

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Civil Writ Petition No. 13496/2021

1. Dr. Mahesh Chandra Sharma
 2. Dr. Vrindavan Lal Sharma
 3. Dr. Matadeen Sharma
- Petitioners

Versus

1. State Of Rajasthan, Through Principal Secretary Ayurveda Department, Government Secretariat, Jaipur.
 2. State Of Rajasthan, Through Principal Secretary Finance, Government Secretariat, Jaipur.
 3. State Of Rajasthan, Through Principal Secretary Department Of Personnel, Government Secretariat, Jaipur.
 4. Director Ayurveda, Directorate Of Ayurveda, Ajmer.
- Respondents

Connected With

D.B. Civil Writ Petition No. 9451/2021

Dr. Narendra Kumar Sharma

-----Petitioner

Versus

1. State Of Rajasthan, Through The Principal Secretary, Department Of Personnel, Government Secretariat, Jaipur (Raj.)
 2. The Principal Secretary, Ayurved Department, Government Secretariat, Jaipur.
 3. The Director, Directorate Of Ayurveda, Ajmer.
- Respondents

D.B. Civil Writ Petition No. 12458/2021

Dinesh Kumar Sharma

----Petitioner

Versus

1. State Of Rajasthan, Through The Principal Secretary, Department Of Personnel, Government Secretariat, Jaipur (Raj.)
2. The Principal Secretary, Ayurved Department, Government Secretariat, Jaipur.
3. The Director, Directorate Of Ayurveda, Ajmer.

----Respondents

D.B. Civil Writ Petition No. 12459/2021

Gopal Lal Sharma

----Petitioner

Versus

1. State Of Rajasthan, Through The Principal Secretary, Department Of Personnel, Government Secretariat, Jaipur (Raj.)
2. The Principal Secretary, Ayurved Department, Government Secretariat, Jaipur.
3. The Director, Directorate of Ayurveda, Ajmer.

----Respondents

D.B. Civil Writ Petition No. 12460/2021

Ghanshyam Chand Sharma

----Petitioner

Versus

1. State Of Rajasthan, Through The Principal Secretary, Department Of Personnel, Government Secretariat, Jaipur (Raj.)
2. The Principal Secretary, Ayurved Department, Government Secretariat, Jaipur.

3. The Director, Directorate of Ayurveda, Ajmer.

----Respondents

D.B. Civil Writ Petition No. 12461/2021

Shiv Bax Ram Sevda

----Petitioner

Versus

1. State Of Rajasthan, Through The Principal Secretary, Department of Personnel, Government Secretariat, Jaipur (Raj.)
2. The Principal Secretary, Ayurved Department, Government Secretariat, Jaipur.
3. The Director, Directorate of Ayurveda, Ajmer.

----Respondents

D.B. Civil Writ Petition No. 13898/2021

Dr. Aslam Parvez :

----Petitioner

Versus

1. State Of Rajasthan, Through Principal Secretary, Department Of Personnel, Government Of Rajasthan, Secretariat, Jaipur.
2. The Principal Secretary, Ayurved And Indian Medicine Department, Govt. Of Rajasthan, Secretariat, Jaipur.
3. The Principal Secretary, Finance Department, Govt. Of Rajasthan, Secretariat, Jaipur.
4. Dy. Secretary, Ayurved and Indian Medicine Department, Govt. Of Rajasthan, Secretariat Jaipur.
5. Director, Ayursh Department, Ayush Bhawan, Sector-26 Pratap Nagar (Sanganer) Jaipur.

----Respondents

D.B. Civil Writ Petition No. 15114/2021

1. Dr. Govind Prasad Goyal

2. Dr. Ramavtar Sharma
3. Dr. Jitendra Singh Kothari
4. Dr. Lalit Kumar Dadhich
5. Dr. Mahesh Dutta Dadheer
6. Dr. Pradhumn Kumar Rajora
7. Dr. Bhuri Lal Soni
8. Dr. Mahesh Chandra Acharya
9. Dr. Gopal Lal Gupta
10. Dr. Bhupendra Kumar Sharma
11. Dr. Jagdish Prasad Nakela
12. Dr. Gopal Ram Sharma

13. Dr. Nand Ram Trivedi
14. Dr. Ajaypal Singh
15. Dr. Nand Lal Jat
16. Dr. Ramkaran Jat

RA. COURT
----Petitioners

Versus

1. State Of Rajasthan, Through Its Additional Chief Secretary, Department Of Finance (Rules Division), Government Of Rajasthan, Government Secretariat, Jaipur.
2. The Principal Secretary, Department Of Personnel Government Of Rajasthan, Government Secretariat, Jaipur..
3. The Principal Secretary, Ayurved And Bhartiya Chikitsa Vibhag, Government Of Rajasthan, Government Secretariat, Jaipur.
4. Director, Ayurved And Bhartiya Chikitsa Vibhag, Government Of Rajasthan, Ajmer.

