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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 5082/2020

DR. JYOTI GOLANI .....Petitioner

Through: Ms. Neetu Rai, Mr. Alok Kumar Rai and Mr. Jaipal, Advs. with Petitioner in person.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Vijay Joshi and Mr. Hemant Goyal, Adv. for R-1/UOI.
Mr. Nitesh Kumar Singh, Ms. Laavanya Kaushik and Mr. Mohnish Sehrawat, Advs. for GNCTD

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

% 20.02.2025

C. HARI SHANKAR, J.

1. This writ petition challenges order dated 20 January 2020 passed by the Central Administrative Tribunal[1] in RA 100/186/2019[2].

2. By the said application, the GNCTD, as the respondent in OA 100/3093/2016 sought review of an earlier order dated 20 September 2017, passed by an earlier Bench of the Tribunal. Incidentally, each Bench was headed by an eminent retired Chief Justice.

[1] "The Tribunal", hereinafter
[2] **GNCTD & Anr. v Dr. Jyoti Golani & Ors**.

3. The petitioner, who was the applicant in OA 3093/2016 and was the respondent in RA 100/186/2019, was initially appointed as Civil Assistant Surgeon Grade-I (Dental), Directorate of Health Services, Delhi Administration, on 24 February 1986. She was subsequently promoted as Junior Staff Surgeon (Dental), Staff Surgeon (Senior Scale), Staff Surgeon (NFSG) and Consultant (SAG) on the basis of DACP Scheme.

4. On 31 May 2016, on which date, the petitioner was due to superannuate, the following notification was issued by the Ministry of Health& Family Welfare, Government of India[3]:

> "No.A12034/1/2024-CHS-V
> Government of India
> Ministry of Health & Family Welfare
>
> Nirman Bhawan, New Delhi
> Dated: the 31st May 2016
>
> Order
>
> The President is pleased to enhance the age of superannuation of the specialists of Non-Teaching and Public Health sub-cadres of Central Health Services (CHS) and General Duty Medical Officer of CHS to 65 years with immediate effect.
>
> Sd/-
> Dr. Bandhopadhyay
> Deputy Secretary to the Government of India"

5. While on the point, we may note that, after the aforesaid order dated 31 May 2016 issued by the MOHFW, the Health and Family

[3] "MOHFW" hereinafter

Welfare Department of the GNCTD issued the following orders on 30 September 2016 and 2 May 2017:

6. Thereafter, on 30 September 2017, the MOHFW issued the following order.

> "A 12035/02/2016-CHS-VI
> Government of India
> Ministry of Health and Family welfare
> (CHS Division)
>
> Nirman Bhawan, New Delhi-110011
> Dated the 30th September 2017
>
> ORDER
>
> The President is pleased to enhance the superannuation age of Dental doctors working under Ministry of Health and Family Welfare to 65 years with immediate effect.
>
> Sd/-
> (Sitansu Mohan Routray)
> Under Secretary to the Govt. of India"

7. Following the aforesaid order of the MOHFW, the Health and Welfare Department of the GNCTD issued following order on 6 November 2018:

> "Government of NCT of Delhi
> Health & Family welfare Department
> 9th Level, A-Wing Delhi Secretariat, I.P. Estate,
> New Delhi-2
>
> F.No.DH&FWQO15/208/2016/HR-Medial-Secy(H&FW)
>
> Dated: 6th November 2018
>
> ORDER
>
> In pursuance to order no. A12035/02/2016-CHS-VI dated 30.09.2017 of Ministry of Health & Family Welfare (CHS Division), GOI and subsequent amendment in Rule 56(bb) as per

Fundamental (Amendment Rules, 2018 by DOPT vide Gazette Notification dated 05.01.2018, Hon'ble Lieutenant Governor of NCT of Delhi is pleased to enhance the age of superannuation of the dental doctors working under Govt. of NCT of Delhi to 65 years w.e.f. 30.09.2017.

