

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Writ Petition No. 2573/2025

1. All India Institute Of Medical Science (AIIMS), Jodhpur, (Raj.), Through its Executive Director.
2. Union Of India Through The Secretary, Ministry Of Health And Family Welfare (PMSSY-IV Division), 745 A, Nirman Bhawan, New Delhi.

----Petitioners

Versus

Dr. Mahendra Kumar Garg S/o G.I. Garg, 39, Patrakar Colony, Sector 7 Extension, New Power House Road, Jodhpur, (Raj.), Professor And Head, Department Of General Medicines, AIIMS, Jodhpur.

----Respondent

Connected With

D.B. Civil Writ Petition No. 18761/2024

Dr. Arjun Singh Sandhu S/o Col. Gurmohinder Singh Sandhu, Aged About 62 Years, Resident Of 118 Central School Scheme, Air Force Area, Jodhpur (Raj.). Professor And Head Of Department Of Urology, AIIMS, Jodhpur.

----Petitioner

Versus

1. Union Of India, Through The Secretary, Ministry Of Health And Family Welfare (PMSSY-IV Division), 745-A, Nirman Bhawan, New Delhi- 110 011.
2. All India Institute Of Medical Science, Jodhpur (Raj.) Through Its Executive Director- 342005.

----Respondents

D.B. Civil Writ Petition No. 18799/2024

Dr. Surajit Ghatak S/o Shri Surath Mohan Ghatak, Aged About 62 Years, Resident Of B-504, AIIMS Residential Complex, Basni, Phase-II, Jodhpur (Raj.) Professor And Head, Department Of Anatomy, AIIMS, Jodhpur.

----Petitioner

Versus

1. Union Of India, Through The Secretary, Ministry Of Health



And Family Welfare (PMSSY-IV Division), 745-A, Nirman Bhawan, New Delhi-110 011.

2. All India Institute Of Medical Science, Jodhpur (Raj.) Through Its Executive Director- 342005.

-----Respondents

D.B. Civil Writ Petition No. 18832/2024

Dr. (Mrs.) Mithu Banerjee W/o Dr. Bikram Choudhury, Aged About 53 Years, Resident Of 801-A Marudhar Heights, AIIMS Road, Basni Phase II, Jodhpur (Raj.).

-----Petitioner

Versus

1. Union Of India, Through The Secretary, Ministry Of Health And Family Welfare (PMSSY-IV Division), 745-A, Nirman Bhawan, New Delhi 110011.
2. All India Institute Of Medical Science, Jodhpur (Raj.)Through Its Executive Director 342005.

-----Respondents

D.B. Civil Writ Petition No. 18835/2024

Dr. Bikram Choudhary S/o Late Maj. Gen. P.S. Choudhury, Aged About 52 Years, VSSM- Resident Of 801 A Marudhar Heights, AIIMS Road, Basni Phase II, Jodhpur (Raj.), Post Professor, Department Of ENT, AIIMS, Jodhpur.

-----Petitioner

Versus

1. Union Of India, Through The Secretary Ministry Of Health And Family Welfare (PMSSY-IV Division), 745-A, Nirman Bhawan, New Delhi- 110 011.
2. All India Institute Of Medical Science, Jodhpur (Raj.) Through Its Executive Director 342005.

-----Respondents

D.B. Civil Writ Petition No. 925/2025

1. All India Institute Of Medical Science (AIIMS), Jodhpur (Raj.), Through Its Executive Director.
2. Union Of India Through The Secretary, Ministry Of Health And Family Welfare (PMSSY-IV Division), 745A, Nirman Bhawan, New Delhi

-----Petitioners



Versus

Dr. (Mrs.) Mithu Banerjee W/o Dr. Bikram Choudhary, R/o 801-A, Marudhar Heights, AIIMS Road, Basni, Phase II, Jodhpur (Raj.), Professor And Head, Department Of Biochemistry, AIIMS, Jodhpur

----Respondent

D.B. Civil Writ Petition No. 1412/2025

1. All India Institute Of Medical Science (AIIMS), Jodhpur (Raj.), Through Its Executive Director
2. Union Of India, Through The Secretary, Ministry Of Health And Family Welfare (PMSSY-IV Division), 745-A, Nirman Bhawan, New Delhi

----Petitioners

Versus

Dr. Arjun Singh Sandhu S/o Col. Gurmohinder Singh Sandhu, R/o 118, Central School Scheme, Air Force Area, Jodhpur, (Raj.), Professor And Head, Department Of Urology, AIIMS, Jodhpur.

----Respondent

D.B. Civil Writ Petition No. 4524/2025

Dr. Mahendra Kumar Garg S/o Shri G.I. Garg, Aged About 65 Years, Resident Of Q-605, Centria Hills And Dales Society, Undri, Pune-411060 (Maharashtra), Retired As Professor And HOD Of General Medicine, AIIMS, Jodhpur (Raj.)

