

**പതിമൂന്നാം കേരള നിയമസഭ
പതിനാലാം സമ്മേളനം**

നക്ഷത്രചിഹ്നമിടാത്തചോദ്യം നം. 3445

**15.07.2015- ലെ
മറുപടി.**

ഡി.എം.ഇ.യുടെ നിയമനം

ചോദ്യം

ശ്രീ.ജി.സുധാകരൻ

ഉത്തരം

**ശ്രീ. വി.എസ്. ശിവകുമാർ
(ആരോഗ്യവും കുടുംബക്ഷേമവും
ദേവസ്വവും വകുപ്പ് ഭരണി)**

(എ) സംസ്ഥാനത്ത് നിലവിലെ ഡി.എം.ഇ ആരാണെന്ന് അറിയിക്കാമോ;

(എ). ജോയിന്റ് മെഡിക്കൽ വിദ്യാഭ്യാസ ഡയറക്ടർ (മെഡിക്കൽ) ഡോ.കെ.ശ്രീകുമാരി, ഡി.എം.ഇയുടെ ചാർജ്ജ് വഹിക്കുന്നു.

(ബി) ഡി.പി.സി കഴിഞ്ഞിട്ടും നാളിതുവരെ ഡി.എം.ഇ.യെ എന്തുകൊണ്ട് നിയമിച്ചില്ലെന്ന് വ്യക്തമാക്കാമോ;

(ബി) ഡി.പി.സി തയ്യാറാക്കിയ സെലക്ട് ലിസ്റ്റ് സംബന്ധിച്ച് പരാതി ലഭിച്ചതിനാലാണ് നിയമനം വൈകുന്നത്.

(സി) ഡെന്റൽ ഡയറക്ടറേറ്റ് രൂപീകരിച്ചിട്ടുണ്ടോ; ഡെന്റൽ ഡയറക്ടറെ നിയമിച്ചിട്ടുണ്ടോ; എങ്കിൽ ആരാണ് ഡെന്റൽ ഡയറക്ടർ; പ്രസ്തുത നിയമനത്തിനുള്ള മാനദണ്ഡമെന്താണെന്നു വ്യക്തമാക്കുമോ;

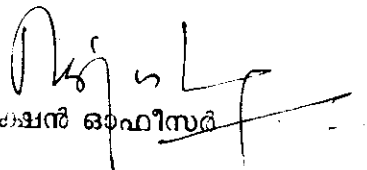
(സി) ഇല്ല.

(ഡി) ഡി.എം.ഇ ആകാൻ ജോയിന്റ് ഡയറക്ടർ (ജനറൽ) ഡോ. ജോതീന്ദ്ര കുമാർ, ബഹുമാനപ്പെട്ട ഹൈക്കോടതിയിലും സുപ്രീംകോടതിയിലും അപ്പീൽ നൽകിയിട്ടുണ്ടോ; ഉണ്ടെങ്കിൽ കേസിന്റെ നിലവിലെ സ്ഥിതി എന്താണ്; വിശദമാക്കാമോ;

(ഡി) ഇതു സംബന്ധിച്ച് ഹർജികൾ ബഹു. ഹൈക്കോടതിയും ബഹു. സുപ്രീംകോടതിയും തീർപ്പാക്കിയിട്ടുണ്ട്. പകർപ്പ് അനുബന്ധമായി ഉള്ളടക്കം ചെയ്തിട്ടുണ്ട്.

(ഇ) ഒൻപതോളം പോസ്റ്റുകൾ ഒഴിഞ്ഞുകിടക്കുന്ന ആലപ്പുഴ ഡെന്റൽ കോളേജിൽ അഡ്മിഷൻ നടത്താൻ സാധിക്കുമോ; വിശദവിവരം നൽകുമോ?