The finance department of GNCTD is also concurred the same vide UO No. 187/DS dated 29.10.2018.

Sd/-
J.P. Sharma
Dy. Secretary (HR-Medical)"

8. Asserting that she was entitled to extension of the date of her superannuation as was granted to doctors working in the Central Health Scheme[4] by the order dated 31 May 2016 issued by the MOHFW, the petitioner approached the Tribunal by way of OA 3093/2016.

9. The Tribunal noted, in the OA, that the petitioner's representation had been rejected by the respondent on the ground that the benefit of the order dated 31 May 2016 could not be granted to her till it was duly endorsed by the GNCTD.

10. Having noted this fact, the Tribunal adopted the view that the case was covered by an earlier decision rendered by the Tribunal in ***Dr. H.P. Singh v UOI***[5], which relied, in turn, on the decision rendered earlier in the case of ***Dr. Santosh Kumar Sharma v UOI***[6].

11. Paras 4 to 7 of the judgment dated 20 September 2017 of the

[4] "CHS", hereinafter
[5] **OA No. 3321/2016**
[6] **OA No. 2712/2016**

Tribunal read thus:

"4. The controversy in the present case is squarely covered by a recent judgment of this Tribunal in the matter of ***Dr. H. P. Singh*** *v.* ***Union of India***[7]. The applicant in the aforesaid case was a Dental Surgeon in the Government of India and was denied the benefit of O.M. dated 31.05.2016. While allowing the O.A. filed by Dr. H.P. Singh, following observations were made:-

> "4. Ms. Deep Shikha Bharati, learned counsel for the applicant has referred to the definition of CHS as notified by the Ministry of Health and Family Welfare. The definition reads as under:-
>
> > "Central Health Services (CHS) is a centralized cadre governed by the Ministry of Health & Family Welfare, controlling Doctors all over India, placed across various ministries and the Delhi Government. It has an approximate strength of 4000 Doctors as on November, 2013. To monitor the various 6 sections are designated in the Ministry which are as under:-
> >
> > · CHS-I
> > · CHS-II
> > · CHS-III
> > · CHS-IV
> > · CHS-V
> > · CHS-VI
> > · CHS Rules"
>
> It is stated that the Code CHS-VI is for the Dental Doctors. In order to establish this fact, reference is made to the appointment order of the applicant dated 03.01.1997 wherein the aforesaid code has been mentioned. The same reads as under:-
>
> "No.A.12034/2/94-CHS-VI"
>
> Another reference is made to the promotion order of the applicant dated 09.01.2013, and again the following number is mentioned in the order:-
>
> "No.A.32012/4/2001-CHS-VI"

[7] Order dated 25.08.2017 in **O.A. No.3321/2016**

Even the Office Memorandum dated 29.10.2008 (Annexure A-10) wherein DACP Scheme was applied to the SAG, the Dental Doctors are shown to be part of CHS. The subject of the said Memorandum reads as under:-

> "Extension of Dynamic Assured Career Progression (DACP) Scheme upto Senior Administrative Grade (SAG) level in respect of officers of Central Health Service (CHS) and Dental Doctors under the Ministry of Health and Family Welfare."

Same code is mentioned in the communication dated 25.08.2016, which reads as under:-

> "No.A.45012/1/2002-CHS-VI"

Apart from the above, seniority list dated 17.05.2016 of Staff Surgeons (Dental) also mentions the same code. The same reads as
under:-

> "File No.A.23018/01/2014-CHS.VI"

From the above definition read with above mentioned documents on record, it appears that CHS include six categories. It is noticed that CHS-VI is category of "Dental Service". Thus, the "Dental Surgeons" in CHS are a part of CHS."

