REPORTABLE

SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 4578 of 2021
(Arising out of SLP (C) No). 10156/2019)

North Delhi Municipal Corporation **Appellant(s)**

VERSUS

Dr. Ram Naresh Sharma & Ors. **Respondent(s)**

WITH

Civil Appeal No. 4579/2021 (@SLP(C) No. 10159/2019)

Civil Appeal No.4580/2021 (@SLP(C) No. 10160/2019)

Civil Appeal No.4581/2021 (@ SLP(C) No. 10928/2019)

Civil Appeal No.4582/2021 (@SLP(C) No. 10925/2019)

Civil Appeal No.4583/2021 (@SLP(C) No. 12046/2019)

Civil Appeal No.4584/2021 (@SLP(C) No. 19288/2019)

Civil Appeal No.4585/2021 (@SLP(C) No. 19287/2019)

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Civil Appeal No.4586/2021 (@SLP(C) No. 24693/2019)

J U D G M E N T

HRISHIKESH ROY, J.

1. Leave granted. These appeals are directed against the judgment and order dated 15.11.2018 passed by the High Court of Delhi whereby the Court upheld the common final order dated 24.08.2017 of the Central Administrative Tribunal, Principal Bench [hereinafter referred to as the 'Tribunal' for short] and dismissed the petitions filed by the North Delhi Municipal Corporation [hereinafter referred to as the 'NDMC' for short]. The Tribunal declared that the applicants who are ayurvedic doctors covered under AYUSH are also entitled to the benefit of enhanced superannuation age of 65 years (raised from 60 years), just like the allopathic doctors. The entitlement of the respondents to continue in service upto 65 years and receive due remuneration for the same is the only issue to be considered in these cases. For the sake of convenience, the relevant facts are taken from SLP (C) No. 10156 of 2019.

2. Prior to 31.05.2016, the retirement age was 60 years for the General Duty Medical Officers ['GDMO' for short] of the Central Health Scheme ['CHS' for short], the Dentists and Doctors covered under

AYUSH (including ayurvedic doctors). At that stage, the Government of India, Ministry of Health and Family Welfare issued the order dated 31.05.2016, with immediate effect, enhancing upto 65 years, the age of superannuation of the specialists of Non-teaching and public health sub-cadres of CHS and GDMOs of CHS. This was followed by consequential amendment of the Fundamental Rules, 1922 by Gazette Notification dated 31.05.2016 of the Department of Personnel Training. On 30.06.2016 the NDMC adopted the Government of India order by issuing office order dated 30.06.2016 and enhanced the retirement age to 65 years for the Allopathic doctors working in the NDMC. The Office Memorandum issued by the Ministry of Health and Family Welfare on 30.08.2016 then clarified that the enhanced superannuation age granted by order dated 31.05.2016 is applicable to GDMOs of CHS i.e. the allopathic doctors and municipal corporations and others were given the liberty to take their own decision on the matter, on the applicability of the Ministry's decision on enhancement of superannuation age. Thus, the ayurvedic doctors were not seen to have been covered by the Ministry's order dated 31.05.2016.

3. The above led to several Original Applications (OA) filed by the ayurvedic doctors, before the Tribunal. The respondent Dr. Ram Naresh Sharma and other ayurvedic doctors sought the benefit of the Government decision and the office order of NDMC, for it to be made applicable to the ayurvedic doctors as well. On 09.12.2016 an interim order was passed by the Tribunal to the following effect.:

> *"In the meantime, it* is *directed that the Applicant may be allowed to continue in service on the post held by him beyond the date of his retirement/superannuation till further orders, however, he will not be paid any salary nor shall this order confer any right or equity in favour of the Applicant."*

4. By the common final order dated 24.08.2017, the Tribunal accepted the discrimination argument advanced by the ayurvedic doctors vis-à-vis the allopathic doctors. Accordingly, it was held that the applicants were entitled to same service conditions including the enhanced age of superannuation to 65 years, as made applicable to doctors (GDMOs) working under the CHS, in terms of the order dated 31.05.2016 of Ministry of Health and Family Welfare. Thus, the employer was directed to allow the ayurvedic doctors to continue in service till the age of 65 years. It was clarified that in case any of the applicants had been made to superannuate at the age of 60 years,

he/she shall be reinstated and be permitted to serve until the age of 65 years.

