

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

APPELLATE SIDE

Present:-

THE HON'BLE JUSTICE Subrata Talukdar.

THE HON'BLE JUSTICE Kesang Doma Bhutia.

MAT No. 407 of 2020

With

IA No.C.A.N. 1 of 2020

Chandi Charan Roy & Ors.

VS.

The State of West Bengal & Ors.

For the Appellants : Mr. Monoranjan Jana
Mr. Paresh Chandra Yadav

For the State : Mr. Pinaki Dhole
Ms. Kakali Samajpaty

Hearing concluded on : 28.09.2021

Judgment on : 17.11.2021

Kesang Doma Bhutia, J:-

This Appeal is directed against the order of dismissal passed by the Hon'ble Single Bench in Writ Petition No. 454(W) of 2017 on 13.02.2020.

Facts giving rise to this appeal in gist is that the Writ Petitioners/ Appellants have been appointed as Part-Time Homeopathic Doctors for the purpose of running Homeopathic Charitable Dispensaries in Rural West Bengal by virtue of Scheme introduced by Department of Health and Family Welfare with Department of Panchayats and Rural Development in 1978, with no age limit for entry and exit at a consolidated honorarium of Rs-250/- per month and which has been enhanced to Rs-16000/- per month at present.

By virtue of Memorandum No. H/AUH/379/3H-270/851 dated 23.05.1988, such part-time Homeopathic Doctors were allowed to work beyond the age of 65 but, with a rider that they should be physically and mentally alert for performing their duties.

However, the Government vide. Memorandum No. HF/O/AYUSH/425IA-10/06 dated 16.07.2012, has brought changes in the entry and exit age of such part-time Homeopathic Doctors and thereby Entry age has been fixed at less than 65 years and Exit age (retirement age) at 65 years.

Assailing such Notification of 2012 to be in violation of the rights guaranteed under Articles 14 and 21 of the Constitution of India, the Petitioners/Appellants have filed W.P. 425(W) of 2017, alleging they have been appointed prior to the issuance of the impugned Notification dated 16.07.2012, which is prospective in nature and not retrospective in effect. The Govt. and/or Statutory Authorities cannot deprive them their right to work as Part-Time Doctors beyond the age of 65 years. Their part-time service tenure is not guided by the impugned Notification and, that too with retrospective effect.

The Hon'ble Single Bench after hearing Ld. Counsel for both sides as well as considering the documents filed by them and citations referred, was pleased to dismiss W.P. 425(W) of 2017, with the finding that the emoluments of Government servants and their terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employees. It is therefore absurd to suggest that the age limit of the writ petitioners could not be altered or modified by way of impugned Notification.

Therefore, the only point for determination in this Appeal is whether the impugned Notification of 2012, has violated the rights of the writ petitioners as guaranteed under Articles 14 and 21 of the Constitution?

It is true that the Health Department with the Panchayat Department for the purpose of setting up of Homeopathic Dispensaries in Rural Bengal, floated a scheme for appointment of part-time Homeopathic Doctors and Compounders-cum-Dressers at a monthly honorarium of Rs250/- and Rs150/- sometime in the year 1978. However, no copy of such Notification has been filed by either side.

Subsequently, Government of West Bengal, Department of Health and Family Welfare, AUH Branch, by issuing fresh Memo dated 23.05.1988, laid down the procedure for appointment of such part-time Homeopathic Doctors and Compounders-cum-Dressers at Gram Panchayats, their duty hours, educational qualifications, requisite experience, age criterion and allied matters. No age limit was prescribed either for entry or exit in such Notification, but the only requirement was that the selected candidates were to be physically fit and mentally alert for performing their duties.

Then the State Government by issuing the impugned Memorandum on 16.07.2012, has been pleased to fix the age limit for entry and exit to be less than 65 years and not more than 65 years respectively and thereby did away with the earlier Notification dated 1988, where there was no age limit for entry as well for exit.

So, by filing the writ petition, the petitioners have challenged the introduction of the new age policy for exit of part time homeopathic

doctors employed under the Scheme of 1978 or under the Notification of 1988 by State Government.

