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**(2014) 01 RAJ CK 0226**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 348 of 2014**

Khinwa Ram Dhaka

APPELLANT

Vs

State of Rajasthan

RESPONDENT

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**Date of Decision :** 29-01-2014

**Acts Referred:**

**Citation :** (2014) 3 CDR 1679 : (2014) LabIC 1899 : (2014) 3 RLW 2154 :  
(2014) 4 SCT 15

**Hon'ble Judges :** Vineet Kothari, J

**Bench :** Single Bench

**Advocate :** P.S. Chundawat and Pankaj Gupta, Advocate for the Appellant; B.K. Bhatnagar and Yashpal Khileree, Advocate for the Respondent

**Final Decision :** Disposed Off

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## Judgement

Vineet Kothari, J.—The issue involved in these writ petitions are common and therefore, these writ petitions are being decided by this common order. The facts are illustratively taken from SBCWP No. 348/2014-Khinwa Ram Dhaka v. State of Rajasthan and Ors.

2. The respondent institution--"Shri Bhanwar Lal Duggar Ayurved Vishwa Bharti", known as Gandhi Vidhya Mandir is an educational institution operating in Sardarshahar, Dist. Churu and imparts education of Ayurvedic treatment of various diseases and receives grand-in-aid from the State Government under the Ayurved Department Grand-in-Aid Rules, 1972.

3. The issue involved in these writ petitions; is about the retirement age of the employees of such aided institutions under the 1972 Rules-whether it is 58 years or 60 years.

4. Rule 8(2) and Rule 11 of the 1972 Rules, which deal with this issue is reproduced hereunder for ready reference:

(Vernacular matter omitted.....Ed.)

5. According to the aforesaid Rules, the retirement age is 58 years extendable up to 60 years under the orders of Director of the concerned Institution. The petitioner-Khinwa Ram Dhaka was initially appointed in the year 1987 as Librarian in the aforesaid College under the impugned order Annex. 2. He is sought to be retired on attaining the age of 58 years, which according to his record would complete on 6.1.2014 on the last date of the month i.e. 31.1.2014, after 3 days from today. The petitioner has challenged this order inter alia on the ground that the State Government has since enacted the Rajasthan Non-Government Educational Institutions Act, 1989 and has framed the Rajasthan Non-Government Educational Institutions (Recognition, Grant-in-Aid and Service Conditions etc.) Rules, 1993 and as per the said letter, the enactment as per Rule 45 of the said 1993 Rules, the age of retirement of teachers and other employees is 60 years, which is further extendable up to 62 years at the discretion of concerned aided institution. The petitioner submits that these rules would govern his retirement age.

6. In the connected SBCWP No. 4521/2010-Dr. Ramanand Jha v. State, the petitioner, Dr. Ramanand Jha working as Professor in the same respondent-Institution, namely, Shri Bhanwar Lal Duggar Ayurved Vishva Bharti, Gandhi Vidhya Mandir was attaining the age of 58 years on 15.6.2010 and he was sought to be retired on 30.6.2010, which order was challenged by him in the connected writ petition on same grounds of 1989 Act and 1993 Rules having been enacted by the State and being applicable, but in that writ petition also, no interim relief was granted by this Court while issuing notices to the respondents on 14.5.2010 and the said petitioner retired on 30.6.2010. The learned counsel for the petitioner, Mr. P.S. Chundawat urged that if the contentions of the petitioners are upheld, the petitioners would have been able to serve two more years resulting into more pensionary benefits to him after his retirement and therefore, he would survive to that extent.

7. The same is the position in other writ petition No. 1822/2010-Jagdish Prasad Shastri v. State of Rajasthan, but in that case, an interim order was granted by another coordinate bench of this Court on 24.2.2010 to the effect that the petitioner shall not be retired on the ground of attaining the age of 58 years and in pursuance of that interim order of this court, the said petitioner Jagdish Prasad continued for two more years and thereafter retired on attaining the age of 60 years. The interim order dated 24.2.2010 in that case is also quoted below for ready reference:

Learned counsel for the petitioner submits against the same respondent a writ petition being SBCWP No. 3314/2006-Dr. Raj Singh Malik and Ors. v. State of Rajasthan and Ors. was preferred and the same has been allowed vide judgment dated 14.10.2008 holding that the employee like petitioner cannot be made to retire on attaining the age of 58 years after coming into force of the notification dated 30th June, 2004.

