

**IN THE HIGH COURT OF JHARKHAND AT RANCHI  
L.P.A. No.496 of 2019**

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The Principal Secretary, Health and Family Welfare Department,  
Govt. of Jharkhand having its office at Nepal House, P.O. & P.S.  
Doranda, District – Ranchi, Jharkhand

... .. **Appellant**

Versus

Dr. Jyotish Chandra Singh & Others

... .. **Respondents**

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**CORAM : HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD**

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For the Appellant : Mr. Mukesh Kumar Sinha, Sr. S.C.-I  
For the Respondents : Mr. Shray Mishra, Advocate

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**ORAL JUDGMENT**

**Order No. 11 : Dated 17<sup>th</sup> April, 2021**

With consent of the parties, hearing of the matter has been done through video conferencing and there is no complaint whatsoever regarding audio and visual quality.

The instant appeal has been preferred by the State of Jharkhand against the order passed by learned Single Judge in W.P.(S) No. 4071 of 2017 dated 08.08.2018 whereby and whereunder the age of superannuation of the writ petitioner who is working in AYUSH has been directed to be enhanced to 65 years.

We have passed an order on 19.03.2021 whereby and whereunder after considering the decision of Cabinet about enhancement of age of superannuation up to the age of 65 years, put query upon the learned counsel for the appellant State that when the Cabinet has taken a decision for enhancement of the age of retirement, without any stipulation making the decision subject to

outcome of appeal, then under what authority the said decision has been made subject to the result of the appeal whereas in the resolution of the Health Department it stands reflected. Therefore, we had directed to file an affidavit answering the issue.

The matter has been adjourned on the request made on behalf of the learned counsel appearing for the State on several occasions.

On 26.03.2021 while allowing time, a cost of Rs.5,000/- for wasting the Court's time has been directed to be paid. It has been informed to this Court that the cost in pursuance to the direction dated 26.03.2021 has been paid and affidavit has also been filed.

Mr. Mukesh Kumar Sinha, learned Sr. S.C.-I, appearing for the appellant State has submitted by referring to the aforesaid affidavit dated 17.04.2021 that the Department of Personnel had given their opinion that the decision of the Cabinet contained in the resolution dated 08.01.2021 shall be subject to the order to be passed in L.P.A. No. 496 of 2019. Such stipulation has been made in the aforesaid resolution dated 08.01.2021 on the basis of decision taken by the Personnel, Administrative Reforms and Rajbhasha Department, Government of Jharkhand by placing the record before the Cabinet to insert the aforesaid condition in Cabinet decision.

We have considered the aforesaid stand of the appellant State of Jharkhand as contained in affidavit dated 17.04.2021 but we are not satisfied with such contention for the reason that as per the rules of executive business, once a decision has been taken by the Cabinet, whether the concerned department has got no authority to first add

something in the resolution and then place the file once again before the Cabinet for inserting a condition which was available in the file but the Cabinet has not considered it appropriate to insert the same in its decision. Hence, the explanation furnished in the affidavit having not found to be satisfactory, as such we hereby reject the affidavit.

The appellant State is directed to file fresh affidavit referring therein the jurisdiction of the concerned department that once before approval of a decision by the Cabinet if any stipulation has been made in the file by the concerned department and if it has not been approved by the Cabinet, can the concerned department insert it and come up with a notification/resolution showing it to be a decision of Cabinet and then again send it before the Cabinet to insert the same.

If the concerned department is having such jurisdiction, appellant State is directed to apprise this Court about such provision of law either from the statute or from the rules of executive business applicable for the State of Jharkhand.

Let this matter be listed on 04.05.2021.

**(Dr. Ravi Ranjan, C.J.)**

**(Sujit Narayan Prasad, J.)**