

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 30TH DAY OF OCTOBER 2015/8TH KARTHIKA, 1937

WP(C).No. 606 of 2013 (A)

PETITIONER(S):

1. **A.R.BALAGOPALAN, AGED 42 YEARS,
S/O A.H. RANGANATHA KAMMATH, WORKING AS L.D CLERK,
DR. PADIAR MEMORIAL HOMOEOPATHIC MEDICAL COLLEGE,
CHOTTANIKKARA.**
2. **L. NAGENDRA SHENOI, AGED 40 YEARS,
S/O N. LAKSHMANA SHENOY, WORKING AS L.D CLERK,
DR. PADIAR MEMORIAL HOMOEOPATHIC MEDICAL COLLEGE,
CHOTTANIKKARA.**
3. **R. RAJESH, AGED 36 YEARS,
S/O M.A RAMACHANDRA PRABHU, WORKING AS L.D CLERK,
DR. PADIAR MEMORIAL HOMOEOPATHIC MEDICAL COLLEGE,
CHOTTANIKKARA.**

**BY ADVS.SRI.K.R.RAJKUMAR
SRI.V.A.SHAJI**

RESPONDENT(S):

1. **STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
HEALTH AND FAMILY WELFARE DEPARTMENT,
THIRUVANANTHAPURAM.**
2. **THE PRINCIPAL,
SANCTIONING AUTHORITY/ CONTROLLING OFFICE,
R GOVERNMENT HOMEOPATHIC MEDICAL COLLEGE,
THIRUVANANTHAPURAM.**
3. **THE PRINCIPAL,
DR. PADIAR MEMORIAL HOMOEOPATHIC MEDICAL COLLEGE HOSPITAL,
CHOTTANIKKARA.**
4. **DR. PADIAR MEMORIAL HOMEOPATHIC MEDICAL COLLEGE HOSPITAL,
CHOTTANIKKARA, REPRESENTED BY ITS SECRETARY,
DR. PADIAR MEMORIAL HOMOEOPATHIC MEDICAL COLLEGE
HOSPITAL, CHOTTANIKKARA.**

**R1 & R2 BY GOVERNMENT PLEADER SRI.NOUSHAD THOTTATHIL
R3 & R4 BY ADV. SMT.R.RANJINI**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
12-06-2015 ALONG WITH WPC. 1459/2013 AND CONNECTED CASES,
THE COURT ON 30-10-2015, DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXHIBIT P1. TRUE COPY OF THE GO(MS)NO.99/02/H&FWD DATED 25.4.2002.
- EXHIBIT P2. THE PHOTOCOPY OF THE JUDGMENT IN WPC 25592/2000
DATED 3.3.2005.
- EXHIBIT P3. THE PHOTOCOPY OF THE JUDGMENT IN WA 1530 OF 2004
DATED 17.6.2005.
- EXHIBIT P4. THE PHOTOCOPY OF THE JUDGMENT IN CIVIL APPEAL
NO.1152-1153/2009 DATED 23.2.2009.
- EXHIBIT P5. TRUE COPY OF THE GO(MS)NO.142/2012/H&FWD DATED 14.05.2012.
- EXHIBIT P6. TRUE COPY OF THE GO(RT)NO.3690/2009/H&FWD DATD 18.12.2009.
- EXHIBIT P7. TRUE COPY OF THE ORDER NO.2026/C1/08/GHMCT DATED 24.07.2012.
- EXHIBIT P8. TRUE COPY OF THE LR.NO.2806/C1/09/GHMCT DATED 29.5.2010.
- EXHIBIT P9. THE PHOTOCOPY OF THE JUDGMENT IN WPC 22001 OF 2010
DATED 3.1.2012.
- EXHIBIT P10. TRUE COPY OF THE ORDER OF IN KERALA STATE HUMAN RIGHTS
COMMISSION IN HRMP NO.6042 OF 2012 DATED 3.11.2012.
- EXHIBIT P11(a) TRUE COPY OF LR.NO. DPMHMC/16/12/AO DATED 6.12.12 ISSUED BY
4TH RESPONDENT.
- EXHIBIT P11(b) TRUE COPY OF LR.NO.DPMHMC/16/12/AO DATED 6.12.12 ISSUED BY
4TH RESPONDENT.
- EXHIBIT P12. TRUE COPY OF THE FORMAT OF THE UNDERTAKING ISSUED TO THE
PETITIONER BY THE 4TH RESPONDENT DATED NIL.
- EXHIBIT P13. TRUE COPY OF THE RELEVANT PORTION OFFILE NOTING RECEIVED
BY THE PETITIONER DTD.30.10.2000 THROUGH THE RIGHT TO
INFORMATION.
- EXHIBIT P14. TRUE COPY OF THE MINUTES OF THE MEETING DTD.16.11.2011.
- EXHIBIT P15. THE TRUE COPY OF THE LETTER NO.2806/C1/09/GHMCT
DTD.21.1.2010.
- EXHIBIT P16. THE TRUE COPY OF THE LETTER NO.2806/C1/09/GHMCT
DTD.29.1.2010.
- EXHIBIT P17. THE TRUE COPY OF THE LETTER NO.2026/C1/2008/GHMCT
DTD.22.7.2011.