Issue notice to the respondents for final disposal, returnable within four weeks.

Meanwhile, petitioner shall not be retired on the ground of attaining the age of 58 years.

8. The learned counsel for the petitioners. Mr. P.S. Chundawat and Mr. Pankaj Gupta vehemently submitted that the aforesaid 1972 Rules should be deemed to have been impliedly repealed by the later enactment of 1989 Act and 1993 Rules and they also heavily relied upon the decision of this Court in the case of Dr. Raj Singh Malik v. State of Rajasthan and Ors., reported in 2009(2) WLC 49, specially para 14 of the said judgment, which is quoted below for ready reference:

14. In my opinion, after enactment of the Act of 1989 known as Rajasthan Non-Governmental Educational Institutions Act, 1989 and the Rules of 1993, framed thereunder, all those rules which were in existence for granting aid prior to enactment of the Act were repealed. The repealing clause incorporated in the Rules of 1993 is as follows:

91. Repeal and Saving.--(1) The Rajasthan Grant-in-aid to Educational & Cultural Institutions Rules, 1963 and any Notification issued and orders made under any such rules to the extent to which they applied to the person/institution to whom these rules apply and insofar as they relate to recognition, grant in aid, Service conditions, or confer powers to make appointments, grant recognition, sanction grant-in-aid, impose penalties, or entertain appeals are hereby repealed:

Provided that--

(a) Such repeal shall not effect the previous operation of the said rules, notification and orders or anything done, or any action taken thereunder;

(b) Any proceedings under the said rules, notification or orders pending at the commencement of these rules shall be continued and disposed off as far as may be, in accordance with the provisions of these rules.

(2) Nothing in these rules shall operate to deprive any person or institution to whom these rules apply of any right of appeal which had accrued to them under the rules notification or orders repealed by sub-rule (1) in respect of any order decided before the commencement of these rules.

(3) An appeal pending at or preferred after the commencement of these rules against an order made before such commencement shall be considered and order thereon shall be passed in accordance with these rules.

Meaning thereby, the petitioners were entitled for all the benefits as are available to the other institutions receiving grant-in-aid as well as State Government employees under the Revised Pay Scale Rules, 1998. In the case of the petitioners, although it is accepted by the Ayurved Department that the petitioners are entitled for the benefit of Revised Pay Scale Rules, 1998 but, in the impugned order, the benefit have extended to the petitioners with effect from 01.01.2006 which is totally in contravention of the judgment rendered by the Full Bench of this Court in S.R. Higher Secondary School's case (supra) in which it

has been held that all the benefits which are available to the State Government employees are required to be given to the employees of the aided non-Governmental institutions also.

9. The learned counsel for the petitioners therefore urged that the retirement age of teachers and other employees of these aided institutions which are imparting education of Ayurvedic medicines, naturopathy and homeopathy, should be treated as 60 years and not 58 years and therefore, the present petitioner Khinwa Ram Dhaka cannot be retired prematurely on 31.1.2014 under the impugned order Annex. 2 dated 26.11.2013 and other petitioners who have already retired also deserve to be notionally treated in the service up to 60 years of age and are entitled to notional benefits accordingly and pensionary benefits thereafter accordingly.

10. On the other hand, Mr. B.K. Bhatnagar, learned counsel appearing for the respondent-College and Mr. Y.P. Khileree, appearing for the Ayurved Department relied upon another decision of co-ordinate bench of this Court in the case Smt. Kamla Devi v. State and Ors.-SBCWP No. 921/1995 decided on 26.2.2007 which specifically dealt with the question of retirement age of same respondent-institution and it was specifically held therein that as per 1972 Rules quoted above, since the retirement age was 58 years only, the petitioner, Kamla Devi, was not entitled to any relief and the writ petition was accordingly dismissed. It may be noted here that the aforesaid decision of this Court in the case of Kamla Devi v. State of Rajasthan and Ors.-SBCWP No. 921/1995 decided on 26.2.2007 was not referred in the later decision of another co-ordinate bench in the case of Dr. Raj Singh Malik (2009(2) WLC 49) (supra) decided on 14.10.2008 where the question was not of retirement age, but of grant of benefits of selection grade, encashment of earned leave and other allowances at par with Government Educational Institutions and other aided institutions and while dealing with the case in para 14, the learned single Judge extended the benefit of 1993 Rules framed under 1989 Act to the petitioner Dr. Ram Singh Malik and others (supra), which case is obviously distinguishable and does not cover the issue involved in the present case before this court about the age of retirement of aided educational institutions imparting education in the field of Ayurved, Homoeopathy etc. which are specifically covered under 1972 Rules.