----Petitioner

Versus

1. Union Of India, Through The Secretary, Ministry Of Health And Family Welfare (PMSSY-IV Division), 745-A, Nirman Bhawan, New Delhi-110 011.
2. All India Institute Of Medical Science, Jodhpur (Raj.) Through Its Executive Officer-342005.

----Respondents

D.B. Civil Writ Petition No.1782/2025

1. All India Institute of Medical Science (AIIMS), Jodhpur (Raj.) through its Executive Director.
2. Union of India through the Secretary, Ministry of Health & Family Welfare (PMSSY-IV Division), 745-A, Nirman Bhawan,



New Delhi.

-----Petitioners

Versus

Dr. Bikram Choudhury S/o Lt. Maj. Gen. P.S. Choudhury, VSM
r/o B-801-A, AIIMS Residential Complex, Basni Phase-II,
Jodhpur (Raj.), Professor and Head, Department of ENT, AIIMS,
Jodhpur.

-----Respondent



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| For Petitioner(s) | : | Mr. Muktesh Maheshwari |
| For Respondent(s) | : | Mr. Sanjeev Johari, Senior Advocate assisted by Mr. Lalit Parihar & Mr. Shubhankar Johari |

HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI
HON'BLE MR. JUSTICE CHANDRA PRAKASH SHRIMALI

Judgment

Reportable

Reserved on 04/03/2025

Pronounced on 15/05/2025

Per Dr. Pushpendra Singh Bhati, J:

1. The present litigation arises out of an identical controversy relating to certain doctors, who while receiving pension from the Union of India, were taken under the employment of the All India Institute of Medical Sciences, Jodhpur (for short, '*AIIMS, Jodhpur*'). The grievance of the said doctors (parties to the instant appeals i.e. appellants/respondents) is that on the strength of the provisions of All India Institute of Medical Sciences Act, 1956 (*in short, 'Act of 1956*), All India Institute of Medical Sciences Regulations, 1999 (*henceforth referred to as 'Regulations of 1999'*), Central Civil Services (Fixation of Pay of Re-employed



Pensioners) Orders, 1986 (for short, 'Orders of 1986') as well as the Circulars of the Ministry of Health, Government of India and AIIMS, Jodhpur, they are being considered and treated as re-employed persons.

1.1. For the sake of brevity and convenience, the facts and the prayer clauses are being taken from the above-numbered D.B. Civil Writ Petition No.2573/2025 (AIIMS, Jodhpur & Anr. Vs. Dr. Mahendra Kumar Garg) and D.B. Civil Writ Petition No. 4524/2025 (Dr. Mahendra Kumar Garg Vs. Union of India & Anr.), for the purpose of the present analogous adjudication.

1.1.1. The prayer clauses read as under:

Writ Petition No.2573/2025:

"It is, therefore, humbly prayed that this writ petition may kindly be allowed and by issuing an appropriate writ, order or direction:

- 1] The Impugned Order dated 08.10.2024 (Annex.04) passed by the learned Central Administrative Tribunal, Jodhpur Bench in Original Application No.472/2023, may kindly be quashed and set aside;*
- 2] The Original Application No.472/2023, may kindly be dismissed in toto.*
- 3] Any other writ, order or direction which your Lordship may deem just and proper in the facts and circumstances of the case, may also kindly be issued in favor of the petitioner."*

Writ Petition No.4524/2025:

"It is, therefore, most humbly and respectfully prayed that the present writ petition may kindly be allowed and:-

- A] By an appropriate writ, order or direction, impugned part of the Judgment dated 08.10.2024 (Annex.1) passed by the learned Central Administrative Tribunal, Jodhpur*



Bench; concluding the petitioner in the "Re-employed" may please be ordered to be quashed and set aside.

B] By an appropriate writ, order or direction, it may be please be held that the petitioner was essentially appointed on "Direct Recruitment" basis by the respondent No.2 (AIIMS, Jodhpur); and thus, he is not covered within the term "Re-employment".

C] By an appropriate writ, order or direction, it may please be held that the petitioner is not "Re-employed" as such; and therefore, the provision relating to the "Re-employment" under the AIIMS Act, 1956, AIIMS Regulations, 1999, and CCS (Fixation of Pay of Re-employed Pensioners) Order, 1986 are not applicable in the present case of the petitioner.

D] By an appropriate writ, order or direction, it may please be held that the petitioner's appointment being on "Direct Recruitment" basis way back in the year 2018; the terms of his appointment with AIIMS, Jodhpur (Respondent No.2) cannot be changed/alterd on the basis of the impugned part of the Judgment dated 08.10.2024 (Annex.1)

E] Any other appropriate order or relief which this Hon'ble Court may deem just and proper in the facts and circumstances of this case may kindly also be passed in favour of the humble petitioner."