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EXHIBIT P18. THE TRUE COPY OF THE LETTER NO.2806/C1/09/GHMCT
DTD.22.7.2010.

EXHIBIT P19. THE TRUE COPY OF THE LETTER ISSUED BY THE 2ND RESPONDENT
NO.3385/C1/11/GHMCT DTD.6.1.2012.

EXHIBIT P20. THE TRUE COPY OF THE LETTER NO.2026/C1/08/GHMCT
DTD.24.7.2012.

EXHIBIT P21. THE TRUE COPY OF THE G.O.(RT)NO.130/2013/H&FWD DTD.10.1.2013.

EXHIBIT P22. THE TRUE COPY ISSUED BY THE DISTRICT LABOUR OFFICER LETTER
NO.E3-14499/2012 DTD.18-2013.

RESPONDENT(S)' EXHIBITS:

EXT.R1(a): TRUE COPY AGREEMENT EXECUTED BY THE MANAGEMENT OF
DR.PADIYAR MEMORIAL HOMEOPATHIC MEDICAL COLLEGE WITH
GOVERNMENT.

EXT.R1(b): TRUE COPY OF THE GOVERNMENT ORDER G.O.(MS)NO.99/02/H&FWD
DTD.25.4.2002.

EXT.R1(c): TRUE COPY OF THE MINUTES OF NEGOTIATION DTD.7.2.2014.

EXT.R4(1): THE TRUE COPY OF THE GOVERNMENT ORDER DTD.20.2.2001.

EXT.R4(2): THE PHOTOCOPY OF THE MINUTES DTD.16.11.2001.

EXT.R4(3): THE PHOTOCOPY OF THE COMMUNICATION DTD.26.11.2001.

EXT.R4(4): THE PHOTOCOPY OF THE GOVERNMENT ORDER DTD.6.5.1985.

EXT.R4(5): THE PHOTOCOPY OF THE GOVERNMENT ORDER DTD.25.3.1995.

EXT.R4(6): THE PHOTOCOPY OF THE JUDGMENT DTD.22.1.2009 IN
WPC.NO.22521/2008.

EXT.R4(7): THE PHOTOCOPY OF THE JUDGMENT DTD.1.3.2010.

EXT.R4(8): THE PHOTOCOPY OF THE ORDER DTD.22.3.2013.

EXT.R4(9): THE PHOTOCOPY OF THE ORDER DTD.7.2.2014 IN WA.NO.652/2013.

//TRUE COPY//

P.S.TO JUDGE

Msv/

C.R.

