

DEPARTMENT OF HEALTH AND FAMILY WELFARE
DISPUR

GUWAHATI- 781006.

3:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM

DEPARTMENT OF HEALTH AND FAMILY WELFARE
DISPUR

GUWAHATI - 781006.

4:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM

FINANCE DEPARTMENT

DISPUR

GUWAHATI - 781006.

5:THE DIRECTOR OF AYUSH

ASSAM

BASISTHA ROAD

BANPHOOL NAGAR PATH

DISPUR

GUWAHATI - 781006.

6:THE DIRECTOR OF PENSION

ASSAM

HOUSEFED COMPLEX

DISPUR

GUWAHATI- 781006.

Advocate for : MR. B C DAS

Advocate for : GA

ASSAM appearing for THE STATE OF ASSAM AND 5 ORS.

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

Date of hearing : 13.06.2023.

Date of judgment : 28.06.2023.

JUDGMENT & ORDER (CAV)

Heard Mr. B. C. Das, learned senior counsel assisted by Mr. S. H. Rahman,

learned counsel appearing for the writ petitioners in this batch of writ petitions. Also heard Mr. D. Saikia, learned Advocate General, Assam assisted by Ms. D. Borah, learned Standing Counsel, Health & Family Welfare Department, Assam appearing for the respondents.

2. The issue involved in all these writ petitions is one and the same and therefore, this bunch of writ petitions is being taken up for disposal by this common judgment and order. For the purpose of disposal of all these petitions, the facts involved in WP(C) No.7707/2018 is referred to herein below.

3. The petitioner no.1 in WP(C) No.7707/2018 is an association of the Ayurvedic doctors in Assam which had received recognition from the Government of Assam, Personnel Department vide Notification No.ABP.60/2008/1 dated 01.08.2008. The petitioner Nos.2 and 3 are Ayurvedic doctors who are working as Senior Medical Officer (Ayurved)/Medical Officer (Ayurved). The writ petitioners are primarily aggrieved by the notification dated 30.07.2016 issued by the Secretary to the Government of Assam, Health & Family Welfare (A) Department, by means of which, the age of retirement of the Allopathic doctors and dental surgeons working under the Health & Family Welfare Department of Assam was enhanced from 60 years to 65 years with immediate effect. However, the Ayurvedic doctors were left out from the purview of the said notification as a result of which, their age of retirement continued to remain 60 years. The aforesaid notification was issued in pursuance of the Cabinet decision dated 27.07.2016. Assailing the notification dated 30.07.2016 the petitioners have approached this Court *inter-alia* contending that the Ayurvedic doctors are

performing similar nature of duties as compared to their Allopathic/Dental counterparts and therefore, excluding the Ayurvedic doctors from the purview of the Government notification dated 30.07.2016, in so far as the same relates to the enhancement of retirement age of the doctors is concerned, is highly arbitrary and discriminatory. The petitioners have also contended that in view of the notification dated 24.11.2017 issued by the Joint Secretary to the Government of India, Ministry of Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homoeopathy increasing the age of superannuation of all AYUSH doctors under the Ministry of AYUSH working in the CGHS Hospitals/Dispensaries to 65 years with effect from 27.09.2017, the State Government of Assam was under a legal obligation to enhance the age of retirement of the Ayurvedic doctors in Assam also to 65 years. The writ petitioners have therefore, prayed for a writ of mandamus directing the respondents to enhance the age of superannuation of Ayurvedic doctors from 60 years to 65 years so as to align the same with the notification dated 24.11.2017. Individual Ayurvedic doctors have instituted the connected writ petitions asserting their rights on the aforesaid plea.

