NEUTRAL CITATION NO. 2025:MPHC-JBP:24098

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SURESH KUMAR KAIT,

CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE VIVEK JAIN

WRIT PETITION No. 17639 of 2022

DR. O. P. SINGH & OTHERS

Versus

STATE OF MADHYA PRADESH AND OTHERS

WITH

WRIT PETITION No. 9935 of 2022

DR. KEDAR SINGH TOMAR

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 10330 of 2023

RAJENDRA PRASAD GAUTAM AND OTHERS

Versus

THE STATE OF M.P. AND OTHERS

WRIT PETITION No. 18550 of 2023

DR. PRADEEP AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 16581 of 2024

MAQBOOL MANSOORI

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 41615 of 2024

DR. PRADEEP KUMAR SOLANKI

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Kailash Chandra Ghildiyal - Senior Advocate along with Ms. Warija Ghildiyal - Advocate for the petitioners in their respective cases.

Shri Suyash Mohan Guru - Advocate for petitioners in his respective cases.

Shri Vishal Pateriya, Shri Atul Upadhyay and Shri Harsh Wardhan Singh - Advocates for petitioners in their respective cases.

Shri Bramhadatt Singh - Deputy Advocate General for respondent/State.

Reserved on	**-**	**02.04.2025**
Pronounced on	**-**	**19.05.2025**

ORDER

Per: ***Suresh Kumar Kait, Chief Justice***

1. In all these writ petitions, a common question of fact and law is involved and therefore, they are heard analogously and being disposed of by this common order.

2. For the sake of convenience, the facts and annexures of WP No.17639 of 2022 are being taken into consideration. The reliefs sought for in the matter are as follows:-

> *"(i) To issue an appropriate writ declaring Sub-Rule (1-c)(a) of the Madhya Pradesh Shaskiya Sevak (Adhivarshiki-Ayu) Sanshodhan Adhiniyam, 2011 being ultra-vires to Constitution of India to the extent that it discriminate between Allopathic*

Doctors and Veterinary Doctors with respect to date of superannuation.

(ii) To grant any other relief, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case including cost of the litigation in favour of the petitioner."

3. The petitioners are qualified Veterinary Surgeons working with the State of Madhya Pradesh in Animal Husbandry and Dairy Department. They joined their services as Veterinary Doctor with the State of M.P. during 1983 to 1988. Initially the age of retirement was 60 years as per Fundamental Rules 56., thereafter, the same was enhanced to 62 years vide amendment notification dated 31.03.2018 (Annexure P/5). The State of Madhya Pradesh by enacting the Madhya Pradesh Shaskiya Sevak (Adhivarshiki-Ayu) Sanshodhan Adhiniyam, 2011 amended the Fundamental Rule 56 and substituted Section 2 in the Madhya Pradesh Shaskiya Sevak (Adhivarshiki-Ayu) Adhiniyam, 1967, whereby the retirement age of Government Doctors working under Madhya Pradesh Public Health & Family Welfare Department has been increased to 65 years and the retirement age of other departments including the veterinary services in which the petitioners are working was kept at 60 years. Thereafter on 31.03.2018 another Gazette Notification has been issued by the State Government increasing the age of superannuation from 60 years to 62 years.

4. A common grievance of the petitioners in this batch of writ petitions is with regard to increase of age of retirement from 62 to 65

years. The petitioners herein are challenging the amendment in Clause (1-c)/(a) published in Gazette Notification dated 06.05.2011 (Annexure-P/3), by which the retirement age of the Medical Doctors has been increased from 62 to 65 years and the petitioners who are rendering similar services in Veterinary Department are yet to retire after attaining the age of 62 years. The services of petitioners and the services of doctors appointed under Health and Family Welfare Department as per Sub-rule (1-c)/(a) are similar and identical and therefore, vide impugned amendment of 2011, discrimination is being caused amongst the veterinary doctors, who are rendering similar services as that of Medical Doctors to the State of Madhya Pradesh. This obstinacy of the respondent No.1 & 2 not only amounts to gross discrimination but also violates Article 14 of the Constitution of India thereby rendering Clause (1-c)/(a) of the amendment dated 06.05.2011 as ultra vires to the Constitution of India. The petitioners preferred present petitions seeking equal treatment to the Veterinary Doctors, thereby challenging the impugned amendment only to the extent that it excludes services of Veterinary Doctors working in Veterinary Department of State of Madhya Pradesh from the increased age of superannuation of 65 years.

5. The respondents have filed their reply in WP No.10330/2023 and adopted the same in all other writ petitions, wherein they have rebutted the averments made in the writ petitions. The respondents stated that fixing of the age of retirement of any employee falls within the domain of a policy decision and is the exclusive prerogative of the employer.

Such rule is not liable for interference in exercise of the extra-ordinary writ jurisdiction under Article 226 of the Constitution of India, until and unless (i) the rule making authority lacked the legislative competence to make the rules; (ii) the rule violated any provision of the Constitution of India, in particular, the Fundamental Rights guaranteed under Chapter III of the Constitution; (iii) rule does not conform to or is repugnant to the statute under which it is made or any other statute, (iv) the rule is manifestly arbitrary (as contrasted from near unreasonableness). In the case at hand, the petitioners failed to demonstrate as to how their case is falling within any of the aforesaid parameters.