1.2. As the pleaded facts and record would reveal, the present writ petitions have been preferred against separate orders of same date passed by the learned Central Administrative Tribunal, Jodhpur Bench (*for short, 'Tribunal'*) in the original applications preferred by certain doctors, who are also parties in the present litigation.

1.2.1. In the present adjudication, the AIIMS, Jodhpur has also preferred some of the instant petitions, thus for the sake of clarity it shall be henceforth referred to as '*AIIMS, Jodhpur*', and likewise,



the parties who are doctors herein (appellants or respondents),
shall be henceforth referred to as 'Doctors'.

2. The impugned orders passed by the learned Tribunal clearly reflects that the controversy is pertaining to the nature of employment of the Doctors in AIIMS, Jodhpur.

3. In sum and substance, the determination as made by the learned Tribunal in the impugned orders (in relation to the identical controversies) was in two parts i.e. (i) since the Doctors are getting pension and got employment in the AIIMS, Jodhpur, they certainly fall in the category of 'Re-employed Persons', as per Regulation 33 of the Regulations of 1999 and; (ii) in absence of any condition in the appointment order, it was not legally permissible for the AIIMS, Jodhpur to deduct the pension from the pay of the Doctors with retrospective effect i.e. from the date of their appointment to the AIIMS, Jodhpur, by applying the formula of 'Pay minus Pension', being violative of the principles of natural justice. The Doctors are aggrieved of the impugned orders passed by the learned Tribunal, as regards to the aforesaid Part (i), whereas the AIIMS, Jodhpur is assailing the aforementioned Part (ii) of the verdict of the learned Tribunal.

4. The common platform on which the instant petitions travel is a recruitment process that was conducted by the AIIMS, Jodhpur for the faculty posts (Group 'A') in various Departments of AIIMS Jodhpur, in pursuance of the advertisement dated 22.01.2018. Consequently, the offer of appointment was made in respect of the said faculty posts to the suitable applicants, and the employment



of the doctors commenced in AIIMS, Jodhpur, after their appointment.

4.1. The cause of grievance raised in the litigatory pursuit by the Doctors is that after such appointment in pursuance of the aforementioned recruitment process, the petitioner received a Circular by AIIMS, Jodhpur dated 24.11.2023, whereby the doctors who are receiving pension from a previous employer/department were required to submit their pension details. The said circular also mentioned that as per the Ministry of Health & Family Welfare (PMSSY-IV Division), Government of India vide letter no. Z-28016/123/2021-PMSSY-IV (Part-1) the basic principle to fix remuneration of retired Government servants appointed on contract basis or on re-employment is Pay minus Pension.

4.2. As per the communications/instructions dated 08.11.2023, 22.11.2023 & 20.12.2023 issued by the Ministry of Health & Family Welfare (PMSSY-IV Division), Government of India, the pay of the retired government servants (like the Doctors herein) has been fixed, while applying the formula of 'Pay minus Pension', and thus, the pension details of the Doctors were sought for by AIIMS, Jodhpur and the said formula was made applicable in their case.

5. At the outset, Mr. Sanjeev Johari, learned Senior Counsel assisted by Mr. Lalit Parihar and Mr. Shubhankar Johari, appearing for the Doctors has taken this Court to the operative portion of one of the impugned orders dated 08.10.2024 (under challenge in the instant Writ Petition No.2573/2025). The said operative portion reads as under:-



"14. Having regard to the submissions made by learned counsel for the parties and material available on record and the provisions of All India Institute of Medical Sciences Act, 1956 [hereinafter referred to as 'the Act of 1956'], it emerges that as per the provisions of Section 11(5) of the Act of 1956, authority has been given to the AIIMS to make Regulations with regard to the Salary, Allowances and the Conditions of Service of the Director and other Officers and employees of the Institute. As per the provisions of Section 29 (1) of the Act, 1956, the Institute with prior approval of the Central Government by publishing Notification in the Official Gazette, can make regulations consistent with this Act and Rules made there under, the carry out the purpose of this Act. The AIIMS, Jodhpur was established by the Ministry of Health & Family Welfare, Government of India under the guidelines for implementation of 'Pradhan Mantri Swasthya Suraksha Yojana' (PMSSY) Scheme, with the aim of correcting regional imbalance in quality tertiary level healthcare in the country and also augmenting facilities for quality medical education in the country.

15. In exercise of power conferred by Sub Section (1) of Section 29 of the Act 1956, All India Institute of Medical Sciences Regulations, 1999 were made. The Regulations 33 thereof, provides details for fixing pay to the reemployed persons/employees.

16. In the present matter, one of the main contention raised by learned counsel for applicant is with regard to the nature of employment of applicant in AIIMS, Jodhpur. As per case of applicant, he cannot be termed as reemployed person.

