A STATE OF KERALA & ANR.

V.

NAVEENA PRABHU & ORS.

Civil Appeal Nos. 1152-1153 oF 2009

FEBRUARY 23, 2009

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[S.B. SINHA AND DR.MUKUNDAKAM SHARMA, JJ.]

Administrative law – Policy decision – Interference with – Government Order introducing 'direct payment system' in Medical College in respect of teaching and non-teaching staff C *of College – Order of High Court extending the said benefit to hospital staff attached to the College – Held: Not sustainable – It was the policy decision of the Government to exclude hospital staff attached to College from the purview of direct payment system – Policy decision usually cannot be interfered* D *with – More so hospital staff did not challenge the said decision at any stage – Nature of duties and responsibilities discharged by teaching and non-teaching staff of college vis-à-vis hospital staff are distinctly different and separate.*

The question which arose for consideration in these E **appeals was whether the High Court was justified in holding that the respondent-hospital staff are entitled to be brought within the purview of direct payment system which was introduced by the Government Order in the Medical College for the teaching and non-teaching staff** F **of the College.**

Allowing the appeals, the Court

HELD: 1.1 By the G.O. (MS) No. 100/2000/H&FWD dated 25.4.2000 issued by Health and Family Welfare G **Department, the Government issued directions for introducing 'direct payment system' in Padiar Medical College with effect from 1.1.2000 subject to the conditions set out in the agreement and also subject to further condition that selection of candidates for admission to**

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the institution against 85% of the sanctioned strength in each institution would be made by the Government or by such authority as may be appointed by the Government for the purpose. It was also stipulated that for the remaining 15% of the seats, candidates would be selected by the Educational Agency from a list of eligible candidates prepared by the Controller of Entrance Examination on the basis of the entrance examination conducted for the purpose. Subsequent thereto another order G.O. (Rt.) 517/2001/H&FWD was issued on 20.3.2001. The said order made it crystal clear that while introducing the direct payment system by the Government in respect of Padiar Medical College, such benefit was extended to the members of the staff of the college whereas the staff of the hospital attached to the college was specifically excluded from the applicability of the aforesaid benefit. This order was never challenged by any of the respondents since such benefit of direct payment system was not extended to the staff of the hospital attached to the college. They did not acquire any status and consequently they acquired no right being specifically excluded from the benefit thereof. [Paras 9, 10 and 11] [964-G-H; 965-A; 965-B; 965-E]

1.2 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 the legality and validity of the aforesaid decision is not scrutinized. 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. [Para 11] [965-G-H]

1.3 As regard the submissions that the nature of

duties and responsibilities of the teaching staff of the college and the staff of the hospital being the same there can be no discrimination so far the staff of the hospital, the teaching staff of the college as also non-teaching staff are being given the benefit of direct payment system but that itself would not entitle or make the staff of the hospital eligible to claim the said benefits. There is no assessment by any authority with regard to the nature of duties and responsibilities discharged by the teaching and non-teaching staff of the college vis-à-vis the staff of the hospital. Without going into the technicalities, it could also be said that nature of duties and responsibilities in the college would be distinctly different and separate from that of the duties and responsibilities of the staff in the hospital attached to the college. This Court also cannot issue any direction for over inclusion of the staff as it involves financial implications. [Para 12 and 13] [966-B; 966-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1152-1153 of 2009

From the Judgement and Order dated 03.06.2005 of the High Court of Kerala at Ernakulam in WA. No. 189, 259, 323, 334 and 229 of 2005.

C.S. Ranjan, G. Prakash, Beena Prakash, Ramesh Babu M.R. for the Appellant.

R. Rajendran Nair, Shakil Ahmed Syed, K. Radhakrishnan, S. Udaya Kumar Sagar, Bina Madhavan Gaichangpoo Gangmei, T.L.V. Iyer, Subraonium Prasad, Jay Kishore Singh, Wills Mathews Arun Basil, M.K. Michael, H.L.K. Puri, Romy Chacko, C.K. Sasi, for the Respondent.

DR. MUKUNDAKAM SHARMA, J.

1. Leave granted.

2. These appeals filed by the State of Kerala are directed against the judgment and order dated 17.6.2005 passed by

the Division Bench of the High Court of Kerala at Ernakulam whereby not only order dated 3.3.2004 of the learned Single Judge of the same High Court was upheld and the writ petition was held to have been rightly allowed by the learned Single Judge.