6. The respondents have further stated that the medical officers of the Health Department are also different from the veterinary medical officers in various ways, as both the departments have their different recruitment rules, service conditions, educational qualifications, etc. Further stated in the reply that similarly, in the case of the teachers working in the Government colleges as well, the age of superannuation was enhanced to 65 years for the object and reasons explicitly mentioned in the same Statement of Object and Reasons of the amendment (supra), viz., to attract qualified persons towards the academic profession and to ensure that the teachers discharge services for a long time. However, in the case of the veterinary doctors in the Department of Animal Husbandry and Dairy it may be seen that there are about 1,671 sanctioned posts of veterinary doctors against which 1,395 are working. Further, in the Mobile Veterinary Unit Scheme of

the State, there are 406 sanctioned posts of veterinary doctors against which 365 are working. However, as against the aforesaid in the Nanaji Deshmuk Veterinary Science University of Madhya Pradesh about 300 students are admitted for obtaining degree in veterinary science each year. Hence, in view of the requirement of more posts for the young veterinary graduates consciously no decision was taken by the State to enhance the age of superannuation of the Veterinary Doctors. It is also stated in reply that vide order dated 13.04.2015 (Annexure P/9, Gazette Notification dated 08.04.2015), the State of Chhattisgarh enhanced the age of superannuation of the veterinary doctors keeping in mind the shortage of veterinary doctors, but here in the State of Madhya Pradesh there is no shortage of veterinary doctors. Hence, in view of the above, the petitions are liable to be dismissed.

7. Learned counsel appearing for the petitioners vehemently argued that the services of veterinary doctors are similar to the services of doctors of Medical Health Services and therefore, there is no basis for providing any different treatment with respect of the retirement age of the petitioners. The State of Madhya Pradesh vide its circular no. C-41/1331-61/1404 dated 4/6.07.1981 has also determined similar pay to veterinary doctors. It is submitted that the nature of job of Allopathic Doctor, Ayurvedic Doctor and Veterinary Doctor are same i.e. to provide treatment to their patients and therefore, there is no intelligible differentia to discriminate amongst the Allopathic, Ayurvedic and Veterinary Doctors.

8. Learned counsel for petitioners further submitted that in similar facts and circumstances the Ayush Doctors (Ayurvedic Doctors) have challenged their retirement age seeking similar treatment with that of the Allopathic Doctors. The matter travelled to Hon'ble Supreme Court in which the Hon'ble Supreme Court vide order dated 03.08.2021, passed in the case of ***North Delhi Municipal Corporation Vs. Dr. Ram Naresh Sharma, Civil Appeal No.4578/2021*** and granted all the benefits including extending the age of retirement to the Ayush Doctors (Ayurvedic Doctors) which were being given to Allopathic Doctors.

9. Further contended by the learned counsel for the petitioners that the learned Single Judge in the case of ***Dr.(Smt). Neera Jain & another vs. Union of India & Ors*** **{ W.P. No.5870/2013(s)}** vide its judgment dated 24.03.2022 extended the benefit of enhanced age of retirement to the Professors of Veterinary Science teaching in the Veterinary University. It is also submitted that certain petitions were filed before this Court by the Ayush Doctors seeking similar relief as granted by the Supreme Court in the abovementioned judgment, i.e. with respect to the enhancement of age of retirement. This Court in W.P. No.28039/2021 vide its order dated 23.12.2021 has granted interim protection to the petitioner in the said petition related to Ayush Doctors. The case of petitioners herein is also similar and identical as they are providing veterinary services to the State of Madhya Pradesh and all the service conditions of the petitioners are similar to Allopathic and Ayush Doctors and hence, the discriminatory treatment by the

State is completely arbitrary, illegal and against the mandate of the Constitution of India.

10. Learned counsel for the petitioners contended that recently the High Court of Jharkhand in the case of ***Dr. Ratan Kumar Dubey Vs. State of Jharkhand & Anr*** and connected matters **{W.P. (S) 1737/2021}** vide its Judgment dated 26.11.2024 while considering a similar issue wherein the Veterinary Doctors were seeking the benefit of enhancement of age of superannuation from 60 to 65 years as was done in the case of Allopathic Doctors, directed the Allopathic Doctors and Veterinary Doctors to be treated at par in the matter of service conditions and pay structure. Thus, the petitioners also deserve to be continued up to the age of 65 years. It is further submitted that the State of Chhatisgarh has amended the rules vide Gazette Notification dated 08.04.2015 enhancing the age of superannuation upto 65 years with respect to the Veterinary Doctors working therein which are pari materia to the rules of State of Madhya Pradesh.

