

ITEM NO.1

COURT NO.6

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 11187/2019
(Arising out of impugned final judgment and order dated 21-12-2018
in LPA No. 264/2016 passed by the High Court Of Delhi At New Delhi)

M/S MOOLCHAND KHAIRATI RAM HOSPITAL AND
AYURVEDIC RESEARCH INSTITUTE

Petitioner(s)

VERSUS

POONNAMMA VISHWANATHAN

Respondent(s)

(IA No.68071/2019-EXEMP.FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 24-10-2019 This matter was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE R. BANUMATHI
HON'BLE MR. JUSTICE A.S. BOPANNA
HON'BLE MR. JUSTICE HRISHIKESH ROY

For Petitioner(s) Mr. Ramesh Kumar Mishra, AOR
Mr. Avinash N. Sharma, Adv.
Mr. Avinash K. Nandan, Adv.

For Respondent(s) Dr. Jose P. Verghese, Adv.
Mr. K. Gireesh Kumar, Adv.
Ms. Sandhya Sajeev, Adv.
Mr. Alex Joseph, AOR

UPON hearing the counsel the Court made the following

O R D E R

We have heard Mr. Ramesh Kumar Mishra, learned counsel appearing for the petitioner-Institute and Dr. Jose P. Verghese, learned counsel appearing for the respondent.

We do not find any ground warranting interference with the impugned order in exercise of our jurisdiction under Article 136 of the Constitution of India.

While passing this order, we take note of the fact that the respondent has reached the age of superannuation and her colleagues who have similarly charged have also superannuated in the meantime.

Though we have arrived at the above conclusion, one aspect of

the matter which is required to be noticed is that the respondent herein had simultaneously raised the dispute under Section 10 of the Industrial Disputes Act in I.D. NO.417/2003 which was not taken to its logical conclusion as she was entitled to reinstatement in the year 2006 on approval not being granted. Subsequently, during pendency of writ proceedings she has attained the age of superannuation in the year 2011. Therefore, keeping in view all these aspects of the matter and also taking note of the fact that the petitioner is running a hospital, it would be appropriate to modify the order with regard to grant of back-wages though we take note of the position when approval is not granted under Section 33(2)(b) of the Industrial Disputes Act, the termination would be non-est and an employee would be entitled to all benefits. Notwithstanding the same, in the peculiar facts as stated herein above, we find it appropriate that even though the respondent would be entitled to continuity of service till she attained the age of superannuation by payment of the terminal benefits on that basis, so far as the back-wages are concerned we order that the respondent would be entitled to 50% of the back-wages and such calculation shall be made by taking into consideration current salary that she would have drawn as on the date of superannuation if she had actually continued in service.

With these observations, we dispose of the special leave petition.

Pending applications, if any, shall also stand disposed of.

(MAHABIR SINGH)
COURT MASTER

(PARVEEN KUMARI PASRICHA)
BRANCH OFFICER