(ഇ) ഒഴിവുകൾ നികത്താൻ നടപടി സ്വീകരിച്ചിട്ടുണ്ട്. ഡെന്റൽ കൗൺസിലിന്റെ അനുമതി ലഭിക്കുന്ന മുറയ്ക്ക് അഡ്മിഷൻ നടത്തുന്നതാണ്.


സെക്ഷൻ ഓഫീസർ

K. JYOTHINDRA KUMAR VS. STATE OF KERALA

LAWS(KER)-2012-3-252

TLKER-2012-0-377/KERLT-2012-2-33/KHC-2012-0-252

HIGH COURT OF KERALA

Coram :- C.N.Ramachandran Nair , K.Vinod Chandran J.

Decided on March 06, 2012

W.A.No. 1183 of 2011

K. Jyothindra Kumar

State Of Kerala

VERSUS

Appellant
Respondents

Advocates :-M.R.Rajendran Nair , M.R.Sudheendran , George Mecheril , V.A.Muhammed , M.Sajjad

JUDGEMENT

K.VIOND CHANDRAN, J. -

1.

(i) Can Dentistry be considered to be a specialty of Medicine? (ii) Are the Dentists discriminated by treating them not on Par with Medical doctors? (iii) Is it a matter of mere Perspective and can a Dentist aspire to the Post of Director of Medical Education? (iv) Is there a common seniority list of Tutors in the Medical College Service and Dental College Service in the State? These are the broad questions raised in the above appeal.

2. THE appellant, a Principal of a Government Dental College, stakes his claim for the post of Director of Medical Education in the State of Kerala. THE brief facts leading to the creation of Directorate of Medical Education and thereafter is necessary before focusing on the specific claim made by the appellant. Prior to the creation of the Directorate, the Medical Colleges and the Dental Colleges in the State were under the Department of Health. THE Dental Colleges were situated within the campus of the Medical Colleges and did not have independent existence and the Principal of the Medical College was the Administrative Head of both the Colleges. THERE was in existence Dental departments in the Medical Colleges, where there were no separate Dental Colleges and the teaching staff of the Dental wings of the Medical Colleges constituted separate units and the promotion and appointment in each unit was considered separately. THE teaching staff in the Medical Colleges, coming under the Medical Education Service, even from that time, constituted a distinct and different service. THE Principals of Medical Colleges were appointed only from the Medical Education Service and those persons in the category of teaching staff, either in the Dental Colleges, Thiruvananthapuram or the Dental Departments in the Medical College, could not be and was not appointed to the post of Principal.

Considering the expansion in the field of medical education, the need for a single Directorate to plan and co-ordinate activities relating to education, training and service of Medical, Dental, Nursing and Para-Medical personal was felt. It was in such circumstance that the 5 Medical Colleges in the State, the 2 Dental Colleges, 3 colleges of Nursing and a college of Pharmaceutical Studies were brought under a Directorate by Exhibit P1 on 10.05.1983. The Directorate was mainly entrusted with the administrative functions; but in the context of the same having been established for co-ordinating Medical and other ancillary educational systems, one post of Director and two posts of Joint Director were created. Though these were administrative posts, the Director was from the Medical College service and one each of the Joint Directors from Medical College service and Dental College service. Among the two posts of Joint Director, being equivalent to the cadre of Principal of Medical College, one was set apart for the cadre of Principal, Medical College service and the other to the Dental College service. Even then, it is to be noticed that there was no separate Principal for Dental Colleges and probably considering the increasing significance of Dentistry and also the demands of the teachers in Dental College service, a post of Joint Director was created, which was equivalent to that of a Principal of Medical College. The Joint Director from the Medical College service was designated as Joint Director (M) and that from Dental College service was designated as Joint Director (G).