5. The Tribunal further relied upon paragraph 30 of its earlier judgment in ***Dr. Santosh Kumar Sharma & others v Union of India & others***[8], in case of Doctors in Indian System of Medicines. The said paragraph reads as under:-

> "30. On the analysis of the factual matrix, we find that although the Doctors working under CHS and those working under the Indian system of medicines belong to different streams, nonetheless all the Doctors perform the similar nature of duties, i.e., treatment of patients and health care in their own systems of medicines. The service conditions of both the streams, though governed by separate rules, but are similar in nature. Rather rule 12(3) of Delhi Health Service Rules applies all the rules of Central Government to the Doctors working in the Homoeopathy system of medicines. Regulation 4 of the Regulation framed under the Delhi Municipal Corporation Act, 1957 treat all the Doctors under

[8] Order dated 24.08.2017 in **O.A. No.2712/2016 and connected O.As.**

different streams of medicines alike and all the service conditions applicable to the Central Government employees have been made applicable to the officers and employees working under various Municipal Corporations. Thus, for all practical purposes they are treated alike. The applicants have placed on record order dated 05.09.2014 at page 16 of OA No.4066/2016, whereby the benefit of DACP scheme was extended to AYUSH Doctors up to the SAG level. Reference is also made to Cabinet decision No.663 dated 29.10.2001 of Government of NCT of Delhi, referred to hereinabove, whereby the facility for the Medical Officers were allowed at par with the Government of India in all respects, and insofar as the teaching staff is concerned, facilities at par with the teaching staff working in teaching institutions of modern system of medicines (Allopathic) were allowed. All these documents clearly demonstrate the parity of duties and equality of other working conditions. Though different rules govern them, but the rules are similar in nature, rather the terms and conditions of service provided under various rules are same in nature. It is under these circumstances, we are of the considered view that the applicants cannot be treated differently than the Doctors working in various subcadres in the CHS. They are also entitled to the benefit of enhancement of age as notified vide Government order dated 31.05.2016. It is also relevant to notice that the Fundamental Rules have application to all the Government servants. The substituted Clause (bb) in FR-56 includes all categories of sub-cadres, i.e., GDMOs and specialists including teaching, non-teaching and public health sub-cadres of CHS. Though the amendment is only for CHS officers, but the Doctors under the Allopathic system of medicine working in the North DMC have also been extended the same benefit vide letter dated 30.06.2016 by the North DMC with effect from the same date the Doctors under CHS have been granted. Similar treatment cannot be denied to the Doctors working in the other two Corporations, i.e., South DMC and East DMC. The East DMC requested the Government of India, Ministry of AYUSH seeking application of the enhancement of age to AYUSH Doctors. The Ministry has not denied it. It is pertinent to note that even in the

counter affidavit, the stand of the Union of India, Ministry of Health and Family Welfare, DOP&T and the Ministry of AYUSH is that it has been left to the wisdom of the concerned organizations to grant the benefit of enhancement of age. No distinguishable features between the Doctors under the Allopathy system and those under AYUSH working in the Corporations have been demonstrated in the reply to deny them similar benefit as granted to the Allopathy doctors. There is in fact discrimination between the Doctors working in different Corporations. Even Allopathy Doctors working in the East and South DMCs have been denied similar treatment. There is no intelligible differentia for treating the Doctors working in Allopathy discipline including Dental Surgeons in CHS and those in MCD and/or in other organizations/streams differently. Similarly, the Doctors working in Indian system of medicines, i.e., under AYUSH, whether Homeopathy, Ayurveda, Unani or Sidha, who are also performing similar duties in their own system and are governed by similar service conditions also cannot be treated differently on the basis of the discipline. This action is clearly hostile and discriminatory in nature.

Following directions were issued in the aforesaid judgment:-

(1) The action of the respondents and the Government order dated 31.05.2016 as also the amendment in FR-56(bb) to the extent the enhancement of age of superannuation is confined to the Doctors under the Central Health Service are declared ultra vires to the Constitution and violative of Article 14.

(2) The applicants in the present OAs are entitled to similar treatment in regard to service conditions including the age of retirement as is available to Doctors working under the Central Health Service. The orders passed by the respondents retiring the applicants at the age of 60 years are hereby declared as null and void.