11. To the contrary, Shri B.D.Singh, learned Deputy Advocate General argued that the nature of work for both cadres of doctors i.e., Veterinary Doctors and the General Duty Medical Officer (Allopathic Doctors) are different. So far as the case of Medical Officers (Allopathic Doctors) and acceptance of recommendation of Central Government's Fifth & Sixth pay revision is concerned; the issue of enhancement of age limit of superannuation is a policy matter and the Government of Jharkhand has taken a decision in the light of

availability of trained manpower with respect to the population; whereas in case of the veterinary doctors, that situation is not there in this State. Further submitted that there is difference in the availability of sanctioned strength of the cadre and there is also difference in the available strength of working employees. It has also been submitted that if the retirement age is enhanced, in the case of Veterinary Doctors, then the veterinarians, who passed out of different colleges, will suffer prospect of non-employment. Moreover, the enhancement of retirement age from 62 to 65 years will bear additional cost on the government exchequer, which would be much higher, as compared to that of the financial burden to be borne out of the appointment at fresh recruitment level. Therefore, in view of the above, it is a factual error to say that the appointment process, nature of service and educational qualification of Veterinary Officers are equivalent to that of Medical Doctors of Allopathy and Dentist stream.

12. Learned Deputy Advocate General relying on the judgments of the Supreme Court rendered in the cases of ***State of Gujarat and others Vs. P.A.Bhatt and others*** reported in (2023) 15 SCC 257, ***Central Council for Research in Ayurvedic Sciences and another Vs. Bikartan Das and others*** reported in (2023) 16 SCC 462 and ***State of Himachal Pradesh Vs. Kailash Chandra Mahajan*** reported in AIR 1992 SC 1277, contended that the contention of the petitioners that there is no intelligible differentia or rational classification in fixing two different ages of retirement of the two classes of doctors is absolutely misconceived. The services of the Medical Doctors are governed by the

Madhya Pradesh Public Health and Family Welfare (Gazetted) Services Recruitment Rules, 2008 whereas that of Veterinary Doctors are governed by the Madhya Pradesh Veterinary Services (Gazetted) Recruitment Rules, 2007. Their education qualification and service conditions are not similar. Hence they are not entitled for enhancement of age of retirement to 65 years.

13. Shri K.C.Ghildiyal, learned Senior Counsel appearing on behalf of the petitioners placing reliance on the judgment of the Supreme Court in the case of ***J.S. Yadav v. State of U.P.*, (2011) 6 SCC 570** contended that the vested right of the candidates cannot be taken away by the amendment. Further relying on the judgment of the Supreme Court in the case of ***Monnet Ispat & Energy Ltd. v. Union of India*,** (2012) 11 SCC 1**,** he contended that the doctrine of legitimate expectation can be invoked as a substantive and enforceable right.

14. Shri Bramhadatt Singh, learned Deputy Advocate General refuting the contentions of the petitioners argued that cases relied upon by the learned Senior Counsel are not applicable in the case in hand. Further submitted that fixing the age of retirement of any employee falls within the domain of a policy decision and is exclusive prerogative of the employer. The nature and conditions of service of veterinary doctors are different than that of the Medical Officers of the Health Department. The reason for enhancing the age of retirement of Medical Doctors was the shortage of Medical Officers as is evident vide Gazette Notification dated 01.04.2011, Annexure R/6. The

Supreme Court in the case of ***North Delhi Municipal Corporation*** (supra) in fact did not enhance the age of retirement of the Ayush Doctors but simply relied upon the order dated 24.11.2007 of the Ministry of Ayush whereby the age of retirement of Ayush Doctors has been enhanced at par with Allopathic Doctors without going into the question whether class of both doctors are performing equal duties and responsibilities. The Supreme Court subsequently clarified the said position in the case of ***State of Gujarat and others Vs. P.A.Bhatt and others*** reported in (2023) 15 SCC 257. Further submitted that in the case of ***Central Council for Research in Ayurvedic Sciences and andother Vs. Bikartan Das and other***, (2023) 16 SCC 462 in paras 13, 17, 45 and 46, the same view was reiterated by the Supreme Court. The Supreme Court in the said case in para 43 held that the age of superannuation is always governed by the statutory rules governing appointment on a particular post. The cases of ***P.A.Bhatt*** and ***Bikartan Das*** (supra) were again relied upon by the Supreme Court while passing the order dated 04.12.2024 (Annexure R/3) in SLP No.3946/2023 – ***Dr.Solaman A.vs State of Kerala*** arising out of the order of the Kerala High Court, wherein it was held that the Ayurvedic or Ayush Doctors serving the State of Kerala having regard to the qualitative distinction in the academic qualifications and the standard of imparting respective degree courses cannot seek parity with medical doctors. The Supreme Court in the case of ***State of Himachal Pradesh Vs Kailash Chandra Mahajan,*** AIR 1992 SC 1277 categorically held

that it is permissible to have different retirement ages for different classes or categories of staff in the same organization.