After going through the Regulation 33, it emerges that any person who is reemployed in the Institute after retirement from the service of Institute or of State or Central Government or any statutory or local body administered by the Government, shall be treated as reemployed. The provisions of Regulation 33 in categorical term conveys that if retired person is



employed in the AIIMS he/she shall be treated as reemployed person. In view of the above, we are unable to accept the contention of learned counsel for the applicant not to treat the applicant as a reemployed person.

17. Inviting the applications for direct recruitment from the eligible persons, do not suggest that the persons who are already retired and getting pension shall not be treated as reemployed persons. The Orders of 1986 are applicable to all persons who are reemployed in the civil services and post in connection with the affairs of the Union Government after retirement getting pension from the service of Union Government including defence also.

After going through the provisions of Section 2 of the above 1986 orders, it emerges that these rules shall not be applicable to those persons who are reemployed after resignation, dismissal or removal provided they have not received any retiral benefits for the pre-employed service. Similarly, persons reemployed in posts the expenditure of which is not debitable to the civil estimates of the Union Government shall not be governed by the provisions of 1986 Orders.

18. In the present matter, we are of the view that since the applicant was previously working with the Indian Army and is getting pension and got employment in the Institute, he is certainly a reemployed person as mentioned in Regulation 33 of the Regulations of 1999.

19. Second issue involved in this O.A. is with regard to application of the formula of 'Pay minus Pension' after a span of more than five years' from the date of appointment accorded to applicant as faculty member in the AIIMS Institute. We note that the applicant was offered appointment after disclosing pay matrix with minimum pay and allowances in his appointment letter. The appointment order does not contain any condition for deducting the pension from the pay. The



advertisement also did not inform the applicant that his pay will be deducted by the pension being received by him on account of the earlier employment. After assuming the duty by the applicant he has been receiving the pay without deducting pension for last so many years. The applicant was appointed in the year 2018. In the year 2023, the Government of India, Ministry of Health and Family Welfare vide letter dated 08.11.2023 informed that there may be instances where pay of the retired Government servants appointed on contract basis or on reemployed in the Institute, has been fixed without pension, therefore, direction was given to ensure that basic principle of pay fixation of retired Government servant appointed on contract basis or on reemployment i.e. 'Pay minus Pension' be scrupulously followed and in case the same has not been done, the pay of the concerned officer should be re-fixed and excess amount drawn shall be recovered under intimation to the Ministry. This letter from the Ministry was addressed to all the Directors and Executive Directors of the new AIIMS. Consequent upon the above direction, the Circular dated 24.11.2023 (Annex.A/1) was issued by the Jodhpur AIIMS asking/directing the applicant to submit his pension details.

20. From perusal of the above direction and circular, it emerges that as per the directions of the Government, the Institute intends to apply the formula of 'Pay minus Pension' in respect of the reemployed persons who were accorded appointment on the fixed salary without incorporating the condition of 'Pay minus Pension'. In our view, the terms and conditions of the appointment given to the applicant cannot be changed in the manner adopted by the respondents.

21. Having regard to the contentions raised by both the parties, we are of the view that unless and until terms and conditions of appointment are in force, the respondents cannot deduct and reduce the pay of applicant by applying the formula of 'Pay minus



Pension'. The respondents did not assign any reason for not incorporating the condition of 'Pay minus Pension' in the letter of appointment. In the absence of any specific reply, we cannot say that whether this was on account of some error or mistake on the part of the respondents or it was a deliberate action on their part.

22. Without disclosing the reasons for not deducting the pension from the pay of the applicant, we cannot permit the respondents to deduct the pension from the pay of applicant that too with retrospective effect i.e. from the date of applicant's appointment. In our view, the action of the respondents in applying the formula of 'Pay minus Pension' without making amendment in the appointment order, is against the principles of natural justice. The Department/Institute cannot change the terms and conditions of appointment to the detriment of employee without assigning any reason and without giving any opportunity of hearing to him. We are of the view that applicant might not accept the offer of appointment in case of incorporating this condition in the advertisement or in the offer of appointment. In view of this, while allowing the O.A. the respondents are directed not to apply the formula 'Pay minus Pension' under the present appointment order dated 20.09.2018 (Annex.A/7). The respondents also cannot recover the amount already paid to the applicant on the strength of appointment letter issued to the applicant. No order as to costs."

5.1. Learned Senior Counsel submitted that the formula/principle of 'Pay minus Pension' was neither there in the advertisement and nor was made applicable in the case of the Doctors herein, at the time of appointment, and thus, the same cannot be imposed at any subsequent stage; the said stand was categorically taken by the Doctors before the learned Tribunal.