It was after the creation of the Directorate that by Exhibit P31 dated 19.09.1983, the Dental wings attached to the Medical Colleges were integrated with the Dental College, Thiruvananthapuram; thus creating a common Dental College service. The system of the Principal of the Medical College having administrative control over the Dental Colleges still continued. The Dental Colleges were given independent status only in the year 1996 by Exhibit P4 dated 4.3.1996 and two posts of Principals were created. Hence, the position was that, prior to the creation of Directorate of Medical Education, the Medical, Dental, Pharmacy, Nursing and Para-Medical educational institutions were under the administrative control of the Principal of the respective Medical Colleges and on the creation of a Directorate, all such institutions were brought under the administrative control of such Directorate. The Directorate was headed by a Director from the Medical College service. Of the two posts of Joint Director, one was made equivalent to that of Principal of Medical Colleges and the other was set apart for the Dental College service. While one of the posts of Joint Director was filled up from among the persons qualified to be

Principal in the Medical College service, the eligible person in the Dental College service was posted as the Joint Director (General). On the Dental Colleges being given independent status and two posts of Principals having been sanctioned, the Joint Director (General) was one who had the eligibility to be posted as Principal of a Dental College and the said post was considered to be equivalent to the post of Principal of Dental College.

3. It was while matters stood thus that the appellant, who was sufficiently senior in the Dental College service and entitled to be and was appointed as Principal of a Dental College in the Dental College service, staked the claim to the post of Director of Medical Education. The appellant would contend that the post of Director of Medical Education was filled by promotion from among the Principals in the Medical Colleges, Dental Colleges and Joint Directors based on their seniority from the very inception of the Directorate. The circumstance of one from the Dental College service being senior-most fortuitously arises only now and he being such person; is entitled to be posted as Director of Medical Education. The appellant would contend that ideally feeder category for promotion to the post of Director of Medical Education should be that of the Principals of Medical Colleges and Dental Colleges. The Joint Directors of the Directorate holding posts equivalent to that of the Principal of Medical College and Dental College also would then be included in the feeder category. On the constitution of such an integrated feeder category, the appellant would also claim that in such feeder category the senior-most person ought to be considered for the post of Director of Medical Education first. In such ideal circumstance, as projected by the appellant, the appellant would contend that he being the senior-most in the cadre of Principal of Medical College and Dental College, willingness ought to have been sought from him for appointment to the post of Director of Medical Education.

The cause of action for the appellant's writ petition is that the 3rd respondent, who was then appointed as the Director of Medical Education, was junior to the appellant and that the 4th respondent who, admittedly, was senior to the appellant having not given her willingness to the post of Director of Medical Education, the appellant ought to have been appointed to the post of Director of Medical Education. The said contention no more survives, since respondent No.3 has retired from service and the present incumbent in the post of Director of Medical Education, the 4th respondent, is admittedly senior to the appellant. The appellant, however, urges the appeal against the judgment of the learned Single Judge on the ground that the 4th respondent having not given willingness earlier should be deemed to have relinquished her claim to the said post. The respondents 3 and 4 are from the Medical College service.

4. THE learned Single Judge considered the contentions raised by the appellant and found that as there is no common seniority list of Principals of Dental Colleges and Medical Colleges, the claim of the appellant to the post of Director of Medical Education as being senior in the cadre is of no significance and is only meaningless. THE learned Single Judge also found favour with the averments of the State in the counter affidavit regarding the various policy consideration in confining the feeder category of the Director of Medical Education to those in the Medical College service and found that it pertains to the policy, within the discretion and jurisdiction of the State. THE policy of the State to treat the Principals of Dental Colleges and Principals of Medical Colleges differently was held to be valid classification in the absence of a common cadre, common seniority list and other factors. THE claim of the appellant based on his seniority, i.e., the date of his appointment as Principal of Dental College for being appointed as Director of Medical Education was found to be unacceptable. Refusing to sit in judgment over policy decisions of the State and issue direction to include Principals of Dental Colleges also in the feeder category to the post of Director of Medical Education, the learned Single Judge dismissed the writ petition.