A.V.RAMAKRISHNA PILLAI, J

WPC Nos.606, 1459, 1540,
1628, 2169, 2304, 2312
and 4009 of 2013

Dated this the 30th day of October, 2015

JUDGMENT

Under challenge in these writ petitions are the orders of termination of the petitioners who are working in different capacities in Dr.Padiar Memorial Homeopathic Medical College, Chottanikkara (hereinafter referred to as 'college' for short). The petitioners are also seeking a declaration that they are entitled to the salary as in the case of other similar employees in the said medical college and in the hospital attached thereto who are being paid salary by the Government. The petitioners allege that the payment of salary by the Government, only to some of the employees working in the hospital attached to the medical college is discriminatory and is the result of creating two types of employees in

the same institution. There is yet another prayer for directing the respondents to allow the petitioners to sign the muster roll register and allow them to work in the post they are holding for the last so many years.

2. WPC No.606/2013 is filed by certain persons who are working as L.D.Clerks in the aforesaid Medical College. They allege that while they were working in the college in that capacity, the 4th respondent in that writ petition issued Ext.P11 letter stating cessation of service without following any law or procedure citing that the Government has decided not to include them in the Direct Payment System. The petitioners allege that they were working in the hospital attached to the college which was brought under Direct Payment System for so many years. In the year 2000, some of the non-teaching staff of the college had filed a case as O.P.No.25592/2000 which was disposed of in favour of the petitioners therein. Though the State filed an

appeal, the judgment of the learned Single Judge was confirmed by the Division Bench. Against that the State has filed an SLP before the Apex Court in which it was contended that the hospital was not included in the Direct Payment System and as such the Apex Court observed that it is a policy decision which cannot be interfered with. Accordingly, the SLP was allowed.

3. The grievance of the petitioners is that the 4th respondent has issued the letter of cessation of service without following any norms or hearing the petitioners and showing wrong reasons.

4. WPC No.1459/2013 is filed by yet another Lower Division Clerk working in the aforesaid Medical College. She joined the service on 10.2.1999. Her grievance is that she along with some others were excluded from the Direct Payment System which was introduced in the year 2000 on the ground that the hospital is not included in the Direct Payment System. She also alleges that she

was served with Ext.P11 letter of cessation without adhering to any norms or hearing the petitioner.

5. WPC No.1540/2013 is filed by a Clerk/Typist working in the aforesaid college with effect from 1.3.1999. He was also served with a letter of cessation (marked as Ext.P10 in that writ petition), which according to him, was without following any procedure or norms.

6. WPC No.1628/2013 is filed by a Medical Officer working in the hospital attached to the aforesaid medical college since 1999. She alleges that she was also excluded from the purview of Direct Payment System and was served with Ext.P5 cessation letter without following any procedural formalities.

7. WPC No.2169/2013 is filed by a Pharmacist in the hospital attached to the aforesaid college. She also has the same grievance projected in the other writ petitions and she is challenging Ext.P9 by which she was relieved of the duties, which, according to

her, is without following any legal norms.

8. WPC No.2304/2013 is filed by another Pharmacist of the hospital attached to the aforesaid Medical College. She is aggrieved by Ext.P11 relieving order, which, according to her is illegal.

9. WPC No.2312/2013 is filed by a Lower Division Clerk working in the hospital attached to the aforesaid college. She also was relieved from the post as per Ext.P11 for the reason that she does not come under the Direct Payment System. She is challenging the said order.

10. WPC No.4009/2013 is filed by a Medical Officer who was inducted in service in the hospital attached to the Medical College with effect from 5.11.1998. She also was not brought under the Direct Payment System and ultimately, she was ordered to be relieved from the service.

