

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

ITANAGAR PERMANENT BENCH

1. WP(c) NO. 308(AP)2017

- 1. Dr. Durbo Tayeng**
S/o Madak Tayeng, presently serving as the General Duty Medical Officer, Dental Surgeon, Community Health Center, Parbuk, Lower Dibang Valley District, Arunachal Pradesh. Ph. 9862631800
- 2. Dr. Binta Picha**
S/o Lt. Tabin Picha, presently serving as the General Duty Medical Officer, Dental Surgeon, Community Health Center, Pakke Kesang, PO/PS- Seppa, East Kameng District, Arunachal Pradesh.
- 3. Dr. (Ms.) Ogam Taggu**
D/o Talo Taggu, presently serving as the General Duty Medical Officer, Dental Surgeon, Community Health Center, Pangin, PO/PS- Pangin, Siang District, Arunachal Pradesh.
- 4. Dr. Pema Wangchu Thongdok**
S/o Tsering Thongdok, presently serving as the General Duty Medical Officer, Dental Surgeon, Community Health Center, Rupa, PO/PS- Rupa, West Kameng District, Arunachal Pradesh.
- 5. Dr. (Ms.) Tomnya Aboh**
D/o Thajam Aboh, presently serving as the General Duty Medical Officer, Dental Surgeon, Community Health Center, Khonsa, PO/PS- Khonsa, Tirap District, Arunachal Pradesh.
- 6. Dr. (Mrs.) Dakter Basar Taso**
S/o Lt. Todak Basar, presently erving as the General Duty Medical Officer, Dental Surgeon, Community Health Center, Basar, PO/PS- Basar, West Siang District, Arunachal Pradesh.
- 7. Dr. Jempo Taiju**, S/o Thinghap Taiju, presently serving as the General Duty Medical Officer, Dental Surgeon, Community Health Center, Changlang, PO/PS- Changlang, Changlang District, Arunachal Pradesh.

.....*Petitioners*

- *Versus* -

1. The State of Arunachal Pradesh represented by the Commissioner, Health and Family Welfare, Government of Arunachal Pradesh, Itanagar.
2. The Director, Health and Family Welfare, Government of Arunachal Pradesh, Naharlagun.
3. The Mission Director, National Health Mission, Government of Arunachal Pradesh, Naharlagun.
4. **Dr. Obang Modi**, Presently serving as the Medical Officer(RBSK) Dental Surgeon, Yingkiong, C/o District Medical Officer, Upper Siang District, Government of Arunachal Pradesh.
5. **Dr. Achak Bagang**, Presently serving as the Medical Officer(RBSK) Dental Surgeon, Yupia, C/o District Medical Officer, Papum Pare District, Government of Arunachal Pradesh.
6. **Dr. Toko Papu**, Presently serving as the Medical Officer(RBSK) Dental Surgeon, Yupia, C/o District Medical Officer, Papum Pare District, Government of Arunachal Pradesh.
7. **Dr. Yamik Kena**, Presently serving as the Medical Officer(RBSK) Dental Surgeon, Yupia, C/o District Medical Officer, Upper Subansiri District, Government of Arunachal Pradesh.
8. **Dr. Padi Kamin**, Presently serving as the Medical Officer(RBSK) Dental Surgeon, Ziro, C/o District Medical Officer, Lower Subansiri District, Government of Arunachal Pradesh.
9. **Dr. Lishi Yalu**, Presently serving as the Medical Officer(RBSK) Dental Surgeon, Yupia, C/o District Medical Officer, Papum Pare District, Government of Arunachal Pradesh.
10. **Dr. Sonya Tatin**, Presently serving as the Medical Officer(RBSK) Dental Surgeon, Pasighat, C/o District Medical Officer, East Siang District, Government of Arunachal Pradesh.
11. **Dr. Marto Nyodu**, Presently serving as the Medical Officer(RBSK) Dental Surgeon, Aalo, C/o District Medical Officer, West Siang District, Government of Arunachal Pradesh.
12. **Dr. Gebi Loya**, Presently serving as the Medical Officer(RBSK) Dental Surgeon, Aalo, C/o District Medical Officer, West Siang District, Government of Arunachal Pradesh.