The appellant, hence, is before us in appeal. The appellant/petitioner would contend that there are no executive orders or Special Rules prescribed for the post of Director of Medical Education and that the well established and correct procedure is to promote the senior-most Principal. Exhibit P10 was claimed to be a grossly deviant procedure in so far as willingness for appointment as Director of Medical Education was sought for only from the Principals of Medical Colleges/Joint Director of Medical Education (M). The procedure adopted by Exhibit P10 was also assailed as being highly discriminatory, since no zone of consideration was fixed and Dentistry being a Medical specialty, the Principals of Dental Colleges are also legitimately entitled to consideration for the said post. The appointment of respondent No.4 has been challenged on the ground that she having relinquished her claim earlier, cannot have a claim thereafter. Seniority for appointment to the post of Principal and Medical Education, according to the appellant, has to be reckoned from the date of appointment in the cadre of Principal and on the basis of inter se seniority of Principals of Medical Colleges and Principals of Dental Colleges. The appellant also contended that the Government, as a model employer, has a duty to integrate the departmental hierarchy and provide promotion channel for eligible employees which they are entitled to under Article 16 of the Constitution of India. The appellant, hence, seeks a combined seniority list, of Principals of Dental Colleges, Medical Colleges and Joint Director of Medical Colleges, to be drawn up for consideration to the post of Director of Medical Education.

The main plank of the appellant's challenge is that Dentistry is a specialty of Medicine and a Professor of Dentistry cannot be said to be ineligible to become a Principal of a Medical College. Appellant relies on regulations issued by the Medical Council of India, produced as Exhibit P28, to contend that Dentistry is one of the specialties and a Professor of Dentistry being a medical teacher, is perfectly eligible to become the Principal of a Medical College and as a direct consequence, is entitled to the post of Director of Medical Education; which in any event is an administrative post. The integration of the services is sought for also on the ground that both Medical College teachers and Dental College teachers are included as item 20B of Schedule-I under Rule 7 of the Kerala Civil Services (Classification, Control & Appeal) Rules, 1960. In such circumstance, the appellant contends that his claim to the post of Director of Medical Education is perfectly justified and draws support from the recognition of the Medical Council of India as also the practice followed in the neighbouring States.

5. It is on the basis of the contentions of the appellant noticed above, we have formulated the four questions to be answered in the present appeal. The endeavour of the appellant before us, was to draw broad parallels by referring to the curriculum of

teeth that are defective because of disease, trauma, or abnormal development to normal function health, and appearance; it includes crowns and bridgework" (Dorland's Medical Dictionary for Health Consumers 2007) "den-tist-ry THE science concerned with the prevention, diagnosis, and treatment of diseases of the teeth, gums, and related structures of the mouth and including the repair or replacement of defective teeth". (THE American Heritage Medical Dictionary Copyright 2007, 2004 by Houghton Mifflin Company, Published by Houghton Mifflin Company) "dentistry (den'tistre) the art and science of practicing the diagnosis, prevention, and treatment of diseases and disorders of the teeth and surrounding structures of the oral cavity. Responsibilities include the repair and restoration of teeth, the replacement of missing teeth, and the detection of diseases, such as blood dyscrasias and tumors, that require treatment by a dental specialist or physician. In addition to the general practice of dentistry, there are eight recognized specialties, each requiring additional training after graduation from a dental college: dental public health, endodontics, oral and maxillofacial pathology, oral and maxillofacial surgery, orthodontics and dentofacial orthopedics, pediatric dentistry, periodontics, and prosthodontics". (Mosby's Medical Dictionary, 8th edition). Dentistry, hence, is necessarily one which comes within the parameters of the science of healing, but the professionals practicing it cannot be equated with Medical Doctors. Hence, dentistry definitely cannot be said to be a specialty of medicine, but is one which definitely comes within the broad parameters of the medical field as distinguished from practitioners of Medicine having an essential graduate qualification of M.B.B.S., but occupying a distinct and well recognised professional status as can be discerned from the above definitions. THE question of treating them on par with Medical Doctors does not arise, since both professionals occupy different professional fields which are in no manner interchangeable or possible of integration. One fundamental fact which assumes significance in deciding the question of equation is that a person with an M.B.B.S. degree, whatever his specialty or super specialty is; is legally competent to declare a person dead while one with a B.D.S. degree is not so competent.