11. In the counter affidavit filed by the State, it was contended as follows:

Direct Payment System (DPS) was introduced

in Dr.Padiyar Memorial Homeopathic Medical College with effect from 1.1.2000 subject to certain conditions set out in the agreement executed by the management of Dr.Padiyar Memorial Homeopathic Medical College with Government which is produced and marked as Ext.R1(a). As per Para II(i) of the agreement in the case of appointment of non-teaching staff, it is stated that there shall be a committee for the selection of non-teaching staff to be appointed in the institution.

It is contended that it is for the Government to determine who are the officers and employees coming under the term 'non-teaching staff' and the decision of the Government thereon shall be final and legally binding on the Educational Agency. All future appointments of the non-teaching staff of the institutions whether provisional or permanent shall be made by the Educational Agency only from the list of candidates prepared by the Selection Committee for non-teaching staff, according to the

rank assigned by the Committee. The Selection Committee for the non-teaching staff shall consist of the following members, viz.

a. Two representatives of the Educational Agency.

b. One member chosen by the Educational Agency from the officers of the Government of the cadre of Revenue Divisional Officers and/or Deputy Collectors provided, however, that, if for any reason the Government considers that the officers chosen by the Educational Agency cannot be deputed to the Committee, the Educational Agency shall choose another officers to the committee from among the same cadre.

One of the representatives of the Educational Agency appointed shall, according to the choice of the Educational Agency, be the Chairman and Convenor of the Selection Committee for the non-teaching staff.

It is further contended that pursuant to the agreement, Government had filled categories of teaching and non-teaching staff vide G.O.(MS) No.99/02/H&FWD dated 25.4.2002. A copy of the government order is produced and marked as Ext.R1 (b). The petitioners were not included in the above Government Order. As per G.O.(Rt) No.517/01/H&FWD dated 20.3.2001 Government had made it

clear that DPS had not been introduced in the Dr.Padiyar Memorial Homeopathic Medical College. Number of posts existing at the time of introduction of DPS in Dr.Padiyar Memorial Homoeopathic Medical College was not according to the necessity. The management has appointed more people than what is actually required. Therefore, Government has no responsibility to pay salary for the additional excess posts appointed by the management violating the criteria at the time of appointment.

It is contended that the Apex Court in ***State of Kerala and others v Naveen Prabhu and others*** reported in (2009(3) ACC 649) has categorically held that the policy decision of the Kerala Government denying the salary and allowances under the DPS to the staff attached to Dr.Padiyar Memorial Homeopathic Medical College is perfectly legal and valid. In view of the judgment of the Apex Court, the matter has attained finality and cannot be re-opened at the instance of persons who do not come under

the Direct Payment System. In the light of the above judgment, Government issued order G.O.(Rt) No.3690/09/H&FWD dated 18.12.2009, which cancelled the order of inclusion of 9 staff of Dr.Padiyar Memorial Homeopathic Medical College under the Direct Payment System as supernumeraries with immediate effect. The petitioners are also included in the list of 9 staff mentioned in the above order. The above Government Order is produced and marked as Ext.R1(C).

It is also contended that the Council of Ministers met on 27.2.2011 decided to appoint 11 staff of Dr.Padiyar Memorial Homeopathic Medical College including the petitioners by creating supernumerary posts. However, as the model code of conduct declared due to the election 2011 came in to force, Government did not issue the order. Government further examined the matter in detail and decided to review the decision of the council of

Ministers on 27.2.2011. The Council of Ministers on 9.5.2012 reviewed and cancelled the decision taken on 27.2.2011. Government cancelled the re-appointment of 11 excess non-teaching staff of Dr.Padiyar Memorial Homeopathic Medical College vide Ext.P5 order.

The Government further contended that they have not introduced DPS in the hospital run by the Management. It is pointed out that the Supreme Court vide judgment dated 23.2.2009 in Civil Appeal No.1152 and 1153 of 2009 upheld the decision of the State Government.