11. The learned counsel for the respondents, Mr. B.K. Bhatnagar also informed the Court that even now and until now, the grant-in-aid is received by the respondent No. 4-Institution only under these 1972 Rules with reference to the Rules of 1972 and therefore there is no question of treating these 1972 Rules as impliedly or specifically repealed or over-ruled. He also urged that 1993 Rules also do not talk of any repugnancy of 1972 Rules nor repealing provisions contained in Rule 91 of the 1993 Rules are with non obstante clause and therefore, cannot have overriding effect over the specific 1972 Rules, which govern the present respondent No. 4-Institution.

12. I have given my thoughtful consideration to the rival contentions, relevant

statute and the judgments cited at the Bar. This Court is of the opinion that mere incongruity or inconsistency in 1972 Rules and 1993 Rules with respect to issue of age of retirement, which is apparent on the face of it, does not entitle the petitioners to any protection by giving mandamus direction to the respondent Institution to retain the employees beyond 58 years so long as the 1972 Rules hold the field. The contentions raised by the learned counsel for the petitioner about the implied repeal cannot be sustained inasmuch as 1993 Rules framed under 1989 Act is like general law, whereas the respondent-institution is covered by the special law, namely, 1972 Rules. It is well settled that the special law will prevail over the general law.

13. It may be for the State Government to consider the increase in the age of retirement of employees of even these institutions which are governed by 1972 Rules to bring them at par with the employees of other aided educational institutions, which are governed by the 1989 Act or 1993 Rules made thereunder, but it is not for this Court to legislate and therefore, it would be best left to the State Government to take decision in this regard and either amend the 1972 Rules suitably or repeal the same and allow the employees of these institutions governed by 1972 Rules as of now also to be governed by 1993 Rules. The employees of these institutions governed by 1972 Rules are therefore, required to make suitable representation to the State Government in this regard, but so long as the 1972 Rules specifically governing the respondent No. 4-institution holds the field, the impugned orders retiring the employees of the said educational institutions at the age of 58 years in accordance with Rule 11(12) (dha) read with Rule 8 of 1972 Rules cannot be faulted.

14. This Court in the case of Smt. Kamla Devi (supra) has clearly noticed and repelled the said argument of applicability of 1993 Rules under 1989 Act and held that 1972 Rules will prevail in respect of Non-Government Ayurved, Naturopathy and Homoeopathy Educational Institutions. The said judgment is quoted below for ready reference:

By this petition for writ, legality of the order dated 26.12.1994 passed by Shri Bhanwarlal Duggar Ayurved Vishva Bharti, Sardar Shahar is questioned by the order aforesaid, it was notified that the petitioner shall retire from service w.e.f. 31.12.1994 on achieving the age of 58 years i.e. the age prescribed for superannuation.

The factual matrix necessary to be noticed for adjudication of the present, petition for writ is that the petitioner entered in the services of Shri Bhanwarlal Duggar Ayurved Vishva Bharti, Sardar Shahar under an order dated 30.06.1969 as "Paricharika"-a post in Class-IV Cadre The date of birth of the petitioner is 01.06.1937. According to the petitioner, she was to be retired on acquiring the age of 60 years, but the respondents under the order impugned dated 26.12.1994 ordered for her retirement from service w.e.f. 31.12.1994 treating the age of 58 years as the age prescribed for superannuation.