15. We have minutely examined the rival submissions of the parties and perused the judgments relied upon.

16. In the case in hand, the petitioners are challenging the constitutional validity of Sub-rule (1-c)/(a) of Fundamental Rules 56 as amended by Section 2(iii) of the Madhya Pradesh Shaskiya Sevak (Adhivarishiki-Ayu) Sanshodhan Adhiniyam, 2011 by the State Government vide Gazette Notification dated 06.05.2011 (Annexure P/3). By the said amendment, the age of superannuation of the members of the Madhya Pradesh Public Health and Family Welfare (Gazetted) Service appointed to a medical post mentioned in Schedule-I of the Madhya Pradesh Public Health and Family Welfare (Gazetted) Service Recruitment Rules, 1988 has been enhanced from 62 to 65 years, whereas the petitioners who are working on different posts of Veterinary Officers under the Animal Husbandry and Dairy Department of the State Government, have not been granted the said benefit. For ready reference, amended sub-rule (1-c)/(a) of the Fundamental Rule 56 is reproduced, which is as under:-

> *"(1-c)**(a)** 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 **sixty five** years.*
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> *Provided that a 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 whose*

> *date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of* ***sixty five*** *years.*
>
> ***The increase of age of superannuation from sixty two years to sixty five years in clause (a) shall be deemed to have come into force from 31st August, 2010.***
>
> *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 a 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."*

17. It is well settled proposition of law that fixing the age of retirement is purely a policy matter that lies within the domain of the State Government. It is not for the courts to prescribe a different age of retirement from the one applicable to Government employees under the relevant service Rules and Regulations. It is trite that the Courts ordinarily do not interfere with policy decisions made by the Government unless those decisions are demonstrably unconstitutional or violative of fundamental rights. With regard to interference being made by the Courts, the Supreme Court in the case of ***Dr. Prakasan M.P. and others Vs. State of Kerala and another*** reported in 2023 SCC Online SC 1074 held as under:-

> *"11. It is well-settled that the age of retirement is purely a policy matter that lies within the domain of the State Government. It is not for the courts to prescribe a different age of retirement from the one applicable to Government employees under the relevant service Rules and Regulations. Nor can the Court insist that once the State had taken a decision to issue a similar Government Order that would*

extend the age of retirement of the staff teaching in the Homeopathic Colleges as was issued in respect of different categories of teaching staff belonging to the Dental stream and the Ayurvedic stream, the said G.O. ought to have been made retrospective, as was done when G.O. dated 14th January, 2010 was issued by the State and given retrospective effect from 1st May, 2009. These are all matters of policy that engage the State Government. It may even elect to give the benefit of extension of age to a particular class of Government employees while denying the said benefit to others for valid considerations that may include financial implications, administrative considerations, exigencies of service, etc."

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18. The Supreme Court in the case of ***Indian Express Newspapers (Bombay) Private Ltd. and others etc. Vs. Union of India and others*** reported in AIR 1986 SC 515 has held that validity of any subordinate legislation can be challenged on the grounds namely, if the rule making authority lacked the legislative competence to make the rules or if the rule violated any provision of the Constitution of India, in particular, the fundamental rights guaranteed under Chapter- III of the Constitution or if the rule does not conform to or is repugnant to the statute under which it is made or any other statute or the rule is manifestly arbitrary (as contrasted from near unreasonableness). The relevant paras are as under:-

"75. *A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent Legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary. In England, the Judges would say "Parliament never intended authority to make such rules. They are unreasonable and ultra vires". The present position of law bearing on the above point is stated by Diplock, L.J. in Mixnam's*

Properties Ltd. v. Chertsey Urban District Council [(1964) 1 QB 214 : (1963) 2 All ER 787 : (1963) 3 WLR 38 (CA)] thus:

"The various special grounds on which subordinate legislation has sometimes been said to be void ... can, I think, today be properly regarded as being particular applications of the general rule that subordinate legislation, to be valid, must be shown to be within the powers conferred by the statute. Thus, the kind of unreasonableness which invalidates a bye-law is not the antonym of 'reasonableness' in the sense in which that expression is used in the common law, but such manifest arbitrariness, injustice or partiality that a court would say: 'Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires'...if the courts can declare subordinate legislation to be invalid for 'uncertainty' as distinct from unenforceable...this must be because Parliament is to be presumed not to have intended to authorise the subordinate legislative authority to make changes in the existing law which are uncertain."

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77. *In India arbitrariness is not a separate ground since it will come within the embargo of Article 14 of the Constitution. In India any enquiry into the vires of delegated legislation must be confined to the grounds on which plenary legislation may be questioned, to the ground that it is contrary to the statute under which it is made, to the ground that it is contrary to other statutory provisions or that it is so arbitrary that it could not be said to be in conformity with the statute or that it offends Article 14 of the Constitution."*

19. The Supreme Court in the case of ***Jacob Puliyel Vs Union of India and others*** reported in 2022 SCC OnLine SC 533 held that the Courts, in exercise of their power of judicial review, do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness etc. The relevant para is reproduced which is as follows:-

"21. We shall now proceed to analyse the precedents of this Court on the ambit of judicial review of public policies relating to health. It is well settled that the Courts, in exercise of their power of judicial review, do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on grounds of mala

fide, unreasonableness, arbitrariness or unfairness etc. Indeed, arbitrariness, irrationality, perversity and mala fide will render the policy unconstitutional(Ugar Sugar Works Ltd. v. Delhi Administration, (2001) 3 SCC 635. It is neither within the domain of the courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are the courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logicalVillianur Iyarkkai Padukappu Maiyam v. Union of India, (2009) 7 SCC 517. Courts do not and cannot act as appellate authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary(Directorate of Film Festivals v. Gaurav Ashwin Jain, (2007) 4 SCC 737)."