It is contended that in due consideration of the judgment in WPC No.22001/2010 dated 3.1.2012 Government have taken steps for unification of non-teaching staff pattern in three Aided Homeopathic Medical Colleges for avoiding further disputes in this matter. The responsibility for the payment of salaries for the excess posts which are not included in the Direct Payment System vests with the

management of Dr.Padiyar Memorial Homeopathic Medical College and this was upheld by the Apex Court.

It is further contended that as per G.O.(Rt) No.3690/09/H&FWD dated 18.12.2009 Government has ordered to cancel the inclusion of 9 staff including the petitioners under Direct Payment System as supernumeraries and as per the Order No.142/12/H&FWD dated 14.5.2012 Government had cancelled the appointment of 11 excess non-teaching staff including the petitioners. In compliance of the above two Government Orders, Management have terminated the service of the petitioner vide the orders impugned. The salary of the staff appointed by the management can only be determined and fixed by the management and the Principal & Controlling Officer has no authorisation in such matters and the State has no liability to pay salary to those staffs who were not coming under the Direct Payment system.

It is contended that none of the grounds raised by the petitioners in support of their case are sustainable either in law or on facts of the above case. As per G.O.(MS) No.99/02/H&FWD Government had approved the posts of 40 teaching staff and 50 non-teaching staff at Dr.Padiyar Memorial Homeopathic Medical College. Out of 50 non-teaching staffs, 16 are working in Dr.Padiyar Memorial Homeopathic Medical College and are paid salary under Direct Payment System. Other posts in Dr.Padiyar Memorial Homeopathic Medical College are not coming under Direct Payment System.

It is contended that according to the agreement signed between Dr.Padiyar Memorial Homeopathic Medical College Management and Government, any service claim before the introduction of Direct Payment System cannot be undertaken by the Government. The petitioners' names are not included in Ext.R1(b). Then vide Ext.R1(c) Government order, Government had ordered to

cancel the approval of 9 staff including the petitioners as supernumeraries under Direct Payment System and by Ext.P5 Government Order, Government had cancelled the re-appointment of 11 excess non-teaching staff of Dr.Padiyar Memorial Homeopathic Medical College including the petitioners. Government is the competent authority to create and retain the posts in Homoeo Colleges and Hospitals. Considering the judgment in WPC No.22001/2010 dated 3.1.2012, Government issued G.O.(MS)No.99/13/H&FWD dated 22.3.2013 and have formulated a uniform pattern for the non-teaching posts in the Aided Homeopathic Medical Colleges in the State.

12. Arguments have been heard.

13. Before considering the issue it is profitable to have a look at the history of the college from the inception till date. The college was established in the private sector in the year 1920. This was governed by the Board of Trustees. On 17.10.1998,

a full fledged Homeopathic Hospital was inaugurated in the college campus. According to the petitioners, this is the only Homeopathic Medical College having a hospital in the college campus of its own in the private sector. For the functioning of the newly constructed hospital, management had appointed 45 non-teaching staff to fulfill the norms prescribed by the Central Council of Homeopathy. All the petitioners would point out that the management was forced to appoint the staff prescribed by the Central Council of Homeopathy (CCH) as they have threatened to revoke recognition. The petitioners were appointed in different posts on different dates. All of them were drawing salary from the management before the Direct Payment System was introduced in the college. It was on 1.1.2000 that the Government has introduced Direct Payment System in the college, that too after several discussions between the management and the Government. On 24.1.2000, an agreement was

executed between the State and the representative of the governing body of the college bringing the institution under the Direct Payment System with effect from 1.1.2000. It was stated in the agreement that the appointment after the Direct Payment System should have the concurrence and the approval of the Government. On 25.4.2002, the Government issued G.O.(MS) No.100/2000/H&FWD dated 25.4.2000 introducing Direct Payment System in the college with effect from 1.1.2000 subject to the condition set out in the agreement dated 24.1.2000. The order also clearly speaks about the payment of salary and allowances to the members of the staff existing as on December 1999 in the college with effect from 1.1.2000. On 20.2.2001, Government issued G.O.(Rt) No.517/2001/H&FWD which speaks about the exclusion of the hospital attached to the college in the Direct Payment system. On 16.8.2001, a meeting between the management staff and the representatives of the