It is contended by counsel for the petitioner that under Rajasthan Non-Government Educational Institutions (Recognition, Grant-in-aid and Service Conditions etc.) Rules, 1993 (hereinafter for short "the Rules of 1993"), the age of retirement as prescribed is of 60 years, as such the respondents erroneously ordered for retirement of the petitioner w.e.f. 31-12-1994.

Per contra, in reply to the writ petition, it is stated by the respondents that in accordance with Rule 8(2)(a) of the Rajasthan Ayurved Anudan Sahayata Rules, 1972 (hereinafter for short "the Rules of 1972") as amended under the notification dated 09.11.1989 (Annexure R/3), the age of retirement for doctors, compounders/nurse and members of the other cadres is 58 years. On asking, it is asserted that the respondent institution is getting aid under the Rules of 1972 and not by the Rajasthan Non-Government Educational Institutions Act, 1989 (hereinafter for short "the Act of 1989") or the rules framed thereunder. A set of the Rules of 1972 is also placed on record.

The Rules of 1972 pertains to grant of aid to the Non-Government Ayurved, Unani, Naturopathy, Homoeopathy and other indigenous alternative medicinal Educational institutions. The dispensary where the petitioner was working is affiliated with teaching of Ayurved at the respondent institution. The respondent is getting aid under the Rules of 1972 and not under the Act of 1989 or the rules framed thereunder. The service conditions of the petitioner were required to be regulated in accordance with the Rules of 1972 and not by the Rules of 1993. It is not in dispute that under the Rules of 1972, the age of retirement prescribed for doctors, compounders/nurse and members of other cadres that includes Class IV Cadres, is 58 years and, therefore, I am to the opinion that no illegality is committed by the respondents while retiring the petitioner on acquiring the age of 58 years.

In result, the writ petition is having no merit, the same, therefore, is dismissed.

15. As aforesaid the earlier judgment in the case of Smt. Kamla Devi (supra) was not referred in the later judgment in the case of Dr. Raj Singh Malik (supra), therefore extending the benefit of 1989 Act and 1993 Rules to the employees of these institutions also governed by the 1972 Rules does not result in repeal of 1972 Rules at the hands of this Court. The observations of the learned single Judge in the case of Dr. Raj Singh Malik (supra) that "after enactment of the Act of 1989 known as Rajasthan Non-Government Educational Institutions Act, 1989 and the Rules of 1993, framed thereunder, all those rules which were in existence for granting aid prior to enactment of the Act were repealed" has to be read with reference to Rule 91 quoted by the learned single Judge himself which specifically talk of repeal of Rajasthan (Grant-in-Aid to Educational and Cultural Institutions) Rules, 1963 and the notifications and orders issued thereunder. Therefore, 1972 Rules also could not be said to be impliedly repealed by the State Government. The observation of the learned single Judge in the case of Dr. Raj Singh Malik (2009(2) WLC 49) (supra) as contended by the learned counsel for the petitioner and extending the benefit for payment of selection grade, leave

encashment and other allowances to the employees of these Institutions cannot be construed as the judgment regarding the age of retirement also as the said issue was not even an issue raised in the case of Dr. Raj Singh Malik (supra) before this Court. Therefore, the observations have to be treated as mere obiter dicta and not ratio of the judgment on this issue of retirement age.

16. On the other hand, the judgment in the case of Smt. Kamla Devi (supra) covers these cases in hand and this court finds no reason to differ with the view taken by the learned single judge in the case of Smt. Kamla Devi (supra).

17. Accordingly, while leaving the petitioners free to make representation to the State Government for increase in the age of employees of these Institutions governed by 1972 Rules and for the State Government to decide such representation in accordance with law, this Court does not find any sufficient ground to give any mandamus direction to the respondent-Institution for retaining these employees up to the 60 years of age. The relaxation as provided in aforesaid Rules 8(2) and 11(xii)(dha) as aforesaid are in the discretion of the Director of the said Institution and the petitioner could also be free to make a suitable representation to the said authority seeking such relaxation and it is in the discretion of the said authority to consider such representation and pass appropriate orders. However, that does not call for any mandamus directions from this Court. Accordingly, these writ petitions are liable to be disposed of accordingly and the same are accordingly disposed of with the aforesaid observations. No order as to costs. A copy of this order be sent to the parties concerned forthwith.