



For Petitioner(s) : Mr. Nitesh Kumar Garg
Mr. Tanveer Ahamad with
Mr. Manish Parihar
Mr. Brijesh Bhardwaj

For Respondent(s) : Mr. Rajendra Prasad, AG assisted by
Mr. Sheetanshu Sharma &
Ms. Harshita Thakral

HON'BLE THE CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA
HON'BLE MR. JUSTICE BHUWAN GOYAL

Order

28/02/2024

1. In this batch of petitions, the issue arising for consideration is as to whether providing the age of superannuation for Ayurvedic Doctors vis-a-vis Allopathic Doctors is discriminatory to Article 14 of Constitution of India.

2. Learned counsel for the petitioners at the outset relied upon the recent judicial pronouncement of the Hon'ble Supreme Court in the case of **North Delhi Municipal Corporation Vs. Dr. Ram Naresh Sharma & Ors. reported as 2021 SCC online SC 540**, and connected appeals to submit that in the aforesaid decision, it has been held that in the matter of fixing age of superannuation, no discriminatory treatment can be meted out as between the Allopathic Doctors and Ayurvedic Doctors. It is submitted that the Hon'ble Supreme Court has held that as the doctors under both segments are performing the same function of treating and healing their patients, the classification is discriminatory and unreasonable.

Learned counsel for the petitioner further submitted that initially the orders passed by this Court in the case of **Dr. Mahesh Chandra Sharma & Ors. vs. State of Rajasthan & Ors.**, upon being challenged, were kept in abeyance but later on the State's



SLP has been dismissed by the Hon'ble Supreme Court vide order dated 30.01.2024

The order passed by the Hon'ble Supreme Court reads as under:

"Heard Dr. Manish Singhvi, learned senior counsel appearing for the petitioner(s) - State of Rajasthan. Also heard Mr. Adeel Ahmed, Mr. Puneet Jain and Mr. Manish Verma, learned counsel appearing for the respondents. Mr. Ajay Choudhary, learned counsel appears for the applicant in application(s) for impleadment.

2. IA Nos. 66651 of 2023, 96650 of 2023 and 100293 of 2023 (applications for impleadment) are allowed.

3. The counsel for the State of Rajasthan submits that since there is shortage of Allopathic doctors serving under the Rajasthan government, a decision was taken to raise the retirement age of Allopathic doctors from 60 years to 62 years. However, since there were large number of Ayush doctors serving with the State Government, similar raising of retirement age for Ayush doctors was not considered necessary by the Government. Dr. Singhvi would then argue that different retirement age for the Allopathic doctors and the Ayush doctors would not attract the argument of discrimination under Article 14 of the Constitution.

4. The impugned judgment rendered by the High Court granting parity relief to the Ayush doctors was based on the judgment of this Court in North Delhi Municipal Corporation v. Dr. Ram Naresh Sharma & Ors. reported in (2021) 17 SCC 642. In this case, the Court noted that the doctors, both under the Ayush and Allopathic stream, render service to patients and on this core aspect, there is nothing to distinguish one from the other.

5. The records would show that the above decision of this Court as followed by the High Courts in Uttar Pradesh Madhya Pradesh and Uttarakhand. The like decision taken by the High Court of Rajasthan favouring the Ayush doctors in raising their retirement age to 62 years, is under challenge here.

6. It is relevant to note that this Court on 24.03.2022 has dismissed the State's appeal in SLP (Civil) No. 33645 of 2018 arising out of the judgment dated 03.04.2018 rendered by the High court of Uttarakhand in the WP No. 484 of 2014.





7. *The arguments advanced by the learned counsel and the reasoning given by this Court in Dr. Ram Naresh Sharma (supra) are carefully considered. No infirmity is found with the impugned judgment dated 13.07.2022 whereunder parity relief on retirement age was granted to the Ayush doctors. The Special Leave Petitions are accordingly dismissed.*

8. *Pending application(s), if any, shall stand closed."*

3. Learned Advocate General, however, would submit that another order of the Hon'ble Supreme Court in the case of **State of Gujarat and Ors. vs. Dr. P.A. Bhatt and Ors. 2023 SCC Online SC 503** was not brought to the notice of the Hon'ble Supreme Court in the case of **State of Rajasthan and Ors. vs. Dr. Mahesh Chand Sharma & Ors.** (supra) and therefore, the State is contemplating to file a review petition against the order dated 30.01.2024 passed in **State of Rajasthan & Ors. vs. Mahesh Chand Sharma & Ors.** (supra). He would further submit that this aspect was taken into consideration in some of the connected matters wherein, interim relief was not granted.

4. After taking into consideration the submissions of learned counsel for the parties, we are of the view that insofar as the present petitions are concerned, the petitioners herein are identically situated as Dr. Mahesh Chand Sharma and others in whose favour earlier an order was passed by this Court and against which SLP has now been dismissed by the Hon'ble Supreme Court vide order dated 30.01.2024.

5. May be that the State is contemplating to file review petition, however, that could not be a ground for this Court not to pass similar orders in the present cases also because the petitioners in this batch of petitions are identically situated as Dr. Mahesh Chand



Sharma and others. Therefore, in that view of the matter, we are inclined to allow all these petitions.

5. It has been brought to our notice and also placed on record that the age of superannuation of Allopathic Doctors was enhanced from 60 to 62 years with effect from 31.03.2016.

6. While the petitioners in D.B. Civil Writ Petition Nos. 2949/2024, 3042/2024 & 2279/2024 are continuing in service, petitioner in connected D.B. Civil Writ Petition No. 2732/2024 has attained the age of superannuation. As the retirement of petitioner in D.B. Civil Writ Petition No. 2732/2024 has taken place after 31.03.2016, he shall be deemed to continue in service upto the age of 62 years. The petitioners in other writ petitions shall also continue in service upto 62 years.

7. The respondents are required to pass necessary orders in compliance of the order passed by this Court. Those who have been superannuated on attaining the age of 60 years, but have not completed the age of 62 years, be reinstated in service forthwith.

8. All the petitions are accordingly allowed. Pending applications, if any, stand disposed of.

9. A copy of this order be placed in each connected file.

(BHUWAN GOYAL),J

(MANINDRA MOHAN SHRIVASTAVA),CJ

Kamlesh Kumar-RAHUL/31,52,94 & 95