Government of Kerala was convened as per the direction of this Court. In that meeting, the management has stated that it was difficult for them to pay the salary and allowances to the employees who were not included in the Direct Payment System. The petitioners would point out that it was decided in the meeting that the staff fixation of non-teaching staff would be done as per the Government College Pattern. The Principal and Controlling Officer, Government Homoeopathic Medical College, Thiruvananthapuram informed the meeting that 31 non-teaching staff that were excluded from the Direct Payment System would be paid salary after getting documentary clarification from the side of the Government for which it was decided that the Principal & Controlling Officer would write to the Government with regard to the above aspects. The petitioners also point out that on 16.11.2001, another meeting between the college and the Government was convened in the Chambers of

Principal secretary, Health & Family Welfare Department and it was decided to prepare and send a list of 40 teaching and 34 non-teaching staff who were working in the college and 16 staff members of the hospital to be included in the Direct Payment System in the hospital also. On 17.4.2002 in an approved proceedings of the council of Ministers with regard to the staff fixation of the college it was decided that the college and the hospital attached would be brought under Direct Payment System. The petitioners point out that on 25.4.2002, the Government issued G.O.(MS) No.99/20002/H&FWD dated 25.4.2002 fixing the employees number as 50. In the annexure of the said order, 16 non-teaching staff appointed in the hospital attached to the college have been stated. On 27.4.2002, by letter No.4320/C1/2000/GHMCT the Principal & Controlling Officer has fixed the pay of the employees appointed in the hospital. The petitioners also point out that on 16.4.2003, by letter No.18066/J2/2002/H&FWD the

Under Secretary to Government of Kerala who was present in the meeting held on 16.11.2001 has issued a communication to the management stating that the staff found to be surplus after the staff fixation should be treated as supernumerary to be absorbed in the vacancies arising in the future. It was on 3.3.2004, this Court disposed of O.P.No.25592/2000 filed by some of the non-teaching staff finding that the service of the petitioners was essential for the functioning of the college and hospital and there cannot be two types of employees in an institution, particularly, when the employees left out are also appointed in terms of the agreement dated 24.1.2000.

14. Though the matter was taken in appeal before a Division Bench, the Division Bench agreed with the observation of the learned Single Judge in the judgment dated 17.6.2005 in Writ Appeal No.1530/2004. This was challenged by the Government in Civil Appeal No.1152-53/09 arising

out of SLP No.19951-52/2005 before the Apex Court which was allowed. It is with this background, the management has issued termination notice to the petitioners as they are unable to bear the expenses of the salary and allowances of the petitioners.

15. The trump card of the State is the decision of the Apex Court wherein it was observed as under:

The decision of the Government to exclude the staff of the hospital attached to the college from the purview of the aforesaid orders was made specifically stating that direct payment system is not introduced by the Government so far as college hospital is concerned. The same being a policy decision of the Government and having not been challenged as either arbitrary or discriminatory at any stage by the respondents, thus, we are not called upon to scrutinise the legality and validity of the aforesaid decision. Besides the same being a policy decision of the government, the same stands as this Court generally does not interfere with the policy decision of the Government."

16. It was argued by the learned counsel for the petitioners, the State Government has misled the Apex Court which resulted in the decision against the petitioners.

17. There cannot be any quarrel against the proposition that a policy decision cannot be subject to challenge in a writ petition filed under Article 226 of the Constitution of India. However, when a particular policy is translated into practice, the same shall not work out discrimination and violate Article 14 of the Constitution of India.

18. In ***State of U.P. V Dayanand Chakrawarty and others*** (2013) 7 SCC 595) it was observed by the Apex Court that if a policy decision is discriminatory and violative of Article 14, a court can interfere under Article 226.