5. Aggrieved by the above decision of the Tribunal, the appellant NDMC preferred Writ Petitions before the High Court of Delhi. During the pendency of writ petition, on 24.11.2017, the Ministry of Ayurveda, Yoga, Naturopathy, Unani, Siddha and Homeopathy ('AYUSH' for short), Government of India, issued an order whereby it was communicated that the superannuation age of AYUSH doctors is also enhanced to 65 years w.e.f. 27.09.2017, i.e. the date of approval of Union Cabinet. It was however directed that the doctors shall hold administrative positions only until age of 62 years and thereafter, their service shall be placed in non-administrative positions.

6. It may be noted that the High Court on 26.09.2017 in WP(C) 8704/2017 arising out of OA 2712/ 2016 (NDMC vs. Dr. Santosh Kumar Sharma), had passed the following interim order:

> *"**** **** *** ***
> Since the private respondents are still working under the orders as passed by the Tribunal, the respondents may continue to work, if they so desire without receiving any salary as of now. We are inclined to permit the respondents to continue to serve this interim order, since learned counsel for the private respondents have stated, on instructions, that in case the*

petitioner succeeds, they shall not claim any equity on account of the fact that they have rendered services under the order of the Court. The respondents shall remain bound by their said statements."

7. When the Writ Petition 637/2018 arising out of O.A. 4026/2016 of the respondent Dr. Ram Naresh Sharma came up for consideration, the High Court on 23.01.2018 while issuing notice passed an interim order to the following effect.

"In the meantime, the operation of the impugned order shall remain stayed on the same terms as recorded in the interim order dated 26.09.2017, passed in W.P.8704/2017"

8. The Writ Petitions challenging the Tribunal's common order dated 24.08.2017 were heard analogously and were dismissed affirming the Tribunal's conclusion in favor of the ayurvedic doctors. The Tribunal noted in its order that although initially the benefit of policy decision of government to enhance the retirement age was confined to allopathic doctors but subsequently the policy decision was made applicable to other category doctors (including ayurvedic doctors), covered by AYUSH. Significantly, while the NDMC has adopted the Ministry's decision but those ayurvedic doctors of the

NDMC who fall in the window between 31.05.2016 and 26.09.2017, are deprived of getting the benefit of the enhanced retirement age. In other words, only those retiring on or after 27.09.2017, could aspire to serve until 65 years.

9. The High Court in the analogous judgment referred to the case of Dr. Pratibha Sharma who was employed as an ayurvedic doctor under the East Delhi Municipal Corporation ['EDMC'] and observed that her employer, unlike the NDMC, has not adopted the Government decision dated 24.11.2017 to enhance the retirement age to 65 years for the AYUSH category doctors. Taking note that Dr. Pratibha Sharma's employers had not adopted the AYUSH Ministry's decision dated 24.11.2017, it was left open to the EDMC to deal with her case as deemed appropriate. With such finding and observation, the WPs came to be dismissed upholding the view taken by the Tribunal in favor of the ayurvedic doctors and consequential direction was issued to the NDMC to disburse payment of arrears of salary and allowances to the ayurvedic doctors, who continue to serve with the NDMC beyond the age of 60 years. Specific direction was also issued on their entitlement to salary and other allowances till they superannuate at

the age of 65 years. Aggrieved by the said decision of the High Court of Delhi, the present Appeals are filed.

10. The Respondents in SLP (C) No. 19288/2019 (Dr. Brijesh Kumari) and SLP (C) No. 19287/2019 (Dr. Mohd. Ahmed Khan) are Ayurvedic and Unani doctors respectively, working under the South Delhi Municipal Corporation ['SDMC']. Dr. Brijesh Kumar was supposed to retire on 31.07.2017 upon attaining age of 60 years, whereas Dr. Mohd. Ahmed Khan was supposed to superannuate on 31.05.2017. Dr. Brijesh Kumar filed O.A. 2503/2017 in the Tribunal, which came to be decided on 05.09.2017. In its order the Tribunal, relied on its earlier judgment in the matter of Dr. Santosh Sharma, whereby the respondents were allowed to continue in service till they attain the age of 65 years. Similarly, Dr. Khan's application came to be decided on 21.09.2017 with like consequences. Aggrieved by these orders, Writ Petitions were preferred by the SDMC impugning the judgments by the Tribunal. These Writ Petitions were dismissed by the Delhi High Court on same day i.e. 27.03.2019 vide judgments in W.P. (C) No. 1776/2018 and W.P.(C) No. 1769/2019. In this Court, the SDMC has averred that the order of AYUSH Ministry dated 24.11.2017 has been adopted by the SDMC on 31.10.2018, but the

approval for the same from the House of SDMC, is still pending. Hence, it cannot be said that the SDMC has adopted the order of AYUSH Ministry dated 24.11.2017.

