

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

Civil Appeal Nos 2476-2478 of 2020
(Arising out of SLP(C) Nos 7137-7139/2020 @ SLP(C) Diary No 7161/2020)

Central Council for Research in Unani Medicine

Appellant(s)

Versus

Dr. Salma Khatoon and Others

Respondent(s)

W I T H

Civil Appeal Nos 2479-2481 of 2020
(Arising out of SLP(C) Nos 7140-7142/2020 @ SLP(C) Diary No 7160/2020)

O R D E R

Civil Appeal Nos 2476-2478 of 2020

- 1 Delay condoned.
- 2 Leave granted.
- 3 Aggrieved by the decision of the appellant to retire her on attaining the age of sixty years, the first respondent moved the Central Administrative Tribunal in OA No 335 of 2018. The issue before the Tribunal was whether the decision which has been

taken by the Government of India on 31 May 2016 to enhance the age of superannuation of General Duty Medical Officers and specialists working in the Central Government and its allied institutions to sixty-five years, would be applicable to persons such as the first respondent. The contention of the first respondent was that though designated as Research Officer, she continues to discharge the duties of a doctor and is entitled to the benefit of the enhancement of the age of retirement. The contrary view of the appellants is that the decision has no application to autonomous institutions.

4 During the pendency of the proceedings, the Central Administrative Tribunal issued an interim order on 24 January 2018. Eventually, the OA was dismissed by the Tribunal on 21 August 2018. Following the dismissal of the OA, a relieving order was served to the first respondent on 28 August 2018. The first respondent challenged the order of the Tribunal before the High Court of Delhi. On 12 September 2018, the High Court passed an interim order, on the basis of the statement of the First respondent that she was continuing in service. While recording the statement of the counsel, in response to a query of the Court, that the first respondent is willing to continue to discharge her duty without receiving any remuneration until the petition is decided, the High Court issued such a direction. An application was thereafter moved on behalf of the appellant for recall of the earlier order. The High Court passed an interim order on 23 January 2020, directing that the first respondent shall be paid salary for the period for which work has been performed beyond the age of sixty years, subject to such further orders as may be passed at the hearing of the petition.

5 Assailing the interim orders of the High Court, Mr. Aman Lekhi, learned Additional Solicitor General submits that the first interim order of the High Court was passed on a mis-statement which was made by the first respondent that she was continuing in service on the date of the interim order. The Additional Solicitor General urged that on the date of the interim order, the first respondent had been relieved from her duties. Moreover, it has been submitted that though the first respondent failed before the Tribunal, she was reinstated by the High Court at the interim stage. Mr. Lekhi submitted, that the second interim order was passed on the application for recall of the first order moved by the appellant on the ground that a direction to continue the first respondent could not have been issued at the interim stage especially after she had been relieved. Mr. Lekhi has sought to canvass submissions on the merits of the issue, which we are not inclined to record at the present stage since the writ petition is pending before the High Court . It would suffice to note that it has been urged on behalf of the appellant that the extension of the age of retirement to sixty-five years would not be applicable to the first respondent having regard to the provisions, *inter alia*, contained in Rule 34(a) of the applicable rules.

6 On the other hand Mr. Manish Verma, learned counsel appearing on behalf of the first respondent submitted that for all intents and purposes, the first respondent though designated as Research Officer, has performed the duties of a medical doctor and hence the policy decision which was taken by the Union Government to extend the age of retirement to sixty-five years would be applicable to her. It is also urged that in pursuance of the first interim order, the first respondent has worked and,

therefore, the High Court was justified in directing the payment of salary for the period during which she has worked. On merits, it has been urged that the decision to enhance the age of retirement to sixty-five years would be attracted to the first respondent.

7 Since the writ petition is still pending consideration before the High Court, we are, at this stage, desisting from expressing any opinion on the merits. However, it is not in dispute that the first respondent has failed before the Tribunal and her OA stood dismissed. The effect of the interim order that was passed by the High Court on 12 September 2018 is that the first respondent was to be continued in service *albeit* without the payment of salary. From a reading of the order it would appear that the court inquired of the learned counsel appearing on behalf of the respondent as to whether she was ready and willing to work without salary. In view of her affirmative response, such a direction was passed by the court. We are not in agreement with the course of action adopted by the High Court. It was not proper for the High Court to direct that the first respondent be continued in service even if without the payment of salary. Directing an employee to work without the payment of salary is neither fair nor proper. The basic issue is whether an order of reinstatement should have been passed at the interim stage, though the OA has been dismissed by the Tribunal. The answer to that is in the negative.