3. Relevant facts for disposal of the appeals are as under:

Dr. Padiar Memorial Homoeopathic Medical College, Chottanikkara (hereinafter referred to as 'Padiar Medical College') is a private college established in the year 1920 and governed by its Board of Trustees. On 30.12.1998, a decision, in consultation with the Government of Kerala, was taken by the management of the college to introduce the 'direct payment system'. At that time there were only 31 teaching staff and 20 non-teaching staff. Consequent thereupon the management appointed 45 non-teaching staff and 21 teaching staff by letter dated 2.1.1999. On 24.1.2000, an agreement was executed between the Government of Kerala and the Governing Body of the College for bringing the said college under the 'direct payment system' w.e.f. 1.1.2000.

4. G.O. (Ms) 511/95/H&FWD dated 10.11.1995 issued by the Department of Health and Family Welfare, Government of Kerala, provided that the system of direct payment will be introduced in the following three private Homoeopathic Colleges in the State, subject to the conditions stipulated hereunder :

"1. Athurasramam Nair Service Society Homeopathic Medical College, Kurichy, Kottayam

2. Dr. Padiyar Memorial Homoeopathic Medical College, Chottanikara.

3. Sir Vidadhiraja Homeopathic Medical College, Nemom, Thiruvananthapuram

Conditions :

(a) Direct payment of salary will take effect from 01.11.1995

A (b) All these private Homeopathic Colleges will enter into agreements with the Government to the effect that in respect of appointments of Staff and enrollment of students, they will abide by terms and conditions similar to those adopted in respect of private
B Engineering Colleges in the State.

(c) Dr. Padiyar Memorial Homeopathic College will not claim any Special rights of a Minority Institutions or of a self-financing institution.

C (d) Shree Vidyadhiraja Homeopathic College shall obtain recognition from University of Kerala as a Precondition for implementation of the direct payment system"

5. The Government Order G.O.(MS) No. 100/2000/H&FWD
D dated 25.4.2000 was issued regarding the introduction of 'direct payment system' with effect from 1.1.2000 which, inter alia, provided that direct payment system can be introduced in the Padiar Memorial Homeo College, allowing the management to fill up 15% seat for BHMS as is being enjoyed by the NSS
E Homeo College, Kurichy if they executed an agreement to this effect as provided in the conditions stipulated in the aforesaid Government order dated 10.11.1995. This Government order authorised the Senior Principal & Controlling Officer for Homoeopathic Education to take necessary action for making
F the staff fixation. Consequently, on 16.11.2001 he sent a list of 40 teaching and 50 non-teaching staff having qualification according to the government rules as on 1.1.2000 and considering the department seniority for staff fixation. The Government accepted and approved the said list as per
G Government Order G.O. (MS) No. 99/02/ H&FWD dated 25.4.2002 relevant portion of which is reproduced hereinbelow :

"In the G.O. read above, Direct Payment System was introduced in the Dr. Padiar Memorial Homoeopathic Medical College, Chottanikkara, with effect from
H 01.01.2000, subject to the conditions set out in the

agreement entered into between Government and the Management of the College. It was stipulated therein that until fixation of staff strength and approval of salary are done, members of the staff in the college will be paid pay and allowances at the approval rate at which they were drawing their pay for the month of December, 1999.

As per the agreement entered into between Government and the amendment of the College on 24.01.2000, Government are liable to disburse the pay and allowances due to the staff of the college which accrue from 01.01.2000 directly through the Principal of the Institution based on the existing staff pattern of the Government Homoeopathic Medical College and the hospitals attached therewith. As per the direction of the High Court in the judgment dated 19.07.2001 in WA No. 2255/00 in OP No. 19111/00 filed by Dr. Renjini N. Menon, final orders in the matter have to be issued within the period of 3 months from the date of receipt of a copy of the judgment. Accordingly as directed by the Government, the Principal and Controlling Officer, Government Homoeo Medical College, Thiruvananthapuram, furnished the list of 40 senior most and qualified teaching staff based on departmental seniority and 50 non-teaching staff of the Dr. Padiar Memorial Homoeo Medical College as on 01.01.2000 to be considered for staff fixation."