5.2. While drawing the attention of this Court towards the Notification dated 22.01.2018, whereby the recruitment process of Faculty Posts (Group 'A') in various departments of the AIIMS, Jodhpur on Direct Recruitment / Deputation Basis was initiated, learned Senior Counsel submitted that the same did not contain any condition of application of the formula of 'Pay minus Pension'.

5.3. To further substantiate the claim of the Doctors, learned Senior Counsel drew the attention of this Court towards the appointment order dated 20.09.2018 which clearly mentions that their pay and allowances shall be equivalent to the Central Government employees of the similar category. The said appointment order indicated that the probation of Doctors shall be governed by the Central Civil Services Rules of the Government of India, and while being on probation, the services of the Doctors shall be governed by the Central Civil Services (Temporary Service) Rules, 1965.

5.4. The attention of this Court has also been drawn towards the Circular dated 24.11.2023 issued by the AIIMS, Jodhpur, according to which, in cases of the persons, who were receiving pension, 'Pay minus Pension' formula shall be made applicable, where the appointment was made on re-employment basis.

5.5. Learned Senior Counsel further drew the attention of this Court to the instructions dated 08.11.2023 issued by the Ministry of Health & Family Welfare, Government of India, pertaining to the pay fixation of retired government servants while applying 'Pay minus Pension' formula. He has further referred to the Instructions



dated 20.12.2023, which again pertains to 'Pay minus Pension' formula; relevant portion whereof reads as under:

"DoE has advised that the principles of remuneration of retired Central Government servants as contained in DoPTs OM No.3(3)/2016-Estt. (Pay.II) dated 01.05.2017 provide that pay plus gross pension on re-employment not to exceed Rs.2,25,000/- i.e. Pay Level 17 as applicable to Secretary to Government of India. Further, DoE guidelines dated 09.12.2020 on engagement of retired Central Government servants on contract basis including as Consultants states that admissible monthly remuneration shall be arrived at by deducting the basic pension from the pay drawn at the time of retirement. Therefore, the basic principle of remuneration of retired Government servants appointed on contract basis or on re-employment is pay minus pension."

5.6. Learned Senior Counsel also submitted that the aforesaid Circulars/Instructions were nothing but an afterthought and have created an anomaly whereby the Doctors who joined the services with open eyes, in view of the conditions of recruitment and appointment, were being subjected to application of the formula of 'Pay minus Pension' at a belated stage. He further submitted that the Doctors on their appointment to the various faculty posts in the entry level Matrix-14A were subjected to minimum monthly salary, as scheduled, with other usual allowances including NPA, if applicable, as admissible from time to time to the Central Government employees of similar category. He further submitted that the Central Civil Services (Revised Pay) Rules, 2016 (hereinafter referred to as 'Rules of 2016') were applicable to the



Doctors, and the offer of appointment was in accordance therewith.

5.7. Learned Senior Counsel further submitted that repeated representations have been given and the Doctors, who came at very senior level upon taking up appropriate employment, after leaving their previous employment, due to resignation/retirement, were having high hopes of serving the premier Institutions like AIIMS, Jodhpur at an appropriate pay band level.

5.8. Learned Senior Counsel also submitted that the conditions mentioned in the advertisement required due adherence and are binding upon the parties, and if such condition of adoption/applicability of formula of 'Pay minus Pension' was not mentioned therein, then imposing/adopting the same at a belated stage, after a span of more than five years, is not only arbitrary but also illegal.

5.9. In support of such submissions, learned Senior Counsel relied upon the following judgments :

(a) *E. Sreedharan Vs. Union of India & Ors. [W.P. (C) No.2356/2002, decided by the Hon'ble Delhi High Court on 05.12.2008].*

(b) *J.S. Yadav Vs. State of Uttar Pradesh & Anr., (2011) 6 SCC 570.*

6. On the other hand, Mr. Muktesh Maheshwari, learned counsel appearing on behalf of AIIMS, Jodhpur, opposed the aforesaid submissions made on behalf of the Doctors.

6.1. Learned counsel submitted that the learned Tribunal passed the impugned orders considering appointment of the Doctors to be



falling within the ambit of the term "Re-employment" as per Regulation 33 of the Regulations of 1999, however has directed the AIIMS, Jodhpur not to apply the formula of 'Pay minus Pension', while merely observing that no such condition was incorporated in the advertisement or in the appointment order of the Doctors.

6.2. Learned counsel has drawn attention of this Court towards the Orders of 1986, which lays down elaborate Rules for 'Pay minus Pension'; relevant portion whereof reads as under:

"4. FIXATION OF PAY OF REEMPLOYED PENSIONERS.

Reemployed pensioners shall be allowed to drawn pay only in prescribed scales of pay for the posts in which they are reemployed. No protection of the scales of pay of the post held by them prior to retirement shall be given.

(i) In all cases where the pension is fully ignored, the initial pay on reemployment shall be fixed at the minimum of the scale of pay of the reemployed post.