(3) The applicants will be entitled to the benefit of enhancement of age of superannuation in terms

of the Government of India order dated 31.05.2016 read with the amended FR-56.

(4) A further direction in the nature of *mandamus* is issued to allow the applicants to continue in service till they complete the age of 65 years. If any of the applicants has been retired at the age of 60 years, he/she shall be re-inducted into service till he/she completes the age of 65 years, and paid salary for the period he/she was out of service on account of retirement at the age of 60 years."

6. The directions issued in the aforesaid judgment shall apply to the applicant of the present O.A. as well.

7. In this view of the matter, this O.A. is allowed in terms of the aforesaid judgment. Order dated 07.06.2016 (Annexure A-16) is hereby set aside. The applicant shall be deemed to be in service and be allowed to continue in service till she attains the age of 65 years. The applicant shall also be entitled to wages for the period she remained out of service on account of retirement at the age of 60 years."

12. The respondent did not choose to challenge the aforesaid order by way of writ proceedings. Instead, the respondent filed RA 186/2019, seeking review of the aforesaid judgment.

13. The review application filed by the respondent has come to be allowed by the Tribunal by order dated 20 January 2020. The Tribunal has revisited the entire issue, and has dismissed the petitioner's OA holding that the order dated 20 September 2017 earlier passed by the Tribunal in the OA 3093/2016 suffered from errors apparent on the face of the record.

14. Aggrieved by the said decision, the petitioner has approached this Court by means of the present writ petition.

15. We have heard Ms. Neetu Rai, learned Counsel for the petitioner, Mr. Vijay Joshi, learned Counsel for Respondent 1/UOI and Mr. N.K. Singh, learned Counsel for Respondents 2 to 4, at length.

16. Mr. Vijay Joshi, who appears for UOI, submits that though the notification dated 31 May 2016 extended the benefit of enhanced age of superannuation to doctors working in the CHS, it was for the Delhi Administration to adopt the said decision for doctors working under it.

17. Ms. Neetu Rai, learned Counsel for petitioner has placed reliance on the judgment of the Supreme Court in ***North DMC v Dr. Ram Naresh Sharma***[9] in which certain doctors who were working under the AYUSH under the MOHFW sought the benefit of enhanced age of superannuation as was extended to Allopathic Doctors working under the Central Government.

18. She has drawn our attention to paras 21 to 25 of the judgment of Supreme Court, which read thus:

> "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

[9] **2021 SCC OnLine SC 540**

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 rejoin 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 v State of Uttar Pradesh***[10] 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 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.

[10] **(2013) 7 SCC 595**

> 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-1 (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."

19. She submits that the petitioner would also be entitled to relief in accordance with the principles contained in the aforesaid judgment of the Supreme Court in ***Dr. Ram Naresh Sharma***.

20. As against this, Mr. N.K. Singh, learned Counsel for the Respondents 2 to 4 submits that the order dated 31 May 2016 was applicable only to doctors working under Central Government and that, in respect of doctors working in the DHS, the benefit of enhanced date of superannuation was granted by the GNCTD only *vide* order dated 30 September 2016. Inasmuch as the petitioner had retired on 31 May 2016, she could not seek the benefit of the said order.

21. We, however, sought Mr. Singh's response on a more elementary aspect of the matter.

22. A reading of the judgment dated 20 September 2017 passed in OA 3093/2016 discloses that the Tribunal, on that occasion, was conscious of the stand of the GNCTD that, till the Delhi Government adopted or issued a notification in terms of the order dated 31 May 2016 issued by the MOHFW, doctors under the Delhi Administration could not seek the benefit of the said order. Despite this, the Tribunal deemed it appropriate to grant relief by parallelising the work done by dentists working under the DHS to the doctors to whom the enhanced age of superannuation was made available by the order dated 31 May 2016. In so deciding, the Tribunal followed earlier precedents laid down by it.