6. By the aforesaid Government order dated 25.4.2002 the Government provided that direct payment system would be introduced in Padiar Medical College with effect from 1.1.2000. However, the entire staff belonging to the college did not become entitled to the benefit of direct payment, since the staff pattern consisting of 40 senior most and qualified teaching staff and 50 non-teaching staff alone was to be recognized as eligible for the said benefit.

7. The private respondents herein are the hospital staff and they sought a direction from the High Court in the writ

A petitions filed by them that they should also be brought under the direct payment system with effect from 1.1.2000. The contention raised by them was that they are similarly situated being a part of the medical college and, therefore, they are entitled to be brought within the purview of direct payment
B system. This contention found favour with the learned Single Judge who heard the writ petition and the learned Single Judge by his judgment and order dated 3.3.2004 allowed the writ petition with a direction that the said hospital staff who are respondents herein should also be brought under the 'direct
C payment system' with effect from 1.1.2000.

8. State of Kerala being aggrieved by the aforesaid judgment and order filed an appeal before the Division Bench of the Kerala High Court which was dismissed and consequently the present appeals are filed in this Court.

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9. We have heard the learned counsel appearing for the parties in respect of all the contentions raised before us. There is no dispute with regard to the fact that Padiar Medical College is a private medical college. The Health and Family Welfare
E Department, Government of Kerala issued an order G.O. (MS) No. 100/2000/H&FWD dated 25.4.2000 pursuant to an agreement entered into between the Government and the President of the Padiar Medical College. In the said order, the Government has, inter alia, stated that they have examined the matter in detail with regard to the introduction of 'direct payment
F system' in Padiyar Medical College and that they have advised that 'direct payment system' could be introduced in Padiar Memorial Homeo College allowing the management to fill up 15% seat for BHMS as is being enjoyed by NSS Homeo College, Kurichy if they executed an agreement to that effect.
G By the said order the Government issued directions for introducing 'direct payment system' in Padiar Medical College with effect from 1.1.2000 subject to the conditions set out in the agreement and also subject to further condition that selection of candidates for admission to the institution against 85% of
H the sanctioned strength in each institution would be made by

the Government or by such authority as may be appointed by the Government for the purpose. It was also stipulated that for the remaining 15% of the seats, candidates would be selected by the Educational Agency from a list of eligible candidates prepared by the Controller of Entrance Examination on the basis of the entrance examination conducted for the purpose. A B

10. Subsequent thereto another order G.O.(Rt) 517/2001/ H&FWD came to be issued on 20.3.2001 by the Health & Family Welfare Department, Government of Kerala reiterating its earlier order that until fixation of staff strength etc. the members of the staff in Padiar Medical College would be paid salary and allowance at the approved rate at which they were drawing their pay for the month of December, 1999. However, in the said order it was made clear that the order would not be applicable to the staff of the hospital attached to the college as the 'direct payment system' has not been introduced in the college hospital. C D

11. The aforesaid order, therefore, makes it crystal clear that while introducing the direct payment system by the Government in respect of Padiar Medical College, such benefit was extended to the members of the staff of the college whereas the staff of the hospital attached to the college was specifically excluded from the applicability of the aforesaid benefit. This order was never challenged by any of the respondents herein since such benefit of direct payment system was not extended to the staff of the hospital attached to the college. They did not acquire any status and consequently they acquired no right being specifically excluded from the benefit thereof. 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 scrutinize the legality and validity of the aforesaid decision. Besides, the same being a policy decision of the Government, E F G H

A the same stands as this Court generally does not interfere with the policy decision of the Government.

12. It was one of the contentions of the respondents that the nature of duties and responsibilities of the teaching staff of the college and the staff of the hospital being the same there B can be no discrimination so far as the staff of the hospital is concerned. It is true that the teaching staff of the college as also non-teaching staff are being given the benefit of direct payment system but that itself would not entitle or make the staff of the hospital eligible to claim the said benefit.

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13. Our attention could not be drawn to the fact that there is any assessment by any authority with regard to the nature of duties and responsibilities discharged by the teaching and non-teaching staff of the college vis-à-vis the staff of the hospital. D Without going into the technicalities, it could also be said that nature of duties and responsibilities in the college would be distinctly different and separate from that of the duties and responsibilities of the staff in the hospital attached to the college. This Court also cannot issue any direction for over inclusion of E the staff as it involves financial implications.

14. Considering the entire facts and circumstances of the case we find merit in these appeals and the same are accordingly allowed. The Writ petitions stand dismissed.

N.J. Appeals allowed.