20. The question which arises for consideration is whether the amendment in question is discriminatory and against the principle of equality as guaranteed under Article 14 of the Constitution of India so far as it excludes the Veterinary Doctors from being deprived of the benefit of enhancement of age of superannuation from 62 to 65 years at par with Allopathic Doctors.

21 The learned Deputy Advocate General drawing comparison of the Medical Doctors with Veterinary Doctors pointed out the reasons for which the Veterinary Doctors cannot be benefitted with enhancement in age of retirement at par with the Medical Doctors because there is intelligible differentia between both of them. Such as their services are governed by different recruitment rules, their educational qualification is not similar and their nature of work and service conditions are different. The object and

reason behind enhancing the age of superannuation of the Medical Officers of the Health Department was that there is a shortage of Medical Doctors whereas the same was not the case of Veterinary Doctors.

22. It is pertinent to mention here that recently the High Court of Jharkhand *in the case of* ***Dr. Ratan Kumar Dubey Vs. State of Jharkhand & Anr*** and connected matters **{W.P. (S) 1737/2021}** vide its Judgment dated 26.11.2024 while considering a similar issue wherein the Veterinary Doctors were seeking the benefit of enhancement of age of superannuation from 60 to 65 years as was done in the case of Allopathic Doctors, directed the Allopathic Doctors and Veterinary Doctors to be treated at par in the matter of service conditions and pay structure. Thus, the petitioners also deserve to be continued up to the age of 65 years. The relevant portion is extracted as follows:

> *15. Hence, the stipulation made in the impugned order dated 18.10.2022, {annexed in I.A. No. 40 of 2023 of W.P.(S) No. 1737 of 2021}, that the recommendation of the 6th CPC is subject matter of approval by the Govt. and therefore falls in the realm of policy decision, is only a half statement. On analysing the position as it appears from the reading of the resolution dated 28.02.2009, it is clear that the recommendation of 6th CPC has already been adopted by the State Government in principle. What remains rest is its implementation by making appropriate provisions to give a full picture to the rights arising from the commitment made by the State Government by adoption of 6th CPC, so that the finality of service condition arising therefrom can be appropriately regulated.*
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> *16. In view of the above discussions, the Government of Jharkhand is directed to come-up with appropriate provisions and rules, through its respective Departments, particularly Department of Animal Husbandry and Departmental Finance, to*

grant the benefits of DACP and enhancement of retirement age of the Veterinary Officers to 65 years, in parlance with the recommendation of the 6th CPC that the two services, i.e. Allopathic Doctors and Veterinary Officer are to be treated at par, in the matter of service conditions and pay structure.

17. It goes without saying that the impugned orders which has been passed in W.P.(S) No. 1737 of 2021 vide order dated 18.10.2022 and in W.P.(S) No. 774 of 2022 vide order dated 01.07.2021, are hereby, quashed and set aside. It is expected that the Government of Jharkhand will do the needful and come-up with appropriate provisions and rules, through its respective Departments at the earliest; preferably within a period of four months from the date of receipt/production of copy of this order."

23. It is noticed that the aforesaid decision of the Jharkhand High Court was based on the recommendation of the 6th Central Pay Commission. Relevant para 3.8.25 of the Report of the Sixth Central Pay Commission, March, 2008, Government of India, is reproduced, herein, which is as under:-

"3.8.25 The Fifth CPC had extended parity with General Duty Medical Officers and Dental Doctors to the posts of Veterinary Officers requiring a degree of B.V.Sc. & AH along with registration in the Veterinary Council of India. This parity is justified and may need to be continued. Insofar as the posts of para veterinary staff are concerned, all the Group 'D' posts of Para Veterinary Attendants shall be placed in the revised pay band PB- 1 along with the grade pay of Rs.1800 after they are retrained suitably. The posts of Para Veterinary Attendant/Compounder shall be extended the corresponding replacement pay band and grade pay. All the three grades in the category of Animal House Supervisor/ Assistant Veterinarians/ Biological Assistants/ Zoological Assistants shall now be placed in the PB-2 pay band of Rs.8700-34800 along with grade pay of Rs.4200. Posts of Para Veterinary staff in the erstwhile scales of Rs.5000-8000 and Rs.5500-9000 will stand merged. The posts of Para Veterinary staff in the pre-revised scale of Rs.6500-10500

shall be upgraded and placed in the higher Pay Band PB-2 of Rs.8700-34800 along with grade pay of Rs.4600 corresponding to the pre-revised pay scale of Rs.7450-11500. These posts shall, therefore, stand merged with posts already existing in the pre-revised scale of Rs.7450-11500, if any."

24. It is also noted that the State of Chhatisgarh looking to the paucity of veterinary doctors in the State has amended Rule 56 of the Fundamental Rules by enacting the Chhattisgarh Shaskiya Sevak (Adhivarshiki-Ayu) (Sanshodhan) Adhiniyam, 2015 vide Gazette Notification dated 08.04.2015, Annexure P/9 related to age of superannuation which are *pari materia* to the rules of State of Madhya Pradesh and enhanced age of superannuation from 62 to 65 years to the Veterinary Doctors working in the State of Chhatisgarh.