13. **Dr. Kime Hachang**, Presently serving as the Medical Officer(RBSK) Dental Surgeon, Bomdila, C/o District Medical Officer, West Kameng District, Government of Arunachal Pradesh.
14. **Dr. Gitum Romin**, Presently serving as the Medical Officer(RBSK) Dental Surgeon, Changlang, C/o District Medical Officer, Changlang District, Government of Arunachal Pradesh.
15. **Dr. Chahon Matey**, Presently serving as the General Duty Medical Officer, Dental Surgeon, Community Health Centre, Longding, District Longding, Government of Arunachal Pradesh.
16. **Dr. Mamin Tayeng**, Presently serving as the General Duty Medical Officer, Dental Surgeon, Community Health Centre, Dirang, District West Kameng, Government of Arunachal Pradesh.
17. **Dr. Tali Mugli**, Dental Surgeon, C/o the Commissioner, Health and Family Welfare, Government of Arunachal Pradesh, Itanagar.
18. **Dr. Takam Sonia**, Presently serving as the General Duty Medical Officer, Dental Surgeon, Community Health Centre, Palin, Kra-Daadi District, Arunachal Pradesh.
19. **Dr. Kengam Ninu**, Presently serving as the General Duty Medical Officer, Dental Surgeon, Community Health Centre, Likabali, West Siang District, Government of Arunachal Pradesh.
20. **Dr. Angela Bado**, Presently serving as the General Duty Medical Officer, Dental Surgeon, Community Health Centre, Old Ziro, Lower Subansiri District, Government of Arunachal Pradesh.
21. **Dr. Haj Sai**, Presently serving as the General Duty Medical Officer, Dental Surgeon, Community Health Centre, Nafra, West Kameng District, Government of Arunachal Pradesh.
22. **Dr. Rajani Goyal**, Presently serving as the General Duty Medical Officer, Dental Surgeon, Community Health Centre, Dayum, Changlang District, Government of Arunachal Pradesh.
23. **The Chairperson**
A.P. State Health Society-cum-Chief Secretary, Government of Arunachal Pradesh, Itanagar.

.....*Respondents*

Advocates for the petitioners :

Mr. Tony Pertin
Mr. Binter Picha
Mr. H. Rime

Mr. G. Bam
Mr. R. L. Thungon
Mr. Kamal Saxena
Mr. Heli Kato Jamoh
Mr. M. Pertin

Advocates for the respondents:-

Mr. Kardak Ete, Senior Addl. A.G., Arunachal Pradesh
Mr. Taba Tagum, standing counsel(Health)

Mr. Ninnong Ratan
Mr. Keeke Loya
Mr. T. Taggu
Mr. Mepe Ete
Mr. R. Ngomle
Mr. M. Ninu
Mr. B. Tajik

Mr. Jakir Hussain

Mr. Dicky Panging
Mr. Vijay Jamoh
Ms. Diana Tamuk
Mr. Marconi Doji
Ms. Mina Gibi

Mr. Gimi Tarak
Mr. Taja Garam
Mr. L. Asha
Mr. S. Taga
Mr. B. Ganga

2. WP(c) NO. 709(AP)2017

- 1. Dr. Binta Picha**
S/o Lt. Tabin Picha, presently serving as the General Duty Medical Officer, Dental Surgeon, Community Health Center, Pakke Kesang, PO/PS- Seppa, East Kameng District, Arunachal Pradesh. M-8259961607
- 2. Dr. Durbo Tayeng**
S/o Madak Tayeng, presently serving as the General Duty Medical Officer, Dental Surgeon, Community Health Center, Parbuk, Lower Dibang Valley District, Arunachal Pradesh.
- 3. Dr. (Ms.) Ogam Taggu**
D/o Talo Taggu, presently serving as the General Duty Medical Officer, Dental Surgeon, Community Health Center, Pangin, PO/PS- Pangin, Siang District, Arunachal Pradesh.

4. **Dr. Pema Wangchu Thongdok**
S/o Tsering Thongdok, presently serving as the General Duty Medical Officer, Dental Surgeon, Community Health Center, Rupa, PO/PS- Rupa, West Kameng District, Arunachal Pradesh.
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D/o Thajam Aboh, presently serving as the General Duty Medical Officer, Dental Surgeon, Community Health Center, Khonsa, PO/PS- Khonsa, Tirap District, Arunachal Pradesh.
6. **Dr. (Mrs.) Dakter Basar Taso**
S/o Lt. Todak Basar, presently erving as the General Duty Medical Officer, Dental Surgeon, Community Health Center, Basar, PO/PS- Basar, West Siang District, Arunachal Pradesh.
7. **Dr. Jempo Taiju**, S/o Thinghap Taiju, presently serving as the General Duty Medical Officer, Dental Surgeon, Community Health Center, Changlang, PO/PS- Changlang, Changlang District, Arunachal Pradesh.

.....*Petitioners*

- *Versus* -

1. The State of Arunachal Pradesh, represented by the Commissioner, Health and Family Welfare, Government of Arunachal Pradesh, Itanagar.
2. The Under Secretary, Health and Family Welfare, Government of Arunachal Pradesh, Itanagar.
3. The Director, Health and Family Welfare, Government of Arunachal Pradesh, Naharlagun.
4. The Mission Director, National Health Mission, Government of Arunachal Pradesh, Naharlagun.
5. **Dr. Chahon Matey**, Presently serving as the General Duty Medical Officer, Dental Surgeon, Community Health Centre, Longding, District Longding, Government of Arunachal Pradesh.
6. **Dr. Sonya Tatin**, Presently serving as the Medical Officer(RBSK) Dental Surgeon, Pasighat, C/o District Medical Officer, East Siang District, Government of Arunachal Pradesh.
7. **Dr. Gebi Loya**, presently serving as the Medical Officer(RBSK), Dental Surgeon, Aalo, C/o District Medical Officer, West Siang District, Government of Arunachal Pradesh.