8 The appellant moved an application for recall of the order, on which, as we have noted earlier, the High Court directed that the first respondent should be paid salary for the period for which she was working. The fundamental objection of the appellant to the direction of the High Court is that though the first respondent has failed

before the Tribunal, the High Court has, at the interim stage, virtually allowed the writ petition. We find merit in the submission. If the first respondent were to ultimately succeed before the High Court in the challenge to the order of the Tribunal, necessary consequences would follow. However, the High Court was not justified in issuing the first interim direction that it did on 12 September 2018, which was followed by the subsequent interim order dated 23 January 2020 effectively granting the final relief at the interim stage. The correctness of the order of the Tribunal declining relief is yet to be determined by the High Court. Since the proceedings are pending before the High Court, we have not embarked upon the merits of the case which is set up by the first respondent before the High Court. We, however, find that the interim orders of the High Court virtually amount to the grant of final relief and ought not to have been passed.

We accordingly vacate the orders dated 12 September 2018 and 23 January 2020. At the final hearing of the petition, the High Court would verify whether, and if so, to what extent the first respondent has actually rendered work in pursuance of the interim order dated 12 September 2018. In the event that the first respondent is found to have actually worked beyond the age of sixty years, she would be entitled to release of her salary for that period.

9 Subject to the aforesaid clarification, we allow the appeals and set aside the impugned interim orders dated 12 September 2018 and 23 January 2020. We, however, clarify by way of abundant caution that the rights and contentions of the parties are kept open to be urged before and decided by the High Court in the pending writ petition. The appellant shall file its counter affidavit before the High Court

within a period of two weeks from today. We request the High Court to expedite the disposal of the writ petition.

10 The Civil Appeals are accordingly disposed of.

11 Pending application(s), if any, stand disposed of.

Civil Appeal Nos 2479-2481 of 2020

1 Delay condoned.

2 Leave granted.

3 The Civil Appeals are disposed of in terms of the order passed in Civil Appeal Nos 2476-2478 of 2020.

4 Pending application(s), if any, stand disposed of.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Hemant Gupta]

.....J.
[Ajay Rastogi]

New Delhi;
June 01, 2020

ITEM NO.12

Virtual Court 3

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

SPECIAL LEAVE PETITION (CIVIL) Diary No.7161/2020

(Arising out of impugned final judgment and order dated 12-09-2018 in CM No. 37179/2018 23-01-2020 in CMA No. 48122/2018 23-01-2020 in WPC No. 9554/2018 passed by the High Court Of Delhi At New Delhi)

CENTRAL COUNCIL FOR RESEARCH IN UNANI MEDICINE Petitioner(s)

VERSUS

SALMA KHATOON & ORS. Respondent(s)

(FOR ADMISSION and I.R. and IA No.39546/2020-CONDONATION OF DELAY IN FILING and IA No.39547/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

WITH Diary No.7160/2020 (XIV)

(FOR ADMISSION and I.R. and IA No.42389/2020-CONDONATION OF DELAY IN FILING and IA No.42390/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 01-06-2020 This petition was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE AJAY RASTOGI

For Petitioner(s) Mr. Aman Lekhi, ASG
 Mr. Romy Chacko, AOR
 Mr. Kumar Onkareshwar, Adv.

 Mr. Romy Chacko, AOR
 Mr. S. Sunil, Adv.

For Respondent(s) Mr. Manish Verma, Adv.
 Mr. Rajnish Kumar Jha, AOR

UPON hearing the counsel the Court made the following

O R D E R

- 1 Delay condoned.**
- 2 Leave granted.**
- 3 The Civil Appeals are disposed of in terms of the signed order.**
- 4 Pending application(s), if any, stand disposed of.**

(Chetan Kumar)

A.R.-cum-P.S.

(Signed order is placed on the file)

(Saroj Kumari Gaur)

Court Master