



IN THE HIGH COURT OF ORISSA AT CUTTACK

A.F.R.

W.P.(C) No.27920 of 2024

(In the matter of an application under Articles 226 and 227 of the Constitution of India, 1950).

<i>Dr. Snigdha Prava Mishra</i>	<i>Petitioner(s)</i>
	<i>-versus-</i>	
<i>State of Odisha and Ors.</i>	<i>Opposite Party (s)</i>

Advocates appeared in the case through Hybrid Mode:

For Petitioner(s) : *Mr. Anjan Kumar Biswal, Adv.*

For Opposite Party (s) : *Mr. Saswat Das, AGA*

CORAM:

DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-20.01.2025

DATE OF JUDGMENT:-14.02.2025

Dr. S.K. Panigrahi, J.

1. In this Writ Petition, the petitioner challenges the order dated 17.09.2024, issued by the Commissioner-cum-Secretary, Health & Family Welfare Department, rejecting her application for voluntary retirement on the grounds of "larger public interest," citing a critical shortage of faculty in Government Medical Colleges.

I. FACTUAL MATRIX OF THE CASE:

2. The brief facts of the case are as follows:



- (i) The petitioner, Dr. Snigdhaa Prava Mishra, is a Professor in Physiology at MKCG Medical College and Hospital, Berhampur. On 28.04.2024, she was transferred and appointed as the Superintendent at SRM Medical College and Hospital, Bhawanipatna, Kalahandi, through a notification issued by the Health and Family Welfare Department.
- (ii) Instead of joining at her new place of posting, the petitioner submitted a representation seeking cancellation of the transfer order, requesting instead to be accommodated as a Professor in Physiology at SJMCH, Puri.
- (iii) On 06.03.2024, after her request for transfer cancellation was denied, she applied for leave on health grounds. Following this, a recall notice dated 20.06.2020 was issued, directing her to immediately join at the SRM Medical College and Hospital, Bhawanipatna.
- (iv) On 24.06.2024, instead of complying with recall order, the petitioner submitted an application for Voluntary Retirement (VR) from government service, citing her illness as the reason.
- (v) The VR Committee, constituted to review such requests, convened on 27.08.2024, and after due deliberation, rejected her application on 17.09.2024, stating that her retirement could not be permitted due to an acute shortage of doctors in government medical institutions across the state.
- (vi) The petitioner subsequently filed a Writ Petition challenging the rejection of her VR application, arguing that the decision was arbitrary and illegal.



II. SUBMISSIONS ON BEHALF OF THE PETITIONER:

3. Learned counsel for the Petitioner earnestly made the following submissions in support of his contentions:
- (i) The petitioner contends that as per Rule 42 of the Orissa Pension Rules, voluntary retirement cannot be denied if the applicant has completed the qualifying service period (more than 20 years) unless a disciplinary proceeding is pending or a major penalty has been imposed. Since no disciplinary proceeding or penalty exists against the petitioner, the rejection is illegal and against the rules.
 - (ii) The authorities have granted voluntary retirement to other doctors under similar circumstances. The rejection of her application is selective, arbitrary, and violative of Article 14 of the Constitution (Right to Equality).
 - (iii) The petitioner asserts that the rejection order is issued without due consideration of her health condition and is merely a routine denial. The authorities have failed to properly examine her medical conditions before rejecting the request.
 - (iv) The rejection violates Article 14 (Right to Equality), Article 16 (Equality in Public Employment), Article 19 (Right to profession), and Article 21 (Right to life and Personal Liberty). By forcing her to continue employment despite severe health issues, the government is endangering her life and well-being.
 - (v) The petitioner's progressive vision loss and cardiac issues make it impossible for her to continue working effectively. Denial of VRS on the



pretext of faculty shortage is unjustified when compared to her individual right to health and well-being.