Now we come to the question whether a Dentist/Dental Surgeon can aspire to the post of Director of Medical Education. The said question, in our opinion, does not in fact revolve on the question whether a Dentist or a Medical Doctor are similarly placed. It is in the realm of policy of the Sovereign and it is dependent on the services to which each belong. It is to be noticed from the history leading to the creation of the Directorate and thereafter that the Medical College service and Dental College service were never integrated. In fact, the Principal of a Medical College, coming from the Medical College service, was administrative head of the Dental Colleges also. It must be due to the growing significance of Dentistry that the post of Principal of Dental Colleges were created. Even before creation of the post of Principal, the significance of Dentistry was recognised when the Directorate of Medical Education set apart one post of Joint Director (G) to the said service.

One who enters the Medical College service depending upon his seniority and merit, has the opportunity to rise up to the post of Director of Medical Education, since the service to which he belongs provides for the same. The Dental College service, however, considering the lesser significance, for reason inter alia of number of colleges and hence students being lesser, provides an incumbent to rise up to the post of Joint Director (General). It is not the service rules but the posts available or rather the absence of the post in the Dental College service which prevents the Principal of a Dental College from being appointed as Director of Medical Education. The post of Director of Medical Education is not one available in the Dental College service.

9. AS is clear from Exhibit P1, which refers to Medical College service and Dental College service, there is no integration of the two services. The integration of the services in the Dental College, Thiruvananthapuram with the services in the Dental wing attached to the Medical Colleges also did not automatically confer any right on the teaching staff in the Dental College service to be considered for the post of Principal in Medical Colleges. The posts in the two services were never interchangeable, nor was there any integration of the services. Even on the creation of the Directorate of medical Education and the creation of two posts of Joint Director (M) and Joint Director (G), there was no integration of service and a person of the Medical College service could not stake a claim to the post of Joint Director (G) and vice versa.

10. THE contention of the appellant, as noticed above, would be that ideally the feeder category for promotion to the post of Director of Medical Education would be the cadre of Principal of Medical Colleges and Principal of Dental Colleges as also the Joint Director (M) and Joint Director (G). THE theory propounded by the appellant remains in the realm of Utopian idealism. THERE cannot be and there is not in existence a common seniority list for Principal of Medical Colleges and Principal of Dental Colleges. If, as contended by the appellant, there is an integration of services in the post of Principal in the Medical Colleges and Dental Colleges, necessarily the posts should be interchangeable. Nobody has a case that a person having graduate qualification of M.B.B.S. can aspire to be a Principal of Dental College or vice-versa. THE appellant's case is not that the Director of Medical Education should be selected from the incumbents holding the post of Joint Director. THE appellant's contention is that there should be a common seniority in the cadre of Principal of Medical Colleges and Dental Colleges, from which the senior-most should be posted as Director of Medical Education. We are unable to accept such a contention, especially in the context of the services being distinct and separate and the incumbents in each service being entitled only to the post available in their respective services alone. Reciprocal arrangements by which certain tutors in the Medical College service teaching specified subjects in the Dental Colleges and the tutors in the Dental College service teaching Dentistry to M.B.B.S. students cannot lead to a conclusion of integration of services. Admittedly earlier there were three services, viz., Medical College service, Dental College service and Dental Departments in Medical Colleges. THE latter of which was integrated with the Thiruvananthapuram Dental College and the Medical College services and Dental College services were always distinct and separate.