4. The respondent Nos.2 and 3 i.e. the Principal Secretary to the Government of Assam, Health & Family Welfare Department as well as the Commissioner and Secretary to the Government of Assam, Health & Family Welfare Department have filed a joint affidavit dated 22.09.2021 placing on record, the reason for which Ayurvedic doctors were not considered by the Government for enhancement of the age of superannuation. The reasons furnished by the Government are available in paragraphs 4 and 5 of the said affidavit, which are reproduced herein below for

ready reference :-

“4. That the deponent begs to state that the cadre strength of the Ayurvedic Doctors under Health & FW Department, Government of Assam is 449 (Sub Divisional Medical Officer *Ayur) + Senior Medical Officer (Ayur) + Medical Officer (Ayur) = 50 + 153 + 246). Currently, there are 82 (eighty two) nos. of vacant posts out of the total of 449 (four hundred and forty nine) cadre post.

Further, every year a total of 93 Ayurvedic doctors (63 UG + 30 PG) graduate from the only Ayurvedic College in the State i.e. Government Ayurvedic College, Guwahati. That apart, there are many other colleges in the country providing BAMS courses and a huge number of students hailing from the State graduate every year from those colleges and many of these passed out Ayurvedic doctors aspire to serve under the Government., thus there is no dearth of Ayurvedic doctors in the State.

5. That the rationale behind enhancement of the age of retirement of the Allopathic Doctors and Dental Surgeons working under the Health & FW(A) Department, Govt. of Assam was the decreasing number of Medical Officers in the Govt. service. Every year, a large number of doctors graduate from the Govt. Medical Colleges in the State, (presently from six medical colleges of the State) but the same is not reflected in the recruitment process. For instance, recently for recruitment of Medical & Health Officer-I, a total of 576 nos. of posts was advertised and only 321 posts were filled up. Thus, there is shortage of Allopathic doctors and dental surgeon in the State and if senior experienced doctors retire at the age of 60 despite having the capacity to continue in service, it will only elevate the shortage/capacity, which again is not in public interest. Keeping this in view, the Health & FW Department had decided to enhance the age of retirement of Allopathic doctors and Dental surgeons from 60 to 65 years so that there

is no shortage of doctors of the above categories and adequate healthcare services can be provided to the people.

However, the same does not apply to the Ayurvedic Doctors in the State. The last recruitment for the MO (Ayur) was held in 2015. Since then many batches of students have graduated with BAMS degree and are willing to serve in the Govt. service. The enhancement of retirement age of the Ayurvedic Doctors from 60 to 65 years will only deprive the fresh graduates from Government employment and serve the State and thus will affect the aspirations of their own young Ayurvedic doctors.

The Government has never denied the immense contribution of the Ayurvedic Doctors in the service of the people. Be it stated that enhancement of the retirement age of the Allopathic Doctors was not based on the nature of duty rather on the dearth of Medical Officers in the service in the State despite having adequate vacancies.

Thus, the decision of enhancing the retirement age of Allopathic doctors and dental surgeon is based on just and cogent reason keeping in mind the larger public interest and hence the question of violation of Article 14 and 16 of the Constitution of India does not arise more particularly when the nature of the course, terms and nature of service differ from the two in addition to the above mentioned factors. The Ayurvedic doctors do not provide specialized treatment like the Allopathic doctors. (The Department has defined the job responsibilities of the Ayurvedic Doctors vide notification No.HLA 460/2012/30 DATED 19/12/2013). At present, the Govt. in Health & FEW Department is not contemplating the enhancement of retirement age of the Ayurvedic Doctors."

5. Mr. B. C. Das, learned senior counsel for the writ petitioners has argued that the Ayurvedic doctors are performing similar nature of duties as the Allopathic doctors.