25. It is also borne out from the record that earlier similar controversy was raised before this Court in a number of petitions by the Ayush Doctors claiming the parity with the Allopathic Doctors who have been extended the benefit of enhancement of age of superannuation from 62 to 65 years. This Court by way of interim measure granted the relief to the Ayush Doctors permitting them to continue upto the age of 65 years. The Supreme Court in the case of ***North Delhi Municipal Corporation Vs. Ram Naresh Sharma*****,** (2021) 17 SCC 642 arising out of the judgment passed by the High Court of Delhi, has held that the Ayush Doctors are entitled to be retired at the same age as the Allopathic Doctors. The relevant paras are reproduced as under:-

"*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 31-5-2016.

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 dated 24-11-2017 must be retrospectively applied from 31-5-2016 to all the respondent doctors concerned, in the present appeals. All consequences must follow from this conclusion."*

26. On perusal of the aforesaid judgment, it appears that the contention of the appellant-Corporation before the Supreme Court was that classification of AYUSH doctors and doctors under CHS in different categories is reasonable and permissible in law. The Supreme Court was 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. 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.

27. The argument of the learned Deputy Advocate General was that subsequent decision of the Supreme Court in the case of ***State of Gujarat and others Vs. Dr.P.A.Bhatt*** reported in (2023) 15 SCC 257 has clarified that the decision rendered in ***North Delhi Municipal Corporation*** (supra) did not enhance the age of retirement of the Ayush Doctors but simply relied upon the Notification dated 24.11.2007 of the Ministry of Ayush itself enhancing the age of retirement of Ayush Doctors at par with Allopathy Doctors. The relevant paras are reproduced as under:-

> ***"18.*** *A cursory reading of the portion of the judgment in* ***Ram Naresh Sharma*** *[North Delhi Municipal Corpn. v. Ram Naresh Sharma, (2021) 17 SCC 642] extracted supra, may give an impression as though the question arising for consideration is no longer res integra and that Allopathy doctors and Ayurveda doctors should be treated on a par insofar as all service conditions are concerned. But a careful reading of the entire judgment shows that the said decision was based upon an Order of the Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy (AYUSH) dated 24-11-2017. As seen from para 2 of the said decision, the age of retirement of Allopathy doctors was increased by an Order dated 31-5-2016 issued by the Ministry of Health and Family Welfare. This was followed by consequential amendment of the Fundamental Rules and Supplementary Rules, 1922. Since Ayurveda doctors were not covered by the Ministry's Order dated 31-5-2016, Ayurveda doctors filed applications before the Administrative Tribunal. The Administrative Tribunal allowed the applications by an order dated 24-8-2017 [Santosh Kumar Sharma v. Union of India, 2017 SCC OnLine CAT 10276]. The North Delhi Municipal Corporation (employer) filed writ petitions before the*

High Court of Delhi challenging the decision [Santosh Kumar Sharma v. Union of India, 2017 SCC OnLine CAT 10276] of the Tribunal. During the pendency of the writ petitions, the Ministry of AYUSH issued an Order dated 24-11-2017 enhancing the age of retirement of AYUSH doctors also to 65 years, but with effect from 27-9-2017. It is in that context that this Court held as aforesaid in Ram Naresh Sharma [North Delhi Municipal Corpn. v. Ram Naresh Sharma, (2021) 17 SCC 642] . This Court did not go into the question whether AYUSH doctors and Allopathy doctors were performing equal duties and responsibilities so as to be entitled to equal pay.

19. *We must remember the fundamental distinction between : (i) the issue of law that equal work entails equal pay; and (ii) the issue of fact as to whether two categories of employees are performing equal work or not? This Court did not go into the factual aspect in* ***Ram Naresh Sharma*** *[North Delhi Municipal Corpn. v. Ram Naresh Sharma, (2021) 17 SCC 642] as to whether AYUSH doctors were performing equal work as Allopathy doctors. This Court simply relied upon the Order of the Ministry of AYUSH itself enhancing the age of retirement of AYUSH doctors on a par with Allopathy doctors.*

20. *In any case, the question of age of retirement stands on a different footing from the service conditions relating to pay and allowances and revision of pay. Therefore, we do not think that the issue raised in these appeals can be said to be covered by the decision in Ram Naresh Sharma [North Delhi Municipal Corpn. v. Ram Naresh Sharma, (2021) 17 SCC 642] ."*

28. On a careful reading of the judgment passed by the Supreme Court in ***Dr.P.A.Bhatt*** (supra), it reveals that the issue in respect of enhancement of age of retirement was not under consideration in that case, which is clear from para 20 wherein the Supreme Court observed that the question of age of retirement stands on a different footing from the service conditions relating to pay and allowances and revision of pay. Therefore, the Supreme

Court was of the view that the issue raised in the appeals cannot be said to be covered by the decision in ***Ram Naresh Sharma*** (supra).