The appellant relies on the decision of the Supreme Court reported in State of A.P. v. N. Ramachandra Rao [(1990) 3 SCC

M.B.B.S. and B.D.S. are also what effectively is practised by both the professionals and contend that Dentistry is a specialty of medicine and Dentists/Dental Surgeons are similar to Medical Doctors. Medicine has been recognised as the science and art of healing and has its genesis as old as the history of man. Healing must have originated with the aid of natural elements like plants and minerals and then went on to spiritual healing. With the development of culture and society, the practice of medicine included prevention along with treatment of illness. The practices of prevention and treatment of illness were then reduced to writing. The early records on medicine discovered in the ancient civilizations show indigenous systems following authoritative texts. Ayurveda, developed in the Indian sub-continent, is an example of this.

6. THE major shift in the West occurred with the gradual rejection of the "traditional authority" and the shift to the "trial and error method". However, medicine was practised by general practitioners and the treatment of patients, manufacture of medicines and administration of the same was their exclusive premise. Dentistry also was practised by the general practitioners and at some point came to be treated as a separate discipline from medicine, but still within the broad frame work of the medical field. Veterinary medicine also likewise was separated from human medicine. With the institutionalization of treatment practices, two major specialties on the broad categories of "medicine" and "surgery" came into existence. Together with it, came the para medical services. Institutionalization and large scale research in the field of medicine brought in its wake legal control making it mandatory for a medical practitioner to be licensed or registered. THE complex know-how generated on research and the advances in the medical field created specialties and super specialties.

Gone are the days of the general practitioner, called the family doctor; attending to each and every ailment and gone are the days of a child being lured to a Dentist with the story of a ?tooth fairy?. Technological advancement and research, as in every walk of life, has overtaken patient care. Area of operation of practitioners have narrowed down with clear and well demarcated boundaries; zealously guarded by each fraternity within the medical fraternity. In these days of super specialty, in mirth, but without any levity, it has been often said that specialty has reached a stage where a specialist knows everything about the left ear and nothing about the right one.

In the early twentieth century, diplomas and even evidence of customary and hereditary practices could entitle a person to get a valid licence for practise of medicine and dentistry. But towards the latter quarter of the century doctors and dentists had to have a basic graduation of a minimum term of four years with an internship for one additional year. Most, nay all, then go for specialties and super specialties. It is the basic degree that qualifies the profession and it cannot be disputed that the graduate course of M.B.B.S. and B.D.S. is distinct and different in content, form, theory, practicals and rigor of training. The degrees awarded on successful completion too differs in content, form and application.

7. IT is in such circumstance that the appellant, a Dental Surgeon, seeks parity with a Medical Doctor, of course to stake the claim for an administrative post. The mere parallels drawn in the curriculum cannot decide the end product or what a student is eventually prepared for. The entire curriculum including theory and practicals in a professional course is designed on the basis of the work the professional is expected to do on qualifying the same. IT is nobody?s case that a Doctor or a Dentist is trained in a similar manner, in which case there was no necessity for having two different graduate systems postulated for each. The professional diversification occurs after the higher secondary level and at the graduate stage. The qualification necessary for entry into the professional course being similar cannot at all lead to drawing parallels in the profession. The fact that the essential graduate qualification for being licensed or registered as a Medical Doctor and Dentist/Dental Surgeon is different is a clear point of distinction between the two professions.