Since the Allopathic doctors/Dental surgeons/Ayurvedic doctors are all employees under the Government of Assam, doing similar nature of job, hence, it was not correct for the State Government of Assam to exclude the Ayurvedic doctors from the decision of raising the age of superannuation to 65 years. By referring to the decision of the Supreme Court rendered in the case of **North Delhi Municipal Corporation vs. Dr. Ram Naresh Sharma & others** reported in **2021 SCC OnLine SC 540**

Mr. Das submits that a similar issue raised in those writ petitions came up for consideration of the Supreme Court wherein it has been held that no classification between the Allopathic doctors and their Ayurvedic counterparts was permissible. In other words, submits Mr. Das, it was held that the Ayurvedic doctors were also entitled to the benefit of enhancement of retirement age as notified by the Central Government's order dated 24.11.2017. Contending that the petitioners' case was squarely covered by the decision of the Supreme Court rendered in the case of **Dr. Ram Naresh Sharma & others** (supra) Mr. Das has argued that this is a fit case where all the writ petitions deserve to be allowed by this Court with a direction to reinstate back in service, even those petitioners who are yet to complete 65 years of age but have been sent on retirement on attaining the age of 60 years.

6. Mr. Das has further argued that every decision of the State would be open to challenge in the Court of law for examining the constitutional validity of such decision on the touchstone of Articles 14 and 16 of the Constitution of India. Any differential treatment extended to similarly situated employees would be highly discriminatory and therefore, violative of the principles enshrined in Article 14 of the Constitution of India. In support of his above argument, Mr. Das has relied upon and referred to the

decision of the Supreme Court rendered in the case of **The State of Gujarat and another vs. Shri Ambica Mills Ltd., Ahmedabad** reported in **(1974) 4 SCC 656** as well as in the case of **Kailash Chand Sharma vs. State of Rajasthan and others** reported in **(2002) 6 SCC 562**.

7. Resisting the arguments advanced by the petitioners' counsel, Mr. D. Saikia, learned Advocate General, Assam has argued that the reasons for which decision not to enhance the age of retirement of Ayurvedic doctors from 60 years to 65 years had been adopted has been clearly spelt out in the affidavit filed by the State which is to tackle the growing unemployment amongst the Ayurvedic doctors as well as the shortfall of Allopathic doctors in the State. By contending that these matters fall within the realm of policy decision of the State, Mr. Saikia has argued that since the Cabinet decision based on which the impugned notification dated 30.07.2016 was issued, is not under challenge in these writ petitions, no relief can be granted to the petitioners. Therefore, the writ petitions are liable to be dismissed on such count alone.

8. Mr. Saikia has also relied upon the decision of this Court rendered in the case of **Anil Kumar Saikia (Dr.) vs. State of Assam and others** reported in **2018 (3) GLT 44** to argue that a similar issue had come up before this Court which was decided in favour of the State by holding that in the absence of a challenge made to the Cabinet decision, the consequential notifications for enhancement of age of retirement cannot be challenged. Mr. Saikia submits that the issue involved in the preset proceedings is squarely covered by the ratio laid down in the case of **Anil Kumar Saikia (Dr.)** (supra) and therefore, these writ petitions are liable to be dismissed.

9. By referring to the decision of the Supreme Court in the case of **AIR India vs. Nergesh Meerza and others** reported in **(1981) 4 SCC 335** Mr. Saikia has further argued that law is well settled that Article 14 of the Constitution does not forbid reasonable classification. By relying on a recent decision of the Supreme Court of India rendered in the case of **State of Gujarat & others vs. Dr. P. A. Bhatt & others** reported in **2023 0 Supreme (SC) 415**, more particularly, the observations made in paragraphs 54 and 55, wherein, it has been held that the Ayurvedic doctors do not perform similar nature of work as the civil surgeons and therefore, they are not entitled to equal pay since the work performed by them is also not equal, Mr. Saikia has argued that since the educational qualification as well as the nature of duties performed by the Ayurvedic doctors is not the same as the Allopathic doctors and the Dental surgeons, hence, making a reasonable classification between the two categories of doctors cannot be said to be violative of Articles 14 and 16 of the Constitution of India.

10. To sum up his argument Mr. Saikia has relied upon the decision of the Supreme Court rendered in the case of **Nagaland Senior Government Employees Welfare Association and others vs. State of Nagaland and others** reported in **(2010) 7 SCC 643** to argue that the State Government, in its wisdom, had felt that it would not be fair to deny the opportunity of employment to a large number of educated unemployed Ayurvedic doctors by enhancing the age of retirement of the existing Ayurvedic doctors and therefore, keeping in mind the public interest at large that the age of Ayurvedic doctors were not enhanced.