*(ii) In cases where the entire pension and pensionary benefits are not ignored for pay fixation, the initial pay on re-employment shall be fixed at the same stage as the last pay drawn before retirement. If there is no such stage in the reemployed post, the pay shall be fixed at the stage below that pay. If the maximum of the pay scale in which a pensioner is reemployed is less than the last pay drawn by him before retirement, his initial pay shall be fixed at the maximum of the scale of the reemployed post. Similarly, if the minimum of the scale of the pay in which a pensioner is reemployed is more than the last pay drawn by him before retirement his initial pay shall be fixed at the minimum if the scale of pay of the reemployed post. **However, in all these cases, non-ignorable part of the pension and pension equivalent of retirement benefits shall be reduced from the pay so fixed.***

The reemployed pensioner will in addition to pay as fixed under para (b) above shall be permitted to draw separately



any pension sanctioned to him and to retain any other form of retirement benefits.

In the case of persons retiring before attaining the age of 55 years and who are re-employed, pension (including pension equivalent of gratuity and other forms of retirement benefits) shall be ignored for initial pay fixation to the following extent:

In the case of ex-serviceman who held posts below commissioned officer rank in the Defence Forces and in the case of Civilians who held posts below Group 'A' posts at the time of their retirement, the entire pension and pension equivalent of retirement benefits shall be ignored.

In the case of service officers belonging to the Defence Forces and Civilian Pensioners who held Group 'A' posts at the time of their retirement, the first Rs.500/- of the pension and pension equivalent of retirement benefits shall be ignored."

6.3. Learned counsel further submitted that the pay and allowances to the pensioners of the Central Government is governed by the Orders of 1986 and the said Orders are applicable to all the persons who are re-employed on the post in connection with the affairs of Union Government, who after retirement are getting pension or other benefits from the service of the Union Government including Railways, Post & Telegraph, Defence etc. The Orders of 1986 was applicable to all persons irrespective of their employment conditions, particularly if they have been in employment under Union Government and are again seeking such employment. The employment under same employer i.e. Union Government excluding removal or leaving without pension has to run in accordance with the Orders of 1986.

6.4. Learned counsel also submitted that the formula of 'Pay minus Pension' has been made applicable in the case of the



Doctors herein in accordance with the Orders of 1986, and there cannot be any anomaly in the same.

7. Heard learned counsel for the parties as well as perused the record of the case, alongwith the judgment cited at the Bar.

8. The seminal issues that falls for consideration are; (i) whether the doctors employed at the AIIMS, Jodhpur would come under the ambit of "re-employment"; and (ii) whether the "pay minus pension" rule of pay fixation would be applicable on the doctors.

9. Before examination of the two aforementioned issues, it is pertinent to mention that the rules with respect to retirement, made by legislature in its wisdom, are in order to introduce new talent in the various governmental departments, and at the same time, there are rules with respect to pension which were made to provide the financial assistance required by its employees after retirement. However, certain circumstances call for special expertise and skill of certain individuals who have already retired, thus, in the public interest, the retired individuals are re-employed within the government services, and this led to origin of concept of re-employment of the retired governmental employees.

9.1. At this juncture, it also has to be noted that over time, several rules and regulations have also been framed regarding pay fixation of re-employed retired government servants under the Indian legal framework. The intent behind such rules and regulations is to address the situation wherein retired government servants who are already receiving pension in lieu of retirement, when re-employed, are granted a pay which includes the certain



heads already paid to them under the pension; the same would result into their unjust enrichment at the expense of the public exchequer. Thus, the rules of pay fixation of the government employees who were re-employed within the service of government were introduced.

9.2. Presently, the Pay fixation of the government employees who are appointed in Central Civil Services is done in accordance with the Central Civil Services (Revised pay) Rules, 2016. However, an exception is carved out on applicability of the said Rules, under Rule 2 (vii), on re-employed pensioners in Government Services. In case of a re-employed pensioners, including that of defence forces personnel/Officers, the pay fixation is carried out in accordance with Order of 1986 read with Office Memorandum dated 01.05.2017, Ministry of Personnel, Public Grievances and Pension Department of Personnel & Training, which requires the application of "Pay minus Pension" formula in case of re-employed pensioners.

9.3. In furtherance of the aforementioned regulations, the Ministry of Health and Family Welfare issued letters dated 08.11.2023, 22.11.2023, 20.12.2023 and 13.12.2023 whereby compliance of the formula of "Pay minus Pension", in the case of the retired government servants who were employees of AIIMS, Jodhpur was sought. AIIMS, Jodhpur, thus, sought the details of the pension details of the doctors vide circular dated 24.11.2023.

10. This leads to the examination of the first issue pertaining to the treatment of appointment of doctors under the head of "re-employment" after retiring.