The advancements in the medical field are equaled by the advancements in Dentistry. It is also to be recognised that both have attained cosmetic dimensions too. There are also specialties and super specialties in Dentistry. Without for a moment discounting the significance of Dentistry, we do not think that a Medical Doctor can be equated with a Dentist/Dental Surgeon. They stand on a distinct and different platform altogether with definite status in their respective platforms, incapable of comparison or equation by any amount of legal overreach. The fact that they are governed by separate enactments and are controlled by different statutory Councils also leads to the very same conclusion. Exhibit P3 stipulates that the posts in Dental service also should be treated as Medical posts and must be brought under the Directorate General of Health Services. This does not, however, lead to an equation of the Medical Doctors with Dentists/Dental Surgeons; nor does it create or suggest any integration. The mere inclusion of Dentistry in Exhibit P28 also cannot lead to equation of the two categories. A close reading of Exhibit P28 would show that clause (2) of Schedule I provides for appointment of non-medical teachers in the Departments of Anatomy, Physiology, Bio-chemistry, Pharmacology and Microbiology. Relaxation also has been provided for accommodating such teachers as Heads of Department, however, only subject to prior approval of Medical Council of India. What is highlighted in the Schedule is that no non-medical person shall be appointed as Director or Principal or Dean or Medical Superintendent. The said prohibition equally applies to the teachers qualified to be and appointed as teachers in the teaching specialty "Dentistry".

8. THE definitions of "dentistry", as has been extracted from Medical Dictionaries, are given below: "dentistry/ den tis try / den?tis-tre) 1. that branch of the healing arts concerned with the teeth, oral cavity, and associated structures including prevention diagnosis, and treatment of disease and restoration of defective or missing tissue. 2. the work done by dentists, e.g., the creation of restorations, crowns, and bridges, and surgical procedures performed in and about the oral cavity. holistic dentistry dental practice that takes into account the effect of dental treatment and materials on the overall health of the individual. operative dentistry dentistry concerned with restoration of parts of the teeth that are defective as a result of disease, trauma, or abnormal development to a state of normal function, health, and aesthetics. preventive dentistry dentistry concerned with maintenance of a normal masticating mechanism by fortifying the structures of the oral cavity against damage and disease. prosthetic dentistry prosthodontics. restorative dentistry dentistry concerned with the restoration of existing

590] to contend that the promotions allowed on the basis of the respective specialities and the availability of promotional vacancies in such specialities would lead to juniors with relatively less important specialty, getting quick promotion, thus permitting a march over their seniors for appointment to administrative posts. The appellant would contend that any advantage so gained by the juniors on such fortuitous circumstances was deprecated by the Supreme Court and it was held that the seniority determined in the order of specialty should not therefore be the basis for promotion to administrative posts. The crucial point to be noticed is that the parties to the said case were holding posts which were interchangeable and inter-transferable and available in one substantive cadre with higher qualifications prescribed for holding a higher post. The said situation is not available here and the primacy of a person in the Medical College service with respect to Medical education as such cannot at all be disputed. The appellant's counsel also relied on the decision reported in A.L. Kalra v. The Project and Equipment Corporation of India [(1984) 3 SCC 316] to contend that wisdom of the legislative policy may not be open to judicial review, but when the wisdom takes the concrete form of law, the same must stand the test of being in tune with the fundamental rights and if it trenches upon any of the fundamental rights, it is void as ordained by Article 13. The violation of fundamental rights by reason of the classification on the ground of arbitrariness and discrimination is not available in the present case. The further reliance placed on the decision of the Supreme Court in Manmad Reddy B. and others v. Chandra Prakash Reddy and Others (C.A.Nos.933, 934, 935, 937, 938 and 939 of 2004 decided on 17.02.2010) is also not relevant, since in the present case the classification does not result in an artificial inequality; on the contrary it is fair, intelligible and reasonable. The said case arose from an instance of persons drawn from different sources and integrated into one class/cadre/category were classified for purposes of promotion on the basis of the source from which they were drawn. In the present case, we have found that there was no integration of cadre in the post of Principals, since the post of Principal in Medical College and Dental College remained separate and distinct. The post of Joint Directors also was in the respective services and were equivalent to the post of Principal in each service and was not interchangeable. The classification cannot by any stretch of imagination be termed to be of equals.

