



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

D.B. Civil Writ Petition No. 14262/2022

1. Dr. Kamlesh Chandra Sharma
2. Dr. Brajesh Kumar Sharma
3. Dr. Kailash Chandra Sharma

-----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. The Director, Ayurved And Bhartiya Chikitsa Vibhag, Government Of Rajasthan, Ajmer.
5. The Director, Pension Department, Government Of Rajasthan, Jyoti Nagar, Jaipur.

-----Respondents

For Petitioner(s) : Mr. Jeetendra Kumar Sharma,
Advocate

For Respondent(s) : Mr. Chiranji Lal Saini, AAG

HON'BLE THE ACTING CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA

HON'BLE MR. JUSTICE VINOD KUMAR BHARWANI

Judgment / Order

28/09/2022

Mr. C. L. Saini, Additional Advocate General, on advance copy, enters appearance on behalf of the State.

Heard.



Following reliefs have been sought:-

"i) By issuing an appropriate writ, order or direction, the impugned notification dated 31.03.2016 by which the benefit of enhancement of age of superannuation has been extended only to the Doctors of Medical & Health Services and not to the Doctors of Ayurvedic and Bhartiya Chikitsa Vibhag of Government of Rajasthan, be declared as ultra-vires and the same may kindly be strike down to the extent it deprives the Doctors of Rajasthan Ayurvedic, Unani, Homeopathy and Naturopathy Service from getting the benefit of enhanced age of retirement upto 62 years and further it may be held that the petitioners who were Doctors of Rajasthan Ayurvedic, Unani, Homeopathy and Naturopathy Service, are also entitled to continue in service till attaining the age of 62 years, with all consequential benefits;

ii) By issuing an appropriate writ, order or direction, the respondents be directed to treat the petitioners continue in service till attaining the age of 62 years with all consequential benefits including refixation of pension etc. with payment of complete arrears and interest;

iii) Any other appropriate order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case, may also be passed in favour of the Petitioners."

This Court in the case of **Dr. Mahesh Chandra Sharma & Ors. Versus State of Rajasthan & Ors. (D.B. Civil Writ Petition No.13496/2021 and batch of petitions)** has dealt with the issue as to whether providing different age of superannuation for Allopathic Doctors vis-a-vis Ayurvedic doctors is discriminatory and violative of Article 14 of the Constitution of India and relying upon the decision of the Hon'ble Supreme Court in the case of **North Delhi Municipal Corporation Vs. Dr. Ram Naresh Sharma & Ors. reported in 2021 SCC ONLINE SC 540** and other judicial pronouncements, it has been held as below:-

"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."

The submission of Learned Additional Advocate General that the relief could not be granted as judgment of the Supreme Court applied prospectively, has already been dealt by us in the case of **Dr. Mahesh Chandra Sharma & Ors. (supra)**.

We place on record the fact regarding petitioners having already 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. As the petitioners have retired after 31.03.2016, the petitioners are also entitled to the same relief which has been granted by us in the aforesaid case. However, the petitioners shall be deemed to have continued in service till attaining the age of 62 years. This will require the respondent-authorities to pass necessary orders treating the petitioners to be in service till attaining the age of 62 years with all consequential benefits of continuity of service. We also make it clear that all other consequential action will also be required to be taken which include appropriate orders with regard to the pensionary benefits which the petitioners have already availed. Consequential orders in this regard shall also be required to be passed by the respondents.

The petition is accordingly allowed.

(VINOD KUMAR BHARWANI),J

(MANINDRA MOHAN SHRIVASTAVA),ACTING CJ