III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTIES:

4. The Learned Counsel for the Opposite Parties earnestly made the following submissions in support of his contentions:
 - (i) The Odisha Civil Services (Pension) Rules provide that a government servant may seek voluntary retirement (VR) after completing twenty years of qualifying service by submitting a notice of at least 3 months to the appointing authority. However, under Rule 42(2) of the Pension Rules, the request for VR is subject to acceptance by the appointing authority. In support of this argument, he placed a reliance on *State of Uttar Pradesh and Ors. v. Achal Singh*¹, where the Court upheld the rejection of VR applications by doctors due to public interest considerations.
 - (ii) The VR Committee, after examining multiple applications for voluntary retirement, found that there was a severe shortage of medical faculty in government medical colleges and hospitals across Odisha. The National Medical Commission (NMC) has prescribed Minimum Standard Requirements (MSRs) regarding faculty strength, which the government is struggling to meet. Further, the medical education in the State is suffering due to shortage of Faculty Members.
 - (iii) The acute shortage of doctors has already led to situations where new medical colleges, such as JK MCH, Jaipur, were permitted to operate with only 50 MBBS seats instead of 100 due to a lack of adequate

¹ (2018) 17 SCC 578.



teaching faculty. Given these constraints, retaining experienced senior medical faculty is essential for the functioning of government medical institutions. Therefore, the rejection of the petitioner's VR application was not arbitrary but necessary administrative decision taken in the larger public interest.

(iv) The sequence of events suggests that the petitioner's true reason for seeking VR was not health concerns but dissatisfaction with her transfer. Prior to her transfer, which she was serving at MKCG Medical College and Hospital, Berhampur, she never complained of any illness that prevented her from discharging her duties. It was only after transfer order was issued that she:

- Initially requested cancellation of the transfer order, seeking to remain at a location of her choice.
- Sought leave on health ground when the transfer was not cancelled.
- Finally applied for VR after being recalled to duty at her new posting.

This pattern strongly indicates that the petitioner's VR request was a pretext to avoid complying with her transfer order, rather than being based on genuine health concerns.

(v) Under the Directive Principles of State Policy (Articles 36-51 of the Constitution of India), the government has a constitutional duty to improve public health infrastructure, ensure adequate medical services, protect the right to health, which is a fundamental right under Article 21.



- (vi) The Supreme Court in *Union of India v. H.N. Kirtania*² has held that transfer is an incidence of service, and a government employee has no right to be posted at a particular place. Moreover, this Court in W.P. (C) No. 9301 of 2022 (Dr. Sulata Mohapatra v. State of Odisha and Ors.) has also ruled that government employees cannot insist on being retained at a particular location.
- (vii) It is further submitted that, as per Rule 48 of the Odisha Service Code, the employees are liable to be transferred anywhere in the state in the interest of public service. Accordingly, the posting of the petitioner was justified.

IV. COURT'S REASONING AND ANALYSIS:

5. Heard Learned Counsel for parties and perused the documents placed before this Court.
6. The petitioner, a professor at MKCG Hospital, Berhampur, was transferred to SRM Medical College and Hospital, Bhawanipatna, pursuant to a notification issued by the Health and Family Welfare Department. Rather than complying with the transfer order, the petitioner sought for cancellation of the said order, requesting instead to be posted as a Professor in Physiology at SJMCH, Puri. Upon the denial of her request on 06.03.2024, she applied for leave on health grounds. A recall notice followed on 20.06.2020, directing her to join her new posting without delay. Instead of adhering to this directive, the petitioner, on 24.06.2024, submitted an application for Voluntary Retirement (VR), citing her illness as the grounds for her request. The

² (1989) 3 SCC 445.



VR Committee, convened on 27.08.2024, deliberated on the matter and, on 17.09.2024, rejected her application. The Committee reasoned that her retirement could not be permitted due to the acute shortage of doctors in government medical institutions across the state.