29. However, we may note that the vide Gazette Notification dated 24.11.2017 issued by the Ministry of Ayush, the age of superannuation of the Ayush Doctors has been enhanced to 65 years with effect from 27.09.2017 i.e. the date of the approval of the Union Cabinet. The said notification is as follows:-

> "F. No. D. 14019/4/2016-E-1 (AYUSH)
> Government of India,
> Ministry of Ayurveda, Yoga & Naruropathy, Unani, Siddha and Homoeopathy
>
> AYUSH Bhawan,
> 'B' Block, GPO Complex,
> INA, New Delhi - 110023
> Dated, the 24" November, 2017
>
> ORDER
>
> The President is pleased to enhance the age of superannuation of the AVUSH doctors under the Ministry of AYUSH and working in CGHS Dispensaries Hospitals to 65 years with effect from 27.09.2017, i.e. the date of the approval of the Union Cabinet.
>
> 2. The doctors shall hold the administrative posts only till the date of attaining the age of 62 years and thereafter their services shall be placed in non-administrative positions.
>
> (ROSHAN JAGGI)
> Joint Secretary to the Government of India
> Tel.24651953
>
> To,
> All participating units of CGHS….."

30. To consider the law enunciated by the Supreme Court, we may refer to the judgment of the Supreme Court in the case of **State of Gujarat Vs. Raman Lal Keshav Lal Soni** reported in (1983) 2 SCC 33. Relevant para 52 is reproduced as under:-

"52. *The legislation is pure and simple, self-deceptive, if we may use such an expression with reference to a legislature-made law. The legislature is undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws but since the laws are made under a written Constitution, and have to conform to the dos and don'ts of the Constitution, neither prospective nor retrospective laws can be made so as to contravene fundamental rights. The law must satisfy the requirements of the Constitution today taking into account the accrued or acquired rights of the parties today. The law cannot say, 20 years ago the parties had no rights, therefore, the requirements of the Constitution will be satisfied if the law is dated back by 20 years. We are concerned with today's rights and not yesterday's. A legislature cannot legislate today with reference to a situation that obtained 20 years ago and ignore the march of events and the constitutional rights accrued in the course of the 20 years. That would be most arbitrary, unreasonable and a negation of history. It was pointed out by a Constitution Bench of this Court in B.S. Yadav v. State of Haryana [1980 Supp SCC 524 : 1981 SCC (L&S) 343 : AIR 1981 SC 561 : (1981) 1 SCR 1024 : (1981) 2 SCJ 137 : 1981 Lab IC 104] . Chandrachud, C.J. speaking for the Court held: (SCC headnote)*

"Since the Governor exercises the legislative power under the proviso to Art. 309 of the Constitution, it is open to him to give retrospective operation to the rules made under that provision. But the date from which the rules are made to operate, must be shown to bear either from the face of the rules or by extrinsic evidence, reasonable nexus with the provisions contained in the rules, especially when the retrospective effect extends over a long period as in this case".

Today's equals cannot be made unequal by saying that they were unequal twenty years ago and we will restore that position by making a law today and making it retrospective. Constitutional rights, constitutional obligations and constitutional consequences cannot be tempered with that way law which if made today would be plainly invalid as offending constitutional provisions in the context of the existing situation cannot become valid by being

made restrospective. Past virtue (constitutional) cannot be made to wipe out present vice (constitutional) by making retrospective laws. We are, therefore, firmly of the view that the Gujarat Panchayats third Amendment) Act, 1978 is unconstitutional, as it offends Arts. 311 and 14 and is arbitrary and unreasonable. We have considered the question whether any provision of the Gujarat Panchayats (Third Amendment) Act, 1978 might be salvaged. We are afraid that the provisions are so interwined with one another that it is well-nigh impossible to consider any life saving surgery……"

31. The judgment on which the petitioner relied is in the case of ***Monnet Ispat & Energy Ltd. v. Union of India*****,** (2012) 11 SCC 1**,** the relevant paras are reproduced, as under:-

"188. *It is not necessary to multiply the decisions of this Court. Suffice it to observe that the following principles in relation to the doctrine of legitimate expectation are now well established:*

188.1. *The doctrine of legitimate expectation can be invoked as a substantive and enforceable right.*

188.2. *The doctrine of legitimate expectation is founded on the principle of reasonableness and fairness. The doctrine arises out of principles of natural justice and there are parallels between the doctrine of legitimate expectation and promissory estoppel.*

188.3. *Where the decision of an authority is founded in public interest as per executive policy or law, the court would be reluctant to interfere with such decision by invoking the doctrine of legitimate expectation. The legitimate expectation doctrine cannot be invoked to fetter changes in administrative policy if it is in the public interest to do so.*

188.4. *The legitimate expectation is different from anticipation and an anticipation cannot amount to an assertable expectation. Such expectation should be justifiable, legitimate and protectable.*

188.5. *The protection of legitimate expectation does not require the fulfilment of the expectation where an overriding public interest*

requires otherwise. In other words, personal benefit must give way to public interest and the doctrine of legitimate expectation would not be invoked which could block public interest for private benefit.

