
(2013) 01 MP CK 0142

In the Madhya Pradesh High Court

Case No : Writ Petition No. 5237 of 2012

Dr. Kanti Lal Sahu and Another

APPELLANT

Vs

State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 17-01-2013

Acts Referred:

Madhya Pradesh Shashkiya Sewak (Adhiwarshik-Aaya) Adhiniyam, 1967 — Section 2

Citation : (2013) LabIC 1237 : (2013) 2 MPJR 271

Hon'ble Judges : S.A. Bobde, C.J.;K.K. Trivedi, J

Bench : Division Bench

Advocate : Anupam Lal Das, for the Appellant; R.D. Jain, learned General and Samdarshi Tiwari, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

S.A. Bobde, C.J.—The petitioner has approached this Court inter alia for a declaration that the explanation to sub-rule (1) (c), renumbered as Clause (a), to Section 2 of Madhya Pradesh Shaskiya Sevak (Adhivarshiki Ayu) Sanshodhan Adhiniyam, 1967 in Rule 56 of the Fundamental Rules is ultra vires to the extent it excludes the Medical Officer or Medico Legal Specialist appointed to an administrative post by promotion or otherwise and who has been engaged otherwise. During the course of arguments, learned counsel for the petitioners fairly stated that if the explanation is read in the manner suggested by the petitioners, it would not be necessary to rest the challenge to the vires of the Rules. The short question that arises for consideration is whether the persons appointed as Medical Officer, such as the petitioners, are entitled to retire at the age of 65 years. Both the petitioners were appointed as Chief Medical & Health Officer on 12.01.1993. Their earlier appointment in different capacity is not relevant here. By virtue of this appointment, they claimed that the retirement age is 65 years.

2. The retirement age has been provided by Fundamental Rule 56. To the extent it is relevant, reads as follows:

F.R. 56. Age of Superannuation.--(1) Subject to the provisions of sub-rule (2) every Government servant other than a Government Teacher, a class IV Government servant, every member of the Madhya Pradesh Public Health and Family Welfare (Gazetted) Service appointed to a medical post mentioned in Schedule-I to the Madhya Pradesh Public Health and Family Welfare (Gazetted) Service Recruitment Rules, 1988 and every member of the Madhya Pradesh Medical Education (Gazetted) Service appointed to a medical teacher post mentioned in Schedule-I to the Madhya Pradesh Medical Education (Gazetted) Service Recruitment Rules, 1987 shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years.

Originally the age of retirement was 60 years. This was amended and raised to 62 years by The Madhya Pradesh Shaskiya Sevak (Adhivarsiki-Ayu) Sanshodhan Adhiniyam, 2007. Thereafter, it was raised to 65 years by the Amending Act of 2011 (No. 20 of 2011). It is not disputed that those covered by the Rules were entitled to retire at the age of 65 years only if they are entitled to retire at the age of 62 years by virtue of Amending Act, 2007.

3. It is obvious that original Fundamental Rule 56, which provided for retirement on attaining the age of 60 years applied to every Government servant. Amending Act No. 2 of 2007 applied to "every member of the Madhya Pradesh Public Health and Family Welfare (Gazetted) Service" appointed to a medical post mentioned in Schedule-I to the Madhya Pradesh Public Health and Family Welfare (Gazetted) Service Recruitment Rules, 1988. The amendment reads as follows:

(iii) after sub-rule (1-b) the following sub-rules shall be inserted, namely:--

(1-c) Subject to the provisions of sub-rule (2), every member of the Madhya Pradesh Public Health and Family Welfare (Gazetted) Service appointed to a medical post mentioned in Schedule-I to the Madhya Pradesh Public Health and Family Welfare (Gazetted) Service Recruitment Rules, 1988, shall retire from service on the afternoon of the last day of the month in which he attains the age of 62 years.

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Explanation.-- For the purpose of this sub-rule "a member of the Madhya Pradesh Public Health and Family Welfare (Gazetted) Service" means a Government Servant by whatever designation called, appointed as Medical Officer or Specialist in accordance with the recruitment, rules and shall also include such Medical Officer or Specialist who is appointed to an administrative post by promotion or otherwise and who has served as Medical Officer or Specialist for not less than twenty years provided he holds a lien on a post in concerned Madhya Pradesh Public Health and Family Welfare (Gazetted) Service.

The explanation clarified the meaning of the term "member of the Madhya Pradesh Public Health and Family Welfare (Gazetted) Service" and covers the following three categories:

- (i) a member of the service appointed as Medical Officer or Specialist;
- (ii) a member of such service who is appointed to an administrative post by promotion or otherwise; and
- (iii) who has served as Medical Officer or Specialist for not less than twenty years, provided he holds a lien on a post concerned in Madhya Pradesh Public Health and Family Welfare (Gazetted) service.

4. The case of the petitioners is squarely covered by the first category itself since they were appointed as Chief Medical & Health Officer in accordance with the recruitment Rules.

5. Learned Advocate General appearing for the respondents, however, contended that the statement of Objects and Reasons for the Amending Act of 2011 shows that the Act was amended to increase the age of superannuation of various categories of officers to 65 years since there was acute shortage of such officers. According to learned Advocate General, it is permissible for the Government to apply the Rules by splitting up the cadre into various categories. It is submitted on behalf of the State that since at the relevant time there was greater need of persons with administrative experience, it was decided to apply the rules to the category of Medical Officers, who had not less than twenty years experience. Since the petitioners did not belong to that category, the enhanced age of retirement is not applicable.

6. We have considered the matter and we find that the petitioners case is squarely covered by both the Amending Acts of 2007 and 2011 since the Amending Acts extend the age of retirement initially to 62 years and then to 65 years in respect of all members of the Madhya Pradesh Public Health Service appointed to a post mentioned in Schedule-I to the Madhya Pradesh Public Health and Family Welfare (Gazetted) Service Recruitment Rules, 1988. Since the petitioners were so appointed to a medical post mentioned in Schedule-I as Chief Medical & Health Officer, they are entitled to retire at the age of 65 years as determined by the Madhya Pradesh Shaskiya Sevak (Adhivarshiki-Ayu) Adhiniyam, 1967 as amended by Amending Acts of 2007 and 2011. In these circumstances, it is not necessary to consider the question of vires of the Rules. The writ petition is allowed. The age of superannuation of the petitioners will be 65 years and they shall be entitled to work till that age in accordance with law. It is not disputed that petitioner No. 2 has been made to retire on 31st May, 2012 during the pendency of this petition. He shall be entitled to reinstatement. The respondents are directed to reinstate the said petitioner in service within four weeks from today. The said petitioner shall be entitled to all consequential benefits as if he was in service. The rule is made absolute in the above terms.