7. The heart of the dispute, therefore, lies in the petitioner's refusal to comply with her transfer and her subsequent attempt to retire voluntarily, which was denied in light of the exigencies of public health and the pressing need for medical professionals in state service.
8. The question before this Court is not a novel one. Courts have long been called upon to weigh the right of a doctor to step away from service against the broader demands of public health. Case after case has traced the same familiar fault line, the individual's freedom to choose the course of their own life on one side, and the state's interest in preserving the machinery of public care on the other. The law does not pretend that these interests will always align. It recognizes that there will be friction, moments when duty pulls in one direction and necessity in another. The task of this Court, then, is not to deny this conflict but to decide, in the given circumstances, which claims bears the greater weight. Does the State's need for doctors justify holding a reluctant hand to the plow? Or does justice demand that, after years of service, an individual be allowed to step away, unshackled by burdens they can no longer bear?
9. To address this issue, it is imperative for this Court to consider the Supreme Court's judgment in *Achal Singh* (supra). The issue before the bench was whether, under Rule 56 of the Uttar Pradesh Fundamental



Rules (as amended), an employee has an unfettered right to seek voluntary retirement by serving a three-month notice to the state government, or whether the state government, under the explanation to Rule 56(c), can decline such a request in the public interest. The bench, while upholding the constitutionality of the rules, observed as follows:

“35. The decisions of the Government cater to the needs of the human life and carry the objectives of public interest. The respondents are claiming the right to retire under Part III of the Constitution such right cannot be supreme than right to life. It has to be interpreted along with the rights of the State Government in Part IV of the Constitution as it is obligatory upon the State Government to make an endeavour under Article 47 to look after the provisions for health and nutrition. The fundamental duties itself are enshrined under Article 51(A) which require observance. The right under Article 19(1)(g) is subject to the interest of the general public and once service has been joined, the right can only be exercised as per rules and not otherwise. Such conditions of service made in public interest cannot be said to be illegal or arbitrary or taking away the right of liberty. The provisions of the rule in question cannot be said to be against the Constitutional provisions. In case of voluntary retirement, gratuity, pensions, and other dues etc. are payable to the employee in accordance with rules and when there is a requirement of the services of an employee; the appointing authority may exercise its right not to accept the prayer for voluntary retirement. In case all the doctors are permitted to retire, in that situation, there would be a chaos and no doctor would be left in the Government hospitals, which would be against the concept of the welfare state and injurious to public interest...

38. Under Article 47 it is the duty of the State to improve the public health, which is a primary duty under the Directive Principles of the State Policy and the statutory expression



which may be enforced. When we consider Article 51A containing Fundamental Duties, it is a duty of every citizen under Article 51A(g) to have compassion for living creatures and to have humanism is also contemplated under Article 51A(h) and to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavours and achievement. It cannot be done by depriving poorest of the poor essential medical services and to leave them at the mercy of doctors. There cannot be an exodus from the Government Medical Services at large, which is being projected in the instant case, definitely this cannot be permitted to happen within four corners of law as it has to be living organism and has to live up to the essence and spirit of constitution and cannot ignore and overlook needs of poorest strata of the society."

10. A question not unlike the one before this Court arose in the Calcutta High Court in *State of West Bengal & Ors. v. Madhab Sarkar*³, where the claim of a doctor seeking voluntary retirement met with denial. There, the court turned to Rule 75(aaaa) of the West Bengal Service Rules, which, by its plain terms, carves out an exception, excluding members of the West Bengal Health Services, the Medical Education Services, the Public Health-cum-Administrative Services, the Dental Service, and the Dental Education Services from the general right of voluntary retirement. The court, in its reasoning, found that the law had spoken with clarity, placing upon doctors a duty that rose above mere personal preference, a duty framed in the larger canvas of public welfare. The relevant portions are produced below:

³ WP ST 120 of 2022.