11. The respondent in SLP (C) 24693/2019, Dr. Lata A. Dupare, was working as a dental surgeon under CGHS, Nagpur. Dr. Lata was supposed to retire on 31.05.2016. The Tribunal by an order dated 17.11.2017 in O.A. 3795/2017 citing its own judgment in Dr. Santosh Sharma, and Dr. H. P. Singh vs. Union of India[1] gave her the benefit of extended superannuation age. Aggrieved by this order, the Union preferred a W.P.(C) 3210/2019 in the High Court of Delhi which came to be dismissed on 01.04.2019.

12. We have heard the learned counsel appearing for the appellants and the respondents. Questioning the legality of the impugned decision, Mr. R. Balasubramaniam, learned senior counsel contends that the benefit of enhanced retirement age should have been extended only w.e.f. 27.09.2017 as per the AYUSH Ministry's decision, as there is limited scope for interference on a cut-off date, stipulated by the government. The interim order dated 26.09.2017 in W.P. 8704/2017 of the High Court is read by the counsel to argue that

1 O.A. 3321/2016.

while the respondents were permitted to continue in service beyond 60 years, they are disentitled to claim any equitable relief by way of arrear of salary on account of the fact that they remained in service under interim orders of the court. The financial implication for the employer is highlighted by the learned senior counsel to argue that the appellants should not be burdened with the liability to disburse the unpaid arrear salary to the respondents.

13. On the other hand, the learned counsel for respondents argue that relief to the respondents was granted by the Tribunal and by the High Court by concluding that the action of the authorities in treatment of the allopathic doctors vis-à-vis the ayurvedic doctors was discriminatory and violative of Art. 14 of Constitution. Accordingly, it is argued that there can be no separate service condition in so far as the superannuation age is concerned between allopathic and other category doctors, particularly when the AYUSH Ministry itself on 24.11.2017 has enhanced the retirement age for the non-allopathic doctors w.e.f. 27.09.2017, in tune with the Ministry's order dated 31.05.2016.

14. Ld. Sr. Counsel for appellant relied on judgment of this Court in *U. P. State Brasswar Corporation Ltd. and Anr. vs. Uday Narain Pandey*[2], and argued that while earlier, awarding full arrears of salary was the practice, under the prevalent pragmatic view of the issue, the Court should determine the award of back wages based on facts and circumstances of each case. For the Bench, Justice S. B. Sinha in *Uday Narain Pandey (supra)* stated that:

> *"**17.** Before adverting to the decisions relied upon by the learned counsel for the parties, we may observe that although direction to pay full back wages on a declaration that the order of termination was invalid used to be the usual result but now, with the passage of time, a pragmatic view of the matter is being taken by the court realizing that an industry may not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all to it and/ or for a period that was spent unproductively as a result whereof the employer would be compelled to go back to a situation which prevailed many years ago, namely, when the workman was retrenched."*

15. The above ratio in *Uday Narain Pandey (supra)* is however not attracted to the matters before us, as there is significant difference in

2 *(2006) 1 SCC 479*

the factual matrix. In the cited case, the respondent-worker had not re-joined or continued his employment after his retirement, and was asking for wages for work, he did not actually render. Whereas, in this bunch of cases, it is undisputed that the respondent doctors have continuously served in hospitals till attaining the enhanced age of superannuation i.e. 65 years vide the AYUSH Ministry order dated 24.11.2017 and by virtue of interim order of the High Court dated 26.09.2017. In other words, they have been productive not only for the patients but also for their employers.

16. The learned senior counsel for appellant by placing reliance upon the HC interim order submits that respondent doctors are not entitled to remuneration and unpaid arrears as they were serving in the hospitals on the strength of the Court's interim order. Such argument for appellants cannot however be accepted in light of the principle *'Actus Curiae Neminem Gravabit'.* Explaining the principle, Justice B. S. Chauhan speaking for this court in *Kalabharati Advertising vs. Hemant Vimalnath Narichania*[3], stated the following:

3 *(2010) 9 SCC 437*

> *"**15.** ...The maxim "Actus Curiae neminem gravabit", which means that the act of the Court shall prejudice no-one, becomes applicable in such a case. In such a situation the Court is under an obligation to undo the wrong done to a party by the act of the Court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralised, as the institution of litigation cannot be permitted to confer any advantage on a party by the delayed action of the Court."*

17. Bearing in mind the above legal principle the Interim order of Delhi High Court dated 26.09.2017 in our opinion cannot be the basis to deny salary and arrear benefits to respondents. The said interim order merged with the final judgment dated 15.11.2018 and all consequential benefits of employment were due to the respondents. Therefore, when the respondents worked and served patients, the basic benefit of salary cannot be denied to the doctors.