The classification resorted to by the Government between the Medical College service and the Dental College service, according to us, is proper and satisfies the twin tests of classification, which was reiterated by the Supreme Court in the decision reported in Food Corporation of India v. Bhartiya Khadya Nigam Karmachari Sangh [(2012) 2 SCC 307] as follows: - "a separate and distinct class and such classification is a reasonable one based on intelligible differentia having nexus with the object sought to be achieved". Exhibit P22 provides for two posts in the administrative cadre, being Director of Medical Education and Joint Director of Medical Education (M)/Principal of Medical Colleges. Obviously the administrative cadre available in the Dental College service is of the Joint Director of Medical Education (G)/Principal of Dental Colleges. The absence of a post or a promotional avenue cannot lead to a writ being issued, since the same would necessarily result in a judicial overreach into the exclusive premise of policy specifically assigned to the Sovereign State. The reliance placed on the practice followed in the other States cannot also provide any help to the appellant since, as held by the learned Single Judge if the rules in the particular State provides for a Dental Surgeon to be posted as Director of Medical Education, then that alone cannot be a reason to determine the policy of another State. The elbow room available in the matter of policy formulation of each State based on its own wisdom is well recognised by the Supreme Court in Nair Service Society v. Dr.T.Beeramasthan and others [(2009) 5 SCC 545]. The well established and correct procedure projected by the appellant of choosing the senior most Principal from among that of Medical Colleges and Dental Colleges cannot be a norm in the absence of any such common cadre. We are in perfect agreement with the learned Single Judge's refusal to tinker with the policy of the State in the garb of judicial review, placing reliance on P.U.Joshi and others v. Accountant General, Ahmedabad and others [(2003) 2 SCC 6322]. The procedure prescribed by Exhibit P10 cannot at all be termed as grossly deviant, since the appointment to the post of Director of Medical Education can only be from the cadre of Principals of Medical Colleges/Joint Director of Medical Education (M). The same cannot also be termed to be discriminatory. In view of our findings regarding the validity of the classification, the validity of the appointment of the 4th respondent in view of her relinquishment is not an issue that can be agitated by the appellant.

11. THE further contention of both Medical College teachers and Dental College teachers being included in Item 20B of Schedule-I under Rule 7 of the Kerala Civil Services (Classification, Control & Appeal) Rules also does not support the case of the appellant, since though they were included in the same item under 20B, the special rules applicable to the Medical College service and Dental College service are separate, thus making the services distinct and separate. THE relief sought by the appellant/petitioner himself is to declare the appellant entitled to be considered for appointment to the post of Director of Medical Education as a consequence of the declaration of Exhibit P22 to be void to the extent of non-inclusion of category of Principals of Government Dental Colleges. THE contention that Exhibit P22 is void for violation of Medical Council of India Regulations by reason of exclusion of Dentistry is contrary to the appellant's own contention that the Director of Medical Education is not a post stipulated or controlled by Medical Council of India Regulations.

In the above circumstances, we are of the opinion that the judgment of the learned Single Judge cannot be interfered with on any count and we affirm the same and as a consequence, dismiss the above appeal, however, without costs.

ITEM NO.25

Court No.10

SECTION XIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil)...../2012
CC 18588/2012

(From the judgement and order dated 06/03/2012 in WA No.1183/2011, of
The
HIGH COURT OF KERALA AT ERNAKULAM)

K. JYOTHINDRA KUMAR

Petitioner(s)

VERSUS

STATE OF KERALA & ORS.

Respondent(s)

With I.A. No. 1 (c/delay in filing)

Date: 19/10/2012 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MRS. JUSTICE GYAN SUDHA MISRA

For Petitioner(s)

Mr. V.Giri, Sr. adv.
Mr. P.V. Dinesh, Adv.
Mr. T.P.Sindhu, a dv.

For Respondent(s)

UPON hearing counsel the Court made the following
O R D E R

Heard.
Delay condoned.
We see no reason to interfere with the impugned order.
The special leave petition is dismissed.

(Shashi Sareen)

(Veena Khara)

Court Master

Court Master

(Handwritten signature)
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