“The health sector being a most important sector in the administration of the system for not only rendition of the services to the society but to the humanity as well. The health of the citizenry plays a very pivotal role in the development of the society and the country. The people doctor ratio in the country is abysmally low and there is a dearth and paucity of the Doctors at the Government Hospitals where the poorest of the poor got benefit of the treatment”

11. The Calcutta High Court also turned its attention to Note-3 appended to Rule 75(aaa) of the Service Rules, which affirms the Government's authority to deny voluntary retirement when public interest so demands. It observed that once such a determination is made, it must be given full force and effect unless the provision is so rigid as to admit no reasonable limitation. Finding no such infirmity in the rule, the Court upheld its application and directed the doctor to resume duty without delay.
12. A review of the foregoing precedents leaves no room for doubt that the demands of public health and the imperatives of societal welfare require the maintenance of a stable and sufficient body of physicians in service to the state. The physician, like the judge, holds a station not for herself alone but for the common good. When one doctor retires, it is not merely an individual decision; it is a fissure in the foundation upon which the health of the people rests. If one follows, and then another, unchecked by the necessity of reasoned regulation, the state is left not with a functioning system of care but with a hollow structure, unfit to bear the weight of the public's need. The law, in its wisdom, does not



permit a doctrine of absolute individualism where the withdrawal of service, *en masse* or in isolation, leaves the vulnerable without aid.

13. A thread runs through the judgments examined, a common principle woven into the fabric of their reasoning. In each case, the courts looked not only to the individual right to retire but to the statutory framework that tempers that right in service of the greater good. Across states, Uttar Pradesh, West Bengal, Tamil Nadu, and others, governments have codified the power to reject voluntary retirement when the withdrawal of service threatens the well-being of the public. It is within these rules that the balance was struck, where the scales tipped toward the State and, by extension, toward the people it serves.
14. Yet in Odisha, the OCS (Pension) Rules, 1992 remain silent where they ought to speak. They lack the safeguard that other states have rightly recognized, that a profession whose absence imperils life itself cannot be surrendered at will. The law, in its present form, leaves an opening, a path unguarded, through which a public servant, however essential his role, may exit without restraint. But the absence of a rule does not negate the presence of a duty. A physician is no mere functionary; she is an agent of public trust, a steward of life itself.
15. A doctor, upon taking the Hippocratic Oath, does more than embrace the science of healing; she assumes a higher duty to society, one that does not bend to convenience or withdraw at will. To wear the mantle of a lifesaver is to accept that personal interest must, at times, yield to the greater public need.



16. A doctor, trained at the expense of the State, has been the beneficiary of a system that, without immediate recompense, has invested in her skill and knowledge for the greater good of society. It is not the individual alone who bears the burden of her education; it is the public that has furnished the means, the resources, and the opportunity. To allow her, once fashioned into a vessel of healing, to cast aside her obligations in pursuit of greener pastures, heedless of the need that bred her, would be to permit a kind of opportunism that the law cannot abide. The duty owed is not one of compulsion but of conscience, not of servitude but of service. If the community has laboured to create the healer, the healer must not, when the moment of her usefulness is at hand, turn away from the very hands that uplifted him.
17. Yet, for all its weight, this duty is not absolute. The obligations of a public servant do not rest on moral sentiment alone. A profession, however noble, must be anchored in clear rules and governed by certainty, not left to the shifting landscape of personal interpretation. A government doctor is not merely a healer; she is also a public servant, bound by the rights and responsibilities that come with that role. If the state demands continued service in the face of a crisis, it must do so through explicit law, not vague expectation. A legal obligation must be clear, not implied. If the law seeks to command service beyond the ordinary, it must not rely on appeals to conscience alone, but must lay down firm rules and regulations, ensuring that those who enter its service know precisely what they are pledging and precisely what may be asked of them. For, where the law is silent, principle must speak, and



where principle demands a higher obligation, it is upon the law to rise and meet it.