18. This Court in case of *Central Electricity Supply Utility of Odisha vs. Dhobei Sahoo and Ors.*[4], stated that:

> *"**51**....Till the declaration is made, the incumbent renders service and when he has rendered service he cannot be deprived of his salary. Denial of pay for the service rendered tantamounts to forced labour which is*

4 *(2014) 1 SCC 161*

impermissible. When an appointment is admitted and the incumbent functions in the post and neither suspended nor removed from service, he is entitled to get salary, for it is his legal right and it is the duty of the employer to pay it as per the terms and conditions of the appointment...."

The above ratio correctly sets out the employers' responsibility to pay the wages for the productive employees serving under them.

19. In the case of *New Okhla Industrial Development Authority & Anr. vs. B. D. Singhal & Ors.*[5], this Court while dealing with a comparable issue, declined to give retrospective application to the U.P. State Government order dated 30th September 2012, which extended the age of superannuation from 58 years to 60 years. The arrears of salary to respondent employees who had retired on 31st August, 2012, upon attaining the age of 58 years was also denied. But that case can have no application in the present appeals since facts are distinguishable. There are two vital factual differences, which need to be considered. *Firstly,* the Allahabad High Court retrospectively applied the U.P. State Government order dated 30th September 2012, from 29th June 2002 i.e. the day on which recommendation for extending the age of superannuation was made. Whereas, in the case

5 *2021 SCC OnLine SC 466, C.A. No. 2311 of 2021*

at hand, on 31.05.2016 a notification was issued which was expeditiously implemented. *Secondly*, arrears of salary were disallowed, because the respondent-employees in *New Okhla Industrial Development Authority* had not worked even a single day after retiring, on attaining 58 years of age. But, in the present case, respondent-doctors have been working continuously without break, pursuant to the Interim order of the Delhi High Court dated 26.09.2017. Hence, based on these two distinguishing aspects, the ratio in *New Okhla Industrial Development Authority* cannot in our opinion be applicable here, to defeat the legitimate expectation of the respondents.

20. In these matters, for almost 5 years, the respondent doctors have been providing service to countless patients, without remuneration or benefits. Their services are utilized by the employer in Government establishments, without demur. In this regard, the learned senior counsel for appellant submits that paying arrear unpaid wages to the respondent doctors will impose substantial financial burden upon the State. Such submission cannot however be countenanced as a fair submission by the State's counsel. The principle of *'No Work, No Pay'* protects employers from paying their

employees if they don't receive service from them. A corollary thereto of *'No work should go unpaid'* should be the appropriate doctrine to be followed in these cases where the service rendered by the respondent doctors have been productive both for the patients and also the employer. Therefore, we are quite clear in our mind that the respondents must be paid their lawful remuneration- arrears and current, as the case may be. The State cannot be allowed plead financial burden to deny salary for the legally serving doctors. Otherwise it would violate their rights under Articles 14, 21 and 23 of the Constitution.

21. In the case of the respondent in SLP (C) 12046/2019 i.e. Dr. H. P. Singh, it is averred by the appellants, that he has not worked after superannuation on attaining the age of 60 years. But, there is sufficient evidence on record to suggest that the respondent-doctor through several representations sought to be re-appointed but it was the employer who created impediments and did not allow the respondent to re-join his duties in hospitals. In such circumstances, the principle of 'No Work, No Pay' cannot be raised by the employers, as it is they who had obstructed the doctor from discharging his service. For support we may cite *Dayanand Chakrawarthy vs. State of*

Uttar Pradesh[6] where this Court speaking through Justice S. J. Mukhpadhyaya rightly held that:

> *"**48.** ... If an employee is prevented by the employer from performing his duties, the employee cannot be blamed for having not worked, and the principle of "no pay no work" shall not be applicable to such employee."*

22. 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

6 *(2013) 7 SCC 595.*

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 31.05.2016.

23. 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 31.05.2016 to all concerned respondent-doctors, in the present appeals. All consequences must follow from this conclusion.

24. In light of the above discussion, the appellant's actions in not paying the respondent doctors their due salary and benefits, while their counterparts in CHS system received salary and benefits in full, must be seen as discriminatory. Hence, we have no hesitation in holding that the respondent-doctors are entitled to their full salary arrears and the same is ordered to be disbursed, within 8 weeks from today. Belated payment beyond the stipulated period will carry interest, at the rate of 6% from the date of this order until the date of

payment. It is ordered accordingly. The appeals are disposed of in above terms without any order on cost.

.....J.
[L. NAGESWARA RAO]

.....J.
[HRISHIKESH ROY]

NEW DELHI
AUGUST 03, 2021.