19. Following the decision of the Apex Court in ***Premchand v Union of India*** (1991(2) SCC 48), the Apex Court observed that though even amongst persons similarly situated differential treatment would be permissible between one class and the other, it is necessary that the differential treatment should be founded on an intelligible differentia which distinguishes persons or things that are

grouped together from others left out of the group and that differentia must have a rational relation to the object sought to be achieved by the statute.

20. Here, all the petitioners as well as the other employees of the college who are brought under Direct Payment system were appointed for the purpose of the smooth functioning of the Homeopathic Medical College for which functioning of an attached hospital is mandated by CCH. Therefore, the hospital cannot be treated as a separate legal entity and has to be construed as a part and parcel of the same institution which imparts knowledge in Homeopathic education. Ext.P14 produced in WPC No.606/2013 is the copy of the minutes of the meeting held on 16.1.2001 in the Chambers of the Principal Secretary, Health & Family Welfare Department wherein the Management as well as the Government have participated. The said minutes reveal that there was a decision to prepare and send a list of employees

containing 40 teaching and 34 non-teaching staffs who are working in the college and 16 staff members to be included in the Direct Payment System at hospital by introducing DPS in the hospital also. This is a clear indication that the Government had reckoned the college as well as the hospital as part of the same entity. On 17.4.2002, the Council of Ministers agreed to the staff fixation in the college and it was decided that the college and hospital attached would be brought under DPS.

21. It is also crucial to note that later, the Government on 25.4.2002, the Government issued G.O.(MS) No.99/2002/H&FWD dated 25.4.2002 fixing the number of employees as 50 coming under the Direct Payment System. The aforesaid events were on account of the realisation of the Government that the college cannot exist without the hospital and thus, resulted in the order dated 25.4.2002. The college where the petitioners are working is entitled to the similar treatment as that of other Homoeo

Medical College run by the Government. It is crucial to note that even if the staff pattern including the petitioners herein who are now left out is approved, it won't be anywhere near the pattern adopted and approved in the Government Homoeo Medical Colleges. However, later, the Government made a shift in their stand and submitted before the Apex Court that the hospital is a separate entity.

22. There is a subsequent event which would reveal that the Government has again treated the hospital at par with the college. After having taken a stand as above before the Apex Court (judgment of the Apex Court is dated 23rd September 2009), the Principal and Controlling Officer, Government Homeopathic Medical College, Thiruvananthapuram as per proceedings No.2026/C1/08/GHMCT dated 24.7.2012 (Ext.P20 in WPC No.606/2013) issued orders appointing one Vishnu Prasad as Watcher in the scale of pay of Rs.4510-6230 in the Dr.Padiyar Memorial Homeopathic Medical College Hospital

with effect from 1.7.2008. Later G.O.(Rt) No.130/2013/ H&FWD dated 10.1.2013 (Ext.P21 in WPC No.606/2013) was issued by the Health & Family Welfare Department by which they have disposed of the representation filed by Mr.Vishnu Prasad approving the said appointment. It can be seen from the said order that the said appointment was in the vacancy created by the re-designation of one K.N.Pradeep Kumar as Peon which arose due to the demise of one Pradeep. Ext.P21 was subject to the condition that if and when the legal heirs of the aforesaid Pradeep approaches for appointment on compassionate ground, the Management would take suitable action as per the decision of the Government to consider such application after completing all legal formalities and for that purpose, a suitable post be spared in the college or hospital. It was further provided that if such a post is not available, the junior most of the relevant category be thrown from the direct payment system giving

opportunity to such applicant. This also is a clear indication that subsequent to the decision of the Apex Court in the SLP, the Government has reckoned the college as well as the hospital as part and parcel of the same entity. That being the same, there is no rhyme and reason why the petitioners are to be discriminated. Though the Apex Court refused to interfere with the previous decisions of the Government, the aforesaid subsequent event gives rise to a fresh cause of action and therefore, the previous decisions will not operate as a bar in these writ petitions.