----Respondents

सत्यामेव जयते
D.B. Civil Writ Petition No. 12302/2021

Bhagwan Sahaya Pareek

----Petitioner

Versus

1. State Of Rajasthan, Through The Principal Secretary, Department Of Personnel, Government Secretariat, Jaipur (Raj.)
2. The Principal Secretary, Ayurved Department,

Government Secretariat, Jaipur.

3. The Director, Directorate Of Ayurveda, Ajmer.

----Respondents

D.B. Civil Writ Petition No. 12306/2021

Laxmi Narayan Verma

----Petitioner

Versus

1. State Of Rajasthan, Through The Principal Secretary, Department Of Personnel, Government Secretariat, Jaipur (Raj.)
2. The Principal Secretary, Ayurved Department, Government Secretariat, Jaipur.
3. The Director, Directorate Of Ayurveda, Ajmer.

----Respondents

D.B. Civil Writ Petition No. 12309/2021

Fateh Singh

----Petitioner

Versus

1. State Of Rajasthan, Through The Principal Secretary, Department Of Personnel, Government Secretariat, Jaipur (Raj.)
2. The Principal Secretary, Ayurved Department, Government Secretariat, Jaipur
3. The Director, Directorate Of Ayurveda, Ajmer.

----Respondents

For Petitioner(s) : Dr. Abhinav Sharma, Advocate with
Ms. Pooja Vijayvargiya, Advocate
Mr. Ravi Kant Sharma, Advocate with
Ms. Shalini, Advocate
Mr. Tanveer Ahamad, Advocate with
Mr. Manish Parihar, Advocate
Mr. Kailash Chand Sharma, Advocate
Mr. Nitesh Kumar Garg, Advocate

For Respondent(s) : Mr. Chiranji Lal Saini, Additional
Advocate General with Ms. Srijana
Shresth, Advocate
Mr. Hari Kishan Saini, Dy.
Government Counsel

HON'BLE MR. JUSTICE MANINDRA MOHAN SHRIVASTAVA
HON'BLE MRS. JUSTICE SHUBHA MEHTA

Judgment

13/07/2022

Heard.

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

Learned counsel for the petitioners at the outset rely 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.

On the other hand, learned counsel for the State would submit that the classification for the purposes of prescribing different age of superannuation for Allopathic Doctors and

Ayurvedic Doctors is based on rational integra and is a valid classification as not only their qualifications are different but their pay scales are also different and they have been recruited under different sets of recruitment rules. According to him, the kind of expertise, which is used by the Allopathic Doctors to treat variety of diseases including surgical operations, distinguishes them from the Ayurvedic Doctors, whose area and extent of practice is not as extensive as that of Allopathic Doctors. Therefore, the petitioners are not entitled to similar treatment as Allopathic Doctors in the matter of age of superannuation.

It is not necessary for us to dwelve deep in the matter because this issue is no longer res integra and stands concluded by the decision of the Hon'ble Supreme Court in the case of **North Delhi Municipal Corporation Vs. Dr. Ram Naresh Sharma & Ors (supra)** and batch of cases where this issue was examined. While enhancing the age of retirement of Allopathic Doctors from 60 to 62 years, this enhancement had not taken place in respect of the class of Ayurvedic Doctors which resulted in filing of petitions before the Tribunal. The Tribunal held the classification unreasonable and the petitions were allowed. The matter was taken to the Hon'ble Supreme Court by the employer namely North Delhi Municipal Corporation. Their Lordships in the Hon'ble Supreme Court held as below:-

"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 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. 14019/4/2016EI (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."

The aforesaid authoritative pronouncement of Hon'ble Supreme Court leaves no scope for arguments on the part of the respondents to defend their action of discrimination in the matter of fixing age of superannuation of Ayurvedic Doctors and it has to be consequently held that they are also entitled to continue in service till completion of age of 62 years, which is applicable in the case of Allopathic Doctors.

It is brought to our notice and also placed on record that the age of superannuation of Allopathic Doctors was enhanced from 60 to 62 years w.e.f. 31.03.2016.

While some of the petitioners are still working, some of the petitioners have retired after attaining the age of 60 years after the issuance of notification enhancing age of retirement from 60 to 62 years in respect of Allopathic Doctors. All those petitioners, who have so retired after 31.03.2016, shall be deemed to have continued in service upto 62 years. This will require the respondents authority to pass necessary orders treating them in service till attaining the age of 62 years in individual cases with consequential benefits of continuity of service. All other consequential action would also be required to be taken which include refixation of pension and other benefits. Those, who have been superannuated on attaining the age of 60 years, but have not completed 62 years of age, be reinstated in service forthwith.

The petitions are accordingly allowed.

(SHUBHA MEHTA),J

(MANINDRA MOHAN SHRIVASTAVA),J

Mohita /58-65 & 17-19



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