11. In his reply argument, Mr. Das, learned senior counsel appearing for the writ petitioners has submitted that the observations made in the case of **Dr. P. A. Bhatt & others (supra)** were with reference to the stand taken by the State of Gujarat in the affidavit filed before the Supreme Court in that case and therefore, those observations would have no bearing in the facts and circumstances of the present case. Mr. Das has further submitted that the mere fact that the Cabinet decision is not under challenge in the present proceedings would also not have a relevant bearing in the outcome of these petitions since it is the settled law that any decision of the Cabinet, circulated under Article 166 of the Constitution of India, would always be open to scrutiny by the court on the touchstone of Article 14 of the Constitution. Contending that the decision of the Council of Ministers would not have any binding effect until and unless the same has received the assent of the Governor, Mr. Das has relied upon and referred to the following decisions to support his arguments :-

1. **Bachhittar Singh vs. State of Punjab and another [AIR 1963 sc 395]**
2. **State of Kerala vs. Smt. A. Lakshmikutty & others [(1986) 4 SCC 632]**
3. **J. P. Bansal vs. State of Rajasthan and another [(2003) 5 SCC 134]**
4. **Distribution of Essential Supplies and Services During Pandemic, In Re [(2021) 7 SCC 772]**

12. I have considered the submissions made by the learned counsel for both the sides and have gone through the materials available on record.

13. At the very outset, it deserves to be mentioned herein that the AYUSH Ministry of the Government of India had earlier issued an order dated 24.11.2017 enhancing the retirement age of AYUSH doctors including the Ayurvedic doctors working in the

Central Government Health Services (CGHS)/ Dispensaries/Hospitals from 60 years to 65 years. The aforesaid decision had received the approval of the Union Cabinet on 27.09.2017 and therefore, the enhancement of the retirement age was given effect to from that date. However, in the instant case, the State Cabinet had decided not to enhance the age of retirement of Ayurvedic doctors who are in service under the Health & Family Welfare Department of the Government of Assam. Health being a State subject, there can be no doubt or dispute about the fact that any decision/circular/notification of the Ministry of Health/AYUSH Ministry, Government of India would not be automatically applicable to the employees of the State Government, unless the same is specifically adopted by the Government of that State by making specific amendments to the Service Rules governing the terms and conditions of service of the respective categories of employees.

14. In the present case, the terms and conditions of service of the Ayurvedic doctors in Assam is evidently governed by the Assam Ayurvedic Health Service Promotion of Medical Officer (Ayur) Orders, 2016. There is neither any rule nor any notification issued by the Government of Assam enhancing the age of superannuation of Ayurvedic doctors to 65 years from 60 years.

15. In the case of **Anil Kumar Saikia (Dr.)** (supra) the issue arising for consideration of this Court was as to whether, the decision of the State Cabinet enhancing the age of retirement only in case of Professors, to the exclusion of other grade of teachers including the Associate Professors serving under the Dibrugarh University, was discriminatory and therefore, violative of the provisions of Article 14 of the Constitution

of India. The other issue arising for decision of the Court in the aforesaid writ petition was as to whether, the correct date of superannuation of the petitioner would be as per the date recorded in his matriculation certificate or otherwise. Answering the first question in the negative, this Court, by relying upon the law laid down by the Supreme Court in the case of **State of Himachal Pradesh & others vs. Himachal Pradesh Nizi Vyavahik Prishikeshan Kendra Sangh** reported in **(2011) 6 SCC 597**, has held that since the writ petitioner had not challenged the Cabinet decision based on which the age of retirement of Professors was enhanced to 65 years, hence, the challenge made to the consequential notifications giving effect to such Cabinet decision would not be maintainable in the eyes of law.

