to all the respondent doctors concerned, in the present appeals. All consequences must follow from this conclusion.”

In light of the aforesaid judgement of the Hon’ble Apex Court; whereby it has upheld the judgment of the Delhi High Court that the classification being made between the Allopathic and Ayush Doctors, is

discriminatory and unreasonable since doctors under both the segments perform the same function of treating and healing their patients.

21. Thus, the differential treatment that had been accorded to the Ayurvedic Doctors in the present case for such a long duration, i.e. from 2011 to 2021, is highly arbitrary and discriminatory as it has deprived them the benefits of increased age of retirement. There is no proper justification, in the eyes of law, provided by the respondent authorities so as to support their case as to why the Ayurvedic Doctors have not been granted the benefits of age enhancement for such a long period of time despite of various circulars and resolutions of the Central Government and of the State of Jharkhand itself, having notified that, both Allopathic and Ayurvedic Doctors should be treated at par.

22. Bearing in mind these facts, judgements cited, submissions made and contentions raised, it is apparent on the face of it that the respondent authorities have acted in an illegal and arbitrary manner due to which the petitioners have suffered heavy loss of retirement benefits. And even when they passed the resolution on 08.01.2021 enhancing the retirement age; these petitioners have already retired prior to 2021. Hence, the petitioners could not claim the benefits as the resolution

was given effect to prospectively. This has indeed not served the purpose of justice and equity and has gravely violated their fundamental right to equality under Article 14 of the Constitution of India.

23. Having regard to the aforesaid discussions, it is held that the resolution dated 08.01.2021, should be given effect to retrospectively from the date the Allopathic Doctors were given the benefit of enhancement of age from 60 to 65 years; which will give the petitioners their due right to claim the benefits of increased age of superannuation from 60 to 65 years and undo the injustice that has been done to them for so long.

24. Accordingly, these writ petitions stand allowed and the respondent authorities are directed to consider the claims of the petitioners and do the needful in accordance with law. Necessary consequential benefits be extended to them as early as possible, preferably within a period of four months from the date of receipt/production of copy of this order. Pending I. As, if any, is also closed.

(Deepak Roshan, J.)

Fahim/-
AFR/
Jharkhand High Court, Ranchi
Dated: 24/09/2024.