10.1. While the dispute between the parties was that under the given factual matrix, if the appointment of the doctors would amount to "re-employment" in light of Order of 1986, Act of 1956, Regulation of 1999, the circulars of the Ministry of health, Government of India and circular of AIIMS, Jodhpur, it is interesting to note that none of the aforementioned statutes, regulations or circulars have provided for any definition or scope of the term "re-employment".

10.2. In absence of any clear definition of the term 're-employment', a purposive interpretation is required to be done in this regard, in light of the factual matrix and the relevant rules & regulations, as was done by Hon'ble Apex Court in the judicial pronouncement in the case of **V.S. Mallimath v. Union of India, (2001) 4 SCC 31**. In the said judicial pronouncement the Hon'ble Apex Court, while determining whether appointment of a member of the Human Rights Commission after retirement would mean "Re-employment", came to the following conclusion:

"Therefore, the question for consideration is whether the appointment of the petitioner as a Member of the Human Rights Commission would tantamount to re-employment. In the absence of any definition of the expression "re-employment" and applying the common parlance theory, the conclusion is irresistible that the said appointment would tantamount to "re-employment"...."

The Hon'ble Apex Court arrived at conclusion of considering employment of the member of the Human Rights Commission after retirement as re-employment, in view of the rules and conditions containing provision of Re-employment and pay fixation thereof.



10.3. This Court is also conscious of the judicial pronouncement of the Hon'ble Delhi High Court in the case of ***Uma Kant Sadhav And Anr. v. Union of India and Ors (W.P. (C) 8971/2018, decided on 09.05.2023***), which was a case, wherein retired government officials were appointed on the post of Chairman and Members of the National Monument Authority in pursuance of an advertisement and appointment orders, and the services of the said employees therein were governed by National Monuments Authority (Conditions of Service of Chairman and Members of the Authority and Conduct of Business) Rules, 2011 read with Section 20H of Ancient Monuments and Archaeological Sites and Remains (Amendments and Validation) Act, 2010 which did not have any provision with respect to re-employment of the retired government officers. Thus, despite appointment of retired government pensioners to the said posts, they were not considered as re-employed as the rules governing their employment had no provision with respect to the "Re-employment".

10.4. Keeping in view the aforementioned judicial pronouncements, this Court observes that the doctors herein are professionals who after their retirement from their government services, in pursuance of the respective notifications of Direct recruitment on the various faculty posts (Group 'A') in various Departments, were given appointment in the AIIMS, Jodhpur. The appointment was done by issuing office orders, where the pay matrix and rules applicable qua their service were mentioned along with other details. The services of the doctors are subject to



the Act of 1956, and Regulations of 1999, and the service conditions of the doctors appointed are governed by the Central Civil Service Rules as applicable to the Central Government employees.

10.5. This Court further observes that the provision of Regulation 33 of the Regulations of 1999, indicates that if a retired person is employed in the AIIMS, he/she is to be treated as a re-employed person. The said Regulation 33 reads as follows:

"33. Pay of re-employed persons:- (1) *the pay of any person who may be re-employed in the institute after retirement from the service of the institute or of a State or the Central Government or any statutory or local body administered by the Government shall be fixed in the prescribed scale of pay at the minimum stage at the time scale of pay of the post in which an individual is re-employed. In cases where the fixation of initial pay of the re-employed officer at the minimum of the prescribed pay scale will cause undue hardship, the pay may be fixed at a higher stage by allowing one increment for each year of service rendered by the officer before retirement in a post lower than that in which he is re-employed. In addition, he may be permitted to draw separately any pension sanctioned to him and to retain any other form of retirement benefit for which he is eligible, such as, Government or Employer's Contribution to Contributory Provident Fund, gratuity, commuted value of pension:*

Provided that except as indicated in sub-regulations (2), (3) and (4), the total amount of initial pay plus the gross amount of pension and/or the pension equivalent of other forms of retirement benefit does not exceed -

(a) The pay he draws before his retirement (Preretirement pay); or

(b) Rs.3,000/- which ever is less.

Explanation: The pay last drawn before retirement shall be taken to be the substantive pay plus special pay, if any. The pay drawn in an officiating appointment may be taken into



account if it was drawn continuously for at least one year before retirement.

(2) The restriction that pay on re-employment plus gross pension or pension equivalent to other retirement benefits, should not exceed the last pay drawn may be relaxed, with the prior approval of the Governing Body, in cases where such relaxations or permissible or re-employed pensioners under the employment of the Central Government:

Provided that no relaxation shall be made in case where appointment to post if made initially, would need Government approval, that is posts carrying a minimum salary of RS.800/- or more per mensem except with the previous approval of the Government.

(3) In cases where the minimum pay of the post in which the officer is re-employed is more than the last pay drawn the officer concerned may be allowed to draw the pension and pension equivalent of other retirement benefits.