16. In the case of **Dr. Ram Naresh Sharma & others** (supra), the core issue that had arisen for consideration of the Hon'ble Supreme Court was as to whether, Ayurvedic doctors would also be covered under the notification of the AYUSH Ministry and therefore, would they be entitled to the benefit of enhanced age of superannuation of 65 years just like the Allopathic doctors. Answering the said question in favour of the Ayurvedic doctors, the Supreme Court has observed that both the AYUSH and the CHS doctors render service to the patients and therefore, there is nothing to distinguish them. It was held that there was no justification for bestowing the benefit of extended age of superannuation differently to these two categories of doctors. Therefore, it was ordered that the notification dated 24.11.2017 must be retrospectively applied from 31.05.2016 so as to cover those Ayurvedic doctors who had continued in service on the basis of interim orders passed by the Central Administrative Tribunal/Courts. The Supreme Court has also rejected the argument

advanced by the learned departmental counsel that classification of AYUSH doctors and doctors under CHS into two different categories was reasonable and hence, permissible in the eyes of law.

17. In order to ascertain as to whether the ratio laid down in **Dr. Ram Naresh Sharma & others** (supra) would be applicable to the facts involved in the present batch of writ petitions, it would be necessary to notice the factual background of that case. In the case of **Dr. Ram Naresh Sharma & others** (supra) the Hon'ble Supreme Court was hearing the appeals directed against the judgment and order dated 15.11.2018 passed by the Delhi High Court affirming the common final order dated 24.08.2017 passed by the Central Administrative Tribunal, Principal Bench declaring that the applicants before it, who were Ayurvedic doctors covered under the AYUSH, were also entitled to the benefit of enhancement of age of superannuation to 65 years like the Allopathic doctors. The learned Administrative Tribunal had passed the aforesaid judgment by taking note of the fact that the Government of India, Ministry of Health & Family Welfare had issued an order dated 31.05.2016 enhancing the age of retirement upto 65 years making it applicable to the specialists, non-teaching and public health sub-cadres of CHS and the GDMOs of the CHS. Accordingly the Fundamental Rules, 1922 were amended. The New Delhi Municipal Corporation (NDMC) had adopted the order of the Government of India dated 31.05.2016 by issuing Office Order dated 30.06.2016 and enhanced the retirement age of Allopathic doctors working in the NDMC upto 65 years. By issuing Office Memorandum dated 30.08.2016 the Ministry of Health & Family Welfare had clarified that the enhancement of age of superannuation granted by the order

dated 31.05.2016 was applicable to GDMOs of CHS i.e. the Allopathic doctors and the Municipal Corporations and others were given the liberty to take their own decision in the matter on the question of applicability of the Ministry's decision on the issue of enhancement of age of superannuation. As such, it was thought that the Ayurvedic doctors were not covered by the order dated 31.05.2016 issued by the Ministry of Health & Family Welfare. The aforesaid situation gave rise to the filing of Original Applications by the Ayurvedic doctors before the Central Administrative Tribunal wherein the applicants such as Dr. Ram Naresh Sharma and other Ayurvedic doctors had sought the benefit of the Government's decision and the Office Order of the NDMC issued on 30.06.2016. The learned Central Administrative Tribunal had accepted the discrimination argument advanced by the Ayurvedic doctors and held that the enhancement of age of superannuation to 65 years would be applicable to the Ayurvedic doctors as well. Aggrieved by the decision of the Tribunal the NDMC had approached the High Court of Delhi by filing writ petitions. However, during the pendency of the writ petitions, the Ministry of Ayurveda, Yoga, Naturopathy, Unani, Siddha and Homeopathy ('AYUSH', for short), Government of India had issued order dated 24.11.2017 whereby, the age of superannuation of AYUSH doctors were also enhanced to 65 years with effect from 27.09.2017 which is the date of approval of the Union Cabinet. Thus, it was evident that there was a decision on the part of the Government of India, based on Cabinet approval, to enhance the age of superannuation of the AYUSH doctors (including Ayurvedic doctors) to 65 years. Taking note of such facts, the High Court of Delhi had affirmed the decision of the Central Administrative Tribunal. Eventually, the Supreme Court had dismissed the

appeal preferred by the NDMC by observing that there was no justification for having different dates for bestowing the benefit of extended age of superannuation to the two categories of doctors who are seen to be rendering duties of similar nature.

