

Non-Reportable

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

Special Leave Petition (C) No.9563 of 2024

State of Rajasthan and Ors.

Petitioner(s)

Versus

Anisur Rahman

Respondent(s)

With

Special Leave Petition (C) No.27110 of 2023

Special Leave Petition (C) No.27095-27096 of 2023

Special Leave Petition (C) No.11028 of 2024

Special Leave Petition (C) No.9795 of 2024

Special Leave Petition (C) No.10560 of 2024

Special Leave Petition (C) No.14059 of 2024

Special Leave Petition (C) No.11564 of 2024

Special Leave Petition (C) No.11401 of 2024

Special Leave Petition (C) No.14125 of 2024

Special Leave Petition (C) No.12493 of 2024

Special Leave Petition (C) No.12115 of 2024

Special Leave Petition (C) No.21533 of 2024

Special Leave Petition (C) No.17270 of 2024

Special Leave Petition (C) No.19882 of 2024

Special Leave Petition (C) No.19881 of 2024

Special Leave Petition (C) No.19880 of 2024

Diary No.41848 of 2024

Diary No.41849 of 2024

Special Leave Petition (C) No.27444 of 2024

Special Leave Petition (C) No.27443 of 2024

Special Leave Petition (C) No.11737 of 2025

Special Leave Petition (C) No.11738 of 2025

Special Leave Petition (C) No.1664 of 2025

Special Leave Petition (C) No.11571 of 2025

Diary No.11533 of 2025

Special Leave Petition (C) No.26821 of 2025
Special Leave Petition (C) No.26820 of 2025
Special Leave Petition (C) No.26819 of 2025
Special Leave Petition (C) No.28275 of 2025
Special Leave Petition (C) No.28274 of 2025

ORDER

1. These Special Leave Petitions raise the question as to whether the doctors, practicing allopathy and indigenous medicine; like Ayurveda, Homeopathy, Unani etc. can be treated equally for the purpose of determining service conditions; herein, specifically retirement age.

2. Reliance has been placed on a series of judgements of this Court which took different stands on the question of retirement age and pay scales. In ***New Delhi Municipal Corporation v. Dr. Ram Naresh Sharma & Ors.***¹, a Division Bench was concerned with the enhancement of retirement age from 60 to 65 years, effected by the NDMC to General Duty Medical Officers (GDMO) of the Central Health Scheme (CHS), while the doctors covered under AYUSH (including Ayurvedic doctors) were denied the said benefit. There were interim orders by the Administrative Tribunal and the High Court by virtue of which the AYUSH doctors were also continued.

¹ (2021) 17 SCC 642

When the matters were pending, AYUSH came out with a communication that the doctors under it will also be enabled superannuation at 65 years with effect from 27.09.2017; as approved by the Union Cabinet. This Court found that the AYUSH doctors and the doctors under the CHS cannot be classified in different categories since though practicing different forms of medicine; indigenous system and allopathy, they render the very same service to the patients, and any classification would be unreasonable and discriminatory.

3. The issue with respect to different pay scales for doctors holding MBBS degree and its higher qualifications as distinguishable from doctors having a degree in indigenous systems came up for consideration in ***State of Gujarat & Ors. v. Dr. P.A. Bhatt & Ors.***² The decision in ***Dr. Ram Naresh Sharma***¹ was distinguished on three grounds. One, that it was based on a decision of the Union Cabinet permitting those doctors under AYUSH also the higher retirement age, which direction came when the matters were pending before the Court. It was also held that the question of age of retirement stands on a different footing from

² 2023 SCC OnLine SC 503

the service conditions relating to pay and allowances and revision thereof. Then, it was emphasised that the fundamental distinction with respect to equal work for equal pay and as to whether the two categories of employees can be considered to be performing equal work or not, was not dealt with in ***Dr. Ram Naresh Sharma***¹.

4. Dr. P.A. Bhatt² held, relying on a number of decisions, that the classification based on educational qualification was not violative of Articles 14 and 16 of the Constitution of India. On the question of whether the allopathy doctors and the AYUSH doctors carry out similar work, entitling them to equal pay, the issue was found in the negative. It was found that allopathy doctors are required to perform emergency treatment and provide trauma care and assist in complicated surgeries none of which can be performed by doctors having a degree in indigenous systems. While holding that every alternative system of medicine has its own place of pride in history, the practitioners of indigenous system of medicine do not, in the present times, perform the complicated functions of a doctor having MBBS. The learned Judges also observed that the footfalls in Government Hospitals manned by MBBS doctors are far more than that in an institution

administering treatment under the indigenous systems of medicine.