23. Here, one should be reminded of the decision of the Apex Court in ***Kailash Chand Sharma v State of Rajasthan and others*** (2002) 6 SCC 562) wherein the Apex Court has made clear that there is scope for interference in the legality and constitutionality of policy decisions. Though the Government says that it is the policy not to bring the hospital under Direct Payment system, the action

pointed out above would indicate otherwise. The action of the Government bringing the employees working in the hospital attached to the Medical College and stating that the hospital cannot be brought under the Direct Payment System is quite untenable. The differential treatment is not founded on an intelligible differentia which distinguishes persons who are grouped together for direct payment from the petitioners who were left out of the group and the same does not have a rational nexus to the object sought to be achieved by the said classification. The Government, according to their whims and fancies, have chosen a group of people to confer the benefit of direct payment which cannot be countenanced at all in the eye of law.

24. The petitioners have a case that they were not being paid salary for so many years except when included in the Direct Payment System. The name of the petitioners were also used to procure the recognition from the CCH and after getting

recognition as above, it is not proper to throw them out pointing out that they do not come under the staff pattern approved by the Government. It is for the CCH to decide the number of staff in the medical college and the hospital attached thereto. The Government have no authority to fix a ceiling or cap in the said number. It is also crucial to note that the respondents had no case before the Apex Court that the petitioners are excess staff. They only said that they cannot be brought under the Direct Payment System. This is only because they have come to the conclusion that they would only accept 50 persons under the Direct Payment System. Though the Government has submitted before the Apex Court that the hospital is not included in the purview of Direct Payment System, their subsequent conduct as revealed through Exts.P20 and P21 produced in WPC No.606/2013 would prove otherwise. Actually all the employees who were in the institution on the date of the agreement are legally having claim to be

brought under the Direct Payment system. However, this has been overlooked. Some of the petitioners have a case that the legal department of the State has, after going through the facts and the documents had found that all the employees of the institution as on the date of the agreement are to be included in the Direct Payment System. Now, the petitioners are being sent out not for want of work, but only citing the reason that the Government has not brought them under the Direct Payment System and therefore, the Management cannot shoulder the responsibility of making the payment. None of the respondents have a case that the petitioners were under qualified or not eligible to be appointed at the time when they were appointed. While agreeing the terms and conditions of the agreement entered into with the management, the Government had stated that the staff pattern would be that of the Government Homoeopathic colleges in Thiruvananthapuram and Kozhikode.

25. If the impugned orders are implemented the petitioners who were serving the institution for several years on which account the institution got recognition of the CCH would be virtually thrown to street.

Therefore, on a consideration of the entire materials now placed on record, this Court is of the view that the petitioners are entitled to succeed.

Therefore, these writ petitions are disposed of quashing Exts.P6 and P11 in WPC No.606/2013, Ext.P11 in WPC No.1459/2013, Ext.P10 in WPC No.1540/2013, Ext.P5 in WPC No.1628/2013, Ext.P9 in WPC No.2169/2013, Ext.P11 in WPC No.2304/2013, Ext.P11 in WPC No.2312/2013 and Exts.P6, P11 and P13 in WPC No.4009/2013 as they have violated the rights of the petitioners.

It is hereby declared that the petitioners are entitled to salary in the case of other 16 employees employed in the hospital who are being paid salary by the Government. The petitioners are allowed to

sign the muster roll and allow them to work in the posts as they are holding the same for the last so many years. The consequential monetary benefits and other service benefits shall be released to the petitioners by the Government and formal orders to this effect shall be issued by the Government within a period of three months from the date of receipt of a copy of this judgment.

**Sd/- A.V.RAMAKRISHNA PILLAI
JUDGE**

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P.S.TO JUDGE