18. From the narration of facts, as above, it will be evident that in the case of **Dr. Ram Naresh Sharma & others** (supra) there was not only a notification issued by the Ministry of AYUSH, Government of India enhancing the age of superannuation of Ayurvedic doctors to 65 years but the said decision also had the approval of the Union Cabinet. However, the situation in the present case is completely different. In this case, the Cabinet had decided to exclude the Ayurvedic doctors from the purview of the notification dated 30.07.2016. The aforesaid Cabinet decision of the State had also received the approval of the Governor of the State. Therefore, the ratio laid down in the case of **Dr. Ram Naresh Sharma & others** (supra), in the opinion of this Court, would not be applicable to the facts of the present case.

19. It is also to be noted herein that in the decision of the Supreme Court rendered in the case of **Dr. P. A. Bhatt & others** (supra), although the earlier decision in the case of **Dr. Ram Naresh Sharma & others** (supra) was considered, however, a slightly divergent view was expressed on the question of equality/ parity of duties and functions between the Allopathic doctors and the Ayurvedic doctors. In the subsequent decision, it was categorically held that the duties performed by the Ayurvedic doctors were distinct and different and the Ayurvedic doctors were not capable of performing such duties as performed by the Civil Surgeons. It was held that although Ayurvedic doctors perform important functions, yet, they certainly do

not perform equal work as their Allopathic counterparts so as to demand equal pay. Be that as it may, since the petitioners' counsel has placed heavy reliance on the decision of **Dr. Ram Naresh Sharma & others** (supra), for the reasons mentioned herein above, the aforesaid decision, would not be of any assistance to the writ petitioners in the facts of the present case.

20. Coming to the next issue as to whether, in the absence of a challenge made to the Cabinet decision, the writ petitions would be maintainable. As has already been noticed herein above, the aforesaid issue come up for consideration of this Court in the case of **Anil Kumar Saikia (Dr.)** (supra) whereby, it was categorically held that in the absence of challenge to the Cabinet decision the consequential notification of enhancement of age of superannuation would not be maintainable in the eyes of law. The aforesaid decision lays down a binding precedent and therefore, has to be followed by this Court. Having regard to the facts and circumstances of the case, this Court is therefore, of the opinion that the decision rendered in the case of **Anil Kumar Saikia (Dr.)** (supra) would be squarely applicable in the present cases as well.

21. It is also to be noted herein that questions such as enhancement of age of superannuation, being matters strictly lying within the realm of policy decision of the State, once there is a Cabinet decision in the matter and such policy decision is found to be based on reasonable grounds, the same cannot be termed as irrational, arbitrary or discriminatory. In such circumstances, the scope of judicial review of the Courts in exercise of powers conferred under Article 226 of the Constitution would be

extremely limited. In the present case, this Court finds that although there was a classification made in the matter of enhancement of age of superannuation between two different categories of doctors, yet, such classification not only has a reasonable basis but also has a public purpose to be achieved. Therefore, it cannot be said that the same is not based on reasonable classification. Once it is found that the differentiation is based on reasonable classification, the decision cannot be held to be violative of the principles of equality enshrined under Articles 14 and 16 of the Constitution of India. In the above context, it would also be pertinent to mention herein that a similar stand of the State regarding fixing of age of retirement so as to provide employment avenue to large number of educated youth in the State was found to be valid by the Supreme Court in the case of **Nagaland Senior Government Employees Welfare Association and others** (supra) and it was held that such a provision need not be held to be against public interest.

22. For the reasons stated herein above, these writ petitions are held to be devoid of any merit and are accordingly dismissed.

Parties to bear their own cost.

JUDGE

T U Choudhury/ Sr. PS

Comparing Assistant