5. Relying on the judgement in ***Dr.P.A. Bhatt***², another Division Bench of this Court in ***Dr.Solamon A. v. State of Kerala and Ors.***³ found that the AYUSH or Ayurvedic doctors, having regard to the qualitative distinction in the academic qualifications and the standard of imparting respective degree courses, cannot seek parity with medical doctors.

6. Reliance was also played on ***Central Council for Research in Ayurvedic Sciences and Another v. Bikartan Das and Others***⁴. In the said judgment, the question arose as to whether the enhancement of retirement age made by the Ministry of AYUSH for all doctors working under AYUSH and the CHS was applicable to the first respondent, since it was clarified that the enhancement would not be applicable to autonomous bodies functioning under the Ministry of Ayush. Though, the issue is not similar to the one we are dealing with, what was stressed upon from that decision was the finding that the age of superannuation is always governed by statutory rules. Even if the nature of work involved in two streams

³ Special Leave Petition (C) No.3946 of 2023

⁴ 2023 SCC Online 996

are similar that cannot be a ground to equate or alter the service conditions of an employee governed by a set of rules. Referring to ***Dr. Ram Naresh Sharma*¹**, it was also found that the decision turned on the order of the Ministry of AYUSH dated 24.11.2017, which was the finding in ***Dr. P.A. Bhatt*²** also.

7. We are quite conscious of the fact that ***Dr. Ram Naresh Sharma*¹** was distinguished in ***Dr. P.A. Bhatt*²**. Still, there is an area of ambiguity insofar as service conditions, especially of retirement age and the pay packages, with reference to the doctors administering different forms of medical treatment, evaluated for the purposes of parity, should be ideally considered, according to us, on the touchstone of, identity of functions, similarity in work carried out and comparable duties assigned.

8. The claim for parity will have to be decided finally looking at the qualification acquired, the treatment practices, the functions, work and duties and so on. As has been noticed in ***Dr. P.A. Bhatt*²**, it is the MBBS doctors, the allopathy practitioners, who are dealing with critical care, immediate life saving measures, invasive procedures including surgeries and even postmortem; none of which can be carried out by any of the practitioners of indigenous

systems of medicine. The contention of the States which have brought in two different retirement ages, is also that of public good and the concern expressed is of dearth of sufficient allopathy doctors. As has been noticed in **Dr. P.A. Bhatt** (supra), it is common knowledge that the footfalls in allopathy institutions are far more than the institutions administering indigenous system of medicine. The curriculum leading to the different qualifications, the dissimilar diagnostic methods, contrasting treatment philosophies and the disparate composition of medicines administered sets the allopathy doctors apart. Further, casualty, critical care, trauma management and the emergency interventional procedures are dealt with by allopathy doctors and not by AYUSH doctors. These aspects according to us, puts the former in a different class altogether, who can be classified differently for service conditions. This has a reasonable nexus with the object sought to be achieved, i.e.: the sufficiency of qualified and experienced MBBS doctors with better pay scales and longer service, both.

9. We cannot ignore the submission of the States that enhancement of retirement age was only to ensure that there are sufficient experienced medical practitioners available to treat the

public. The dearth of medical practitioners as occurring in allopathy does not exist in the indigenous systems of medicine especially when critical life-saving therapeutic, interventional and surgical care is not carried out by the practitioners of indigenous systems of medicine. There is divergence of opinion insofar as whether the MBBS doctors and doctors practicing indigenous systems of medicine can be treated equally, for the purpose of service conditions, which on principle, it is trite cannot result in treatment of unequals as equals. We are of the opinion that there should be an authoritative pronouncement on the issue and we hence refer the matter to a larger Bench. The Registry is directed to place the matter before the Hon'ble the Chief Justice of India on the administrative side.

10. In the meanwhile, the States and the authorities would be entitled to either continue the practitioners of indigenous systems of medicine, even after the age of superannuation specified for them till the age of superannuation provided for MBBS doctors, without the benefit of regular pay and allowances. Eventually, if the larger Bench holds in favour of the AYUSH doctors, entitling them for enhancement in retirement age, the practitioners would be entitled to avail pay and allowances during the period they

were continued. However, if they are not allowed to continue by virtue of this order, still they would be entitled to avail the pay and allowances for the enhanced period, if the issue is held in their favour. If the State Government permits such continuance and the individual doctors do not take up such assignment without regular pay and allowances, they would be treated as retired and the fate of this reference will be inconsequential to them.

11. Considering the fact that if the AYUSH doctors are continued, they will not be entitled to pension also, it is directed that they shall be paid half of the pay and allowances, which, if the reference does not yield any favourable orders will be adjusted in their pension or otherwise against the regular pay and allowances.

12. Ordered accordingly.

..... **CJI.**
(B. R. GAVAI)

..... **J.**
(K. VINOD CHANDRAN)

New Delhi;
October 17, 2025.