It is settled law that Policy decisions of the State or its Authorities are not to be disturbed/interfered with unless they are found to be grossly arbitrary or irrational. The scope of Judicial Review when examining Policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution of India or opposed to any statutory provisions or manifestly arbitrary. From time to time the Authorities of the State take decisions bearing upon the exigencies of service prevailing in each situation. Courts cannot interfere with the Policy either on the ground that a better, fairer or wiser alternative is available. Unless the Policy is manifestly perverse and contrary to deeply embedded Constitutional principles, Courts should normally leave Administration to the Administrators.

In State of Punjab and others vs. Ram Lubhya Bagga and others, (1998) 4 SCC 117, it was inter alia held "when Government form its policy, it is based on number of circumstances of facts law including constraints based on its resources. It is also based on expert opinion and should not be subject of Judicial Review.

In the present case, the State Respondents in their Affidavit in Opposition have clearly stated that when the Scheme was introduced

there was less availability of trained educated personnel. Considering the status of temporary and part-time engagement and to make the Scheme successful, no restriction on age was imposed. Subsequently, with the passage of time considering the huge availability of formal educated manpower and enhancement of honorarium of such part-time engagement, the upper age limit has been fixed at 65 years. The intention of the Government by issuing the impugned Memorandum is to fix the exit age of part-time Homeopathic Doctors at 65 years and not beyond 65 years as stipulated by the earlier Notification of 1988. Therefore, the Government is the appropriate authority wants those part-time Homeopathic Doctors who have crossed the age of 65 years no more eligible to continue with their part-time engagement beyond 1st August 2012.

Ld. Counsel for the appellants/ Writ Petitioners submits the that impugned Memorandum is prospective in nature and cannot have retrospective effect. The part-time Doctors who were employed before the coming into the force of the Memorandum dated 2012, being Governed by the Notification dated 1988, there is no upper age limit for exit. It is submitted that the impugned Memorandum being prospective in nature would be applicable only to those persons who are and who will be engaged as part-time Homeopathic Doctors in Gram Panchyats after August, 2012. If this court is to accept such contention of the Ld. Counsel for the appellants, then there will arise

discrimination between part-time homeopathic doctors who were engaged prior to 2012 and those who are engaged after 2012. Those who got appointment prior to 2012 with no age limit for exit will continue to work even after they attend the age of 65 years, while their counterparts or colleagues who joined after 2012, have to leave the part-time job on their attaining the age of 65 years. Then there will be a clear violation of Article 14 as there will be two types of age for exit (superannuation) in respect of similarly placed part-time Homeopathic Doctors in the same department and under the same service condition on the same amount of honorarium and employed under the same authorities. Article 14 of the Constitution of India forbids class legislation and this court cannot create two types of treatment for persons placed in the same situation and belonging to the same category.

Therefore, whether the age of superannuation should be increased and decreased and the date from which it should be effected is a matter of administrative policy and the Court should not interfere which is exclusively in the jurisdiction of the executive and, for the solitary fact that the above Policy would hurt the interests of the Writ Petitioners who are a section of part-time homeopathic doctors. Consequently this Court holds, that there is no violation of the rights guaranteed under Article 21 of the Constitution of India arising out of the impugned policy.

Further, the Hon'ble Supreme Court in *Reserve Bank of India V. Sasranaman*, AIR 1986 SC 1830, has observed " It has to be borne in mind that in Service Jurisprudence there cannot be any service rule which would satisfy each and every employee and its constitutionality has to be judged by considering whether it is fair, reasonable and does justice to majority of the employees and fortune of some individuals is not the touchstone".

In the light of the above discussion this Court refrains itself from interfering with the findings of the Hon'ble Single Bench as this Court does not find any merit in the Present Appeal.

MAT No. 407 of 2020 along with **IA No.CAN 1 of 2020** stands **dismissed.**

There will be no order as to costs. Interim order, if any, stands vacated.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I Agree.

(Subrata Talukdar, J.)

(Kesang Doma Bhutia, J.)