32. It is profitable to refer to the decision of the Supreme Court in the case of ***State of Uttarakhand v. Sudhir Budakoti*****,** (2022) 13 SCC 256 wherein the Supreme Court observed as under:-

> ***"14.*** *A mere differential treatment on its own cannot be termed as an "anathema to Article 14 of the Constitution". When there is a reasonable basis for a classification adopted by taking note of the exigencies and diverse situations, the Court is not expected to insist on absolute equality by taking a rigid and pedantic view as against a pragmatic one.*
>
> ***15.*** *Such a discrimination would not be termed as arbitrary as the object of the classification itself is meant for providing benefits to an identified group of persons who form a class of their own. When the differentiation is clearly distinguishable with adequate demarcation duly identified, the object of Article 14 gets satisfied. Social, revenue and economic considerations are certainly permissible parameters in classifying a particular group. Thus, a valid classification is nothing but a valid discrimination. That being the position, there can never be an injury to the concept of equality enshrined under the Constitution, not being an inflexible doctrine."*

33. The High Court of Himachal Pradesh in the case of ***Pankaj Kumar Lakhanpal & ors Vs. State of H.P. & ors,*** CWP No.1599/2020 and other connect petitions vide order dated 02.03.2023 in para 18 & 19 observed as under:-

> *"18. The respondent-State thereafter assailed the aforesaid judgment by filing LPA No. 720/2011, titled as* ***State of Himachal Pradesh vs. Abhinav Soni****, which came to be decided on 27.7.2015 by the learned Division Bench of this Court, to which one of us (Justice Tarlok Singh Chauhan) was party. The*

Court specifically held that the respondent-State could not make distinction to deny NPA to the Veterinary Officers simply on the basis that the MBBS doctors deal with human beings, whereas Veterinary Officers having the same qualification and same degree are dealing with animals as is evident from paras 14 and 15 of the judgment which read as under:-

> *14. How distinction can be made between a MBBS Doctor, who deals with human being and a Veterinary Officer, who is also having the same qualification and same degree, but is dealing with animals.*
>
> *15. Thus, it appears that the decision made by the writ respondents-appellants herein is not sustainable in the eyes of law, rather, is discriminatory.*

While dismissing the appeal filed by the respondent State, it was observed as under:--

> *'26. Keeping in view the facts of the case read with the tests laid down by the Apex Court from time to time and the discussions made hereinabove, we are of the considered view that the State-writ respondents have made discrimination on the following grounds:-*
>
> *(i) NPA has been granted to the Veterinary Officers appointed on contract basis, but not to the Veterinary Officers appointed on contract basis despite the fact that they are performing same job, are discharging same duties and responsibilities.*
>
> *(ii) The Medical Officers, who came to be appointed on contract basis, were given the benefit of NPA, but was denied to the writ petitioners-respondents herein, i.e. the Veterinary Officers appointed on contract Basis entitled to NPA right from the date of filing of the writ petition, as directed by the Writ Court/learned Single Judge'.*

19. What would thus be evident from the aforesaid discussions so far is that this Court has already recognized parity between MBBS doctors and Veterinary Officers in the matters of counting

of ad-hoc service and also grant of NPA to the Veterinary Officers at par with the MBBS doctors."

34. There is no anomaly between the Allopathic Doctors and Ayush Doctors so far as their age of retirement i.e. 65 years is concerned. By the impugned amendment, age of retirement of Medical Doctors has been increased to 65 years and the Ayush Doctors are also enjoying the benefit of enhancement of age of retirement upto 65 years vide Gazette Notification dated 24.11.2017 issued by the Government of India, Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy. Merely saying that the Allopathic Doctors and Ayush Doctos are treating human patients by adopting their own method cannot be equated with Veterinary Doctors as they are treating non-human patients, is not acceptable. The Madhya Pradesh Veterinary Services (Gazetted) Recruitment Rules, 2007, outline the regulations for recruiting gazetted veterinary officials in the State. These rules, which were amended in 2011, are based on the 1966 rules. The 2007 rules cover aspects like eligibility criteria, selection processes, and other related details for gazetted positions within the veterinary services. In our view, a veterinarian or veterinary surgeon is a medical professional who practices veterinary medicines. They manage a wide range of health conditions and injuries in non-human animals.

35. Article 14 of the Constitution of India which guarantees equality before the law and equal protection of the laws, can be used to challenge age based retirement policies that are considered discriminatory. While the government has the right to set retirement polices, these must not create arbitrary or discriminatory classifications. Specifically any classification based on age must have rational nexus to a legitimate objective.

36. The Supreme Court of India recognizes the intrinsic value and right to life of animals stating that their life extends beyond mere survival encompassing dignity, honour and the ability to live peacefully. The Supreme Court has incorporated this into the legal framework, expanding the interpretation of life under Article 21 of the Indian Constitution to include animals. The Supreme Court has addressed the rights and duties related to animals welfare including veterinary services, in several cases. One notable case is ***Animal Welfare Board of India Vs. A.Nagaraja*** reported in (2014) 7 SCC 547.

37. In view of the above discussion and settled position of law, we are of the considered view that the claim of the veterinary doctors in respect of enhancement of age of retirement should be at par with the Allopathic Doctors and Ayush Doctors. In consequence thereof, the impugned amendment so far as it excludes the veterinary doctors depriving of benefit of enhancement of age of retirement upto 65 years is declared discriminatory and unconstitutional on the principle of equality guaranteed under Article 14 of the Constitution of India. Consequently, we direct the State Government to come up with appropriate provision and rules fixing the age of retirement of veterinary doctors upto 65 years at the earliest, till then this judgment shall hold the field.

38. Accordingly, the writ petitions are allowed and disposed of in above terms.

(SURESH KUMAR KAIT)
CHIEF JUSTICE

(VIVEK JAIN)
JUDGE

c.