23. The impugned order has come to be passed in a review application. The respondent consciously chose not to challenge the earlier judgment dated 20 September 2017 passed by the Tribunal in the OA 3093/2016 by way of writ proceedings. By filing a review application instead, the scope of challenge got restricted to the parameters of Order XLVII Rule 1 of the CPC.

24. Order XLVII Rule 1[11] of the CPC, which applies *mutatis mutandis* to the writ petition as well as original applications, envisages

[11] **1. Application for review of judgment**. –
(1) Any person considering himself aggrieved –
(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
(b) by a decree or order from which no appeal is allowed, or
(c) by a decision on a reference from a Court of Small Causes,
and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment of the Court which passed the decree or made the order.

review only where there is an error apparent on the fact of the record or where the review is justified on the basis of new and important information which was not available to the review applicant despite due diligence at the time when the decision in review was passed, or for any other sufficient reason. The Supreme Court has clarified, in ***Shri Ram Sahu v Vinod Kumar Rawat***[12], that the words "any other sufficient reason" have to be understood in the light of the other grounds of review specified in the provision.

25. Probably conscious of this principle, the Tribunal has, in the impugned order, faulted the earlier decision as being vitiated by error apparent on the face of record on two counts.

26. The first error apparent on the face of record of the judgment rendered dated 20 September 2017 by the Tribunal in OA 3093/2016, according to the impugned order, was that the petitioner, having superannuated on 31 May 2016, could not seek the benefit of the order dated 31 May 2016 passed by the MOHFW, as it came into effect only w.e.f. 30 September 2016.

27. This finding is clearly vitiated by error of law. A reading of the order dated 31 May 2016 indicates that it was brought into force with immediate effect. In other words, every doctor who retired on 31 May 2016 or thereafter, would be entitled to enhancement of the age of superannuation by the period envisaged in the said order. The petitioner, as an officer who retired on 31 May 2016, would also,

[12] **(2021) 13 SCC 1**

therefore, be entitled to the benefit of order, assuming that the order was otherwise available to her.

28. The second ground on which the Tribunal in the impugned order faults the earlier judgment is that the earlier judgment did not take into account the fact that the Delhi Administration had, after the order dated 31 May 2016, extended the benefit of enhanced age of superannuation to doctors working under it on 30 September 2016. In other words, the Tribunal's view is that, for failure to notice the subsequent order dated 30 September 2016, the judgment dated 20 September 2017 passed by the Tribunal was vitiated by error apparent on the fact of the record.

29. We cannot agree on this score either. The fact that after three months after 31 May 2016, the Delhi Administration may have chosen to issue an order on 30 September 2016, granting the benefit of enhanced age of superannuation to doctors working under the Delhi Administration would not foreclose such doctors from claiming the benefits of the earlier order dated 31 May 2016. The judgment dated 20 September 2017 of the Tribunal in OA 3093/2016 has noted this fact and has, applying its earlier decisions, held that, as the petitioner was discharging the same duties as the doctors who got the benefit of the order dated 31 May 2016, she could not be denied the benefits of the said order. This judgment cannot be said to be vitiated by error apparent on the fact of the record merely because it did not notice the subsequent notice issued by the Delhi Government on 30 September 2017.

30. Moreover, the view adopted by the earlier division benches of the Tribunal in OA 3321/2016, is also in *sync* with paras 21 to 25 of the judgment of the Supreme Court in ***Dr. Ram Naresh Sharma***.

31. We, therefore, are of the view that the Tribunal materially erred in effectively revisiting the entire OA in review jurisdiction, while passing the impugned order.

32. Resultantly, the impugned order dated 20 January 2020 passed in RA 186/2019 is quashed and set aside.

33. The judgment dated 20 September 2017 passed in OA 3093/2016 stands restored.

34. There shall be no order as to costs.

35. The writ petition is accordingly allowed, with no order as to costs.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

FEBRUARY 20, 2025
dsn/an

Click here to check corrigendum, if any