(4) Once the initial pay of re-employed pensioner has been fixed in the manner indicated above he will be allowed to draw normal increments in the time scale of the post to which he is appointed:

Provided that the pay and gross pension or pension equivalent of other retirement benefits taken together do not any time exceed Rs.3,000/- per month."

10.6. Thus, there is no ambiguity in the findings of the learned Tribunal that Regulation 33 of the Regulations of 1999 is governing the field of the Doctors herein, and thus, they have been rightly declared as "re-employed" persons.

11. Once it is determined that the Doctors herein are Re-employed persons, what remains to be determined is whether the "Pay minus Pension" rule of pay fixation would be applicable on the doctors.

11.1. The Orders of 1986 and 'Pay minus Pension' formula becomes a foregone conclusion once it is determined that the



doctors are re-employed persons, and therefore, arriving at the second conclusion that since the conditions which were neither there in the advertisement nor in the appointment order would not apply in the case of the doctors herein, is not correct, because the Rules which apply to the service, including consolidated and conjoint reading of the Act of 1956, the Regulations of 1999 and Orders of 1986 clearly demarcates that once the employees are re-employed, the 'Pay minus Pension' formula should be applicable to them.

11.2. This Court is also of the clear opinion that the pay fixations have to be done as per the Orders of 1986 which are governing the field for the Union Government employees, upon their re-employment, and thus, any action contrary thereto, would not be permissible. The 'Pay minus Pension' principle is an outcome of the statutory provisions, particularly the Orders of 1986, and Regulation 33 of the Regulations of 1999, and thus cannot be obliterated merely on the ground that such conditions were not mentioned in the advertisement or the appointment orders.

11.3. The applicability of the Rules of 2016 as well as Office Memorandum dated 01.05.2017 issued by the Ministry of Personnel, Public Grievance & Pension, Department of Personnel & Training, Government of India, wherein clear provisions are contained which specifically govern the pay fixation of the re-employed pensioners, cannot be disputed. The said Office Memorandum provides for a detailed and analogous framework regarding pay fixation of re-employed pensioners, including those who were in service since 2016, the year when the Rules of 2016



came into existence. The services of re-employed persons thereafter will be governed by the Office Memorandum, which clearly outlines the provisions, governing the field. Thus, upon application of the Rules of 2016, the conclusion would be that the rule of re-employment and formula of 'Pay minus Pension' would apply to the doctors herein.

11.4. The statutory provisions which are governing the field qua the re-employed persons cannot be excluded only because there has been an omission on the part of the AIIMS, Jodhpur to clarify the same at the time of advertisement or in the appointment order. The statutes have to prevail unless found to be contrary to law. It is true that it was a direct recruitment, but at the same time, Regulation 33 of the Regulations of 1999 clearly prescribed that such re-employment in common parlance of the Doctors was under the same employer i.e. Union of India.

12. However, it also has to be noted that the lackadaisical and ignorant attitude of AIIMS, Jodhpur about its own provisions as well as the other provisions of law applicable upon its employees has led to the situation leading to this controversy. It was only when the Ministry of Health and Family Welfare sent repeated communications to apply the "pay minus pension" formula upon the concerned employees, the AIIMS, Jodhpur issued Circular seeking pension details of such employees. Hence, it is not just and fair to seek retrospective recovery of the amount already paid to the doctors, at this belated stage for no fault on their part.

13. Thus, in view of the above, the instant **D.B. Civil Writ Petitions No.18761/2024, 18799/2024, 18832/2024,**



18835/2024 & 4524/2025 preferred by the Doctors, to the extent of challenge to the impugned orders of the learned Tribunal, whereby it was held that since the Doctors are getting pension and got employment in the AIIMS, Jodhpur, they certainly fall in the category of 'Re-employed Persons', as per Regulation 33 of the Regulations of 1999, stand **dismissed**; whereas instant **D.B. Civil Writ Petitions No.2573/2025, 925/2025, 1412/2025 & 1782/2025 preferred by the AIIMS, Jodhpur,** to the extent of challenge to the impugned orders, whereby it was held that it was not legally permissible for the AIIMS, Jodhpur to deduct the pension from the pay of the Doctors, by applying the formula of 'Pay minus Pension" stand **partly allowed**, and it is hereby directed that as the doctors herein were re-employed, they shall be governed by the applicable provisions of law with respect to their pay fixation and the "pay minus pension" formula *vis-a-vis* the doctors is to be followed in its true spirit and essence, **prospectively, from the date of this judgment i.e. 15.05.2025**; accordingly, the recovery of amount by application of "pay minus pension" shall not be made with **retrospective effect** i.e. from the date of their appointment in AIIMS, Jodhpur. All pending applications stand disposed of.

(CHANDRA PRAKASH SHRIMALI),J

(DR.PUSHPENDRA SINGH BHATI),J

SKant/-