18. For a moment, let us set aside the issue of legal certainty and focus on the reality before us. A troubling pattern has emerged as doctors across the country continue to seek voluntary retirement in alarming numbers. This is not merely an administrative inconvenience but a growing public health crisis. If left unaddressed, this unchecked exodus will weaken the very foundation of the healthcare system. It will leave the sick without healers, the suffering without aid, and the state unable to fulfil its most fundamental duty, which is the protection of life.
19. It is tempting to believe that law alone can stem the tide, that a statutory bar on retirement will hold the system intact. But legislation, without more, is no cure; it is a patch upon a fracture too deep to be mended by restraint alone. The true remedy lies not merely in restricting departure, but in removing the very reasons doctors seek to leave. To prevent doctors from leaving, we must give them reason to stay.
20. If doctors find themselves compelled to retire over matters as routine as transfers, then it is not the law alone that has failed them, it is the very system meant to support them. Strengthening healthcare infrastructure, improving working conditions, and ensuring that those entrusted with healing others are not themselves burdened by inefficiency and neglect, these are not secondary considerations. They are the very heart of the solution. A law that restrains without reform is not protection but mere postponement. The state must not merely command service but make service itself worthy of commitment.



21. Hence, where the legislature has not spoken, where the executive has not acted, the duty falls upon the courts to lay down the gavel with certainty, to step into the breach, and to ensure that justice does not falter for want of command.
22. Recognizing the indispensable role of physicians in safeguarding public health and the growing crisis of attrition among medical professionals, this Court, in the exercise of its constitutional duty to uphold the right to healthcare, issues the following broad policy recommendations for the government's consideration in drafting a framework for the retention of doctors within the healthcare system:
- a) The government shall ensure that compensation structures for physicians are reformed in a manner that is equitable, transparent, and commensurate with their professional contribution. Remuneration must be aligned with evolving healthcare priorities, ensuring that the pursuit of financial sustainability by health systems does not result in unjust diminution of physicians' wages.
 - b) The State shall undertake necessary measures to integrate work-life balance principles into the healthcare profession, ensuring that the physical and mental well-being of physicians is preserved. Rigid clinical schedules that undermine a physician's right to family life and personal wellness shall be subject to revision in favour of flexible and sustainable working conditions.
 - c) Physicians, being central to the provision of healthcare, must be accorded a substantive role in the decision-making processes that govern clinical operations, resource allocation, and policy formulation.



d) Healthcare institutions must be mandated to adopt robust and effective staffing models that ensure sufficient support personnel, so that physicians are neither overburdened with administrative tasks nor unduly encumbered with duties that can be competently performed by allied healthcare professionals.

e) The government shall prioritize investment in technological interventions that ease the administrative and documentary burdens imposed upon physicians. Any introduction of digital systems or artificial intelligence tools must be carried out in consultation with medical professionals.

f) The government shall initiate and oversee the establishment of mental health and wellness programs specifically tailored to address physician burnout. A culture that stigmatizes help-seeking behaviors among medical professionals shall be actively dismantled, and systems of peer support, counselling, and psychological care shall be integrated within healthcare institutions.

g) Given the critical nature of physician retention, the government shall direct healthcare systems to undertake periodic internal reviews, including structured feedback mechanisms, to assess and address concerns raised by medical professionals regarding workplace conditions, compensation, and administrative inefficiencies.

23. It is expected that the government shall act upon these recommendations with the urgency and gravity that the present crisis demands. The retention of physicians within the healthcare system is not merely a matter of administrative efficiency or economic



pragmatism but a question of ensuring the continuity of essential services that sustains the very framework of public health.

V. CONCLUSION:

24. For the reasons set forth, this Court finds no merit in the Writ Petition. The scarcity of doctors is not a mere inconvenience but a matter of grave public concern. To permit the petitioner's retirement would set a precedent that risks unravelling the very fabric of the healthcare system. The demands of individual preference must yield where the greater public good is at stake.
25. Moreover, the concerned Department shall amend the provisions on voluntary retirement in the OCS (Pension) Rules, 1992, aligning them with the evolving framework in other States. This reform shall be undertaken within three months from the date of this judgment.
26. Accordingly, this Writ Petition is disposed of as dismissed.
27. Interim order, if any, passed earlier stands vacated.

(Dr. S.K. Panigrahi)
Judge

*Orissa High Court, Cuttack,
Dated the 14th February, 2025/*