8. **Dr. Toko Papu**, presently serving as the Medical Officer(RBSK), Dental Surgeon, Yupia, C/o District Medical Officer, Papum Pare District, Government of Arunachal Pradesh.
9. **Dr. Marto Nyodu**, Presently serving as the Medical Officer(RBSK) Dental Surgeon, Aalo, C/o District Medical Officer, West Siang District, Government of Arunachal Pradesh.
10. **Dr. Yamik Kena**, Presently serving as the Medical Officer(RBSK) Dental Surgeon, Yupia, C/o District Medical Officer, Upper Subansiri District, Government of Arunachal Pradesh.
11. **Dr. Obang Modi**, Presently serving as the Medical Officer(RBSK) Dental Surgeon, Yingkiong, C/o District Medical Officer, Upper Siang District, Government of Arunachal Pradesh.
12. **Dr. Achak Bagang**, Presently serving as the Medical Officer(RBSK) Dental Surgeon, Yupia, C/o District Medical Officer, Papum Pare District, Government of Arunachal Pradesh.
13. **Dr. Lishi Yalu**, Presently serving as the Medical Officer(RBSK) Dental Surgeon, Yupia, C/o District Medical Officer, Papum Pare District, Government of Arunachal Pradesh.
14. **Dr. Padi Kamin**, Presently serving as the Medical Officer(RBSK) Dental Surgeon, Ziro, C/o District Medical Officer, Lower Subansiri District, Government of Arunachal Pradesh.
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16. **Dr. Rajani Goyal**, Presently serving as the General Duty Medical Officer, Dental Surgeon, Community Health Centre, Dayum, Changlang District, Government of Arunachal Pradesh.
17. **Dr. Takam Sonia**, Presently serving as the General Duty Medical Officer, Dental Surgeon, Community Health Centre, Palin, Kra-Daadi District, Arunachal Pradesh.
18. **Dr. Kengam Ninu**, Presently serving as the General Duty Medical Officer, Dental Surgeon, Community Health Centre, Likabali, West Siang District, Government of Arunachal Pradesh.
19. **Dr. Haj Sai**, Presently serving as the General Duty Medical Officer, Dental Surgeon, Community Health Centre, Nafra, West Kameng District, Government of Arunachal Pradesh.

20. **Dr. Angela Bado**, Presently serving as the General Duty Medical Officer, Dental Surgeon, Community Health Centre, Old Ziro, Lower Subansiri District, Government of Arunachal Pradesh.
21. **Dr. Tali Mugli**, Dental Surgeon, District Hospital, Daporijo, PO/PS – Daporijo, Upper Subansiri District, Arunachal Pradesh, Itanagar.
22. The Chairperson, A.P. State Health Society-cum-Chief Secretary, Government of Arunachal Pradesh, Itanagar.

.....*Respondents*

Advocates for the petitioners : Mr. Kento Jini
Mr. T. T. Tara
Mr. Duksor Loyi
Mr. Binter Picha
Mr. J. Jini
Mr. G. Bam
Mr. S. Ketan
Mr. M. Rime
Mr. A. T. Tara

Advocates for the respondents: Mr. Kardak Ete, Senior Addl. A.G.,
Arunachal Pradesh
Mr. Taba Tagum, standing counsel(Health)

Mr. Ninnong Ratan

Mr. A. K. Singh
Mr. D. T. Sermupa
Mr. T. Bagang
Mr. T. Tsering

B E F O R E
HON'BLE MR. JUSTICE AJIT BORTHAKUR

Date of hearing : 06.03.2018

Date of Judgment & order : 20.04.2018

JUDGMENT AND ORDER(CAV)

Heard Mr. Tony Pertin, learned counsel, assisted by Mr. Binter Picha, learned counsel, appearing on behalf of the petitioners, in both these writ petitions.

Also heard (i). Mr. Kardak Ete, learned Senior Addl. Advocate General, Arunachal Pradesh, *assisted* by Mr. Taba Tagum, learned standing counsel, Health Department, appearing on behalf of State Respondents No. 1 to 3; (ii). Mr. Ninnong Ratan, learned counsel appearing on behalf of private Respondents No. 4 to 12 in WP(c)308(AP)2017 and for respondents No. 6 to 14 in WP(c)709(AP)2017; (iii). Mr. Jakir Hussain, learned counsel for private Respondents No. 15 & 16 in WP(c)308(AP)2017; (iv). Mr. Dicky Panging, learned counsel for private Respondents No. 17 in WP(c)308(AP)2017 and for respondent No. 21 in WP(c)709 (AP)2017; and (v). Mr. Gimi Tarak, learned counsel for respondents No. 18 to 22 in WP(c)308(AP)2017 and for the applicant in I.A. 106(AP)2017.

2. The petitioners, in this case i.e. WP(c)308(AP)2017, are presently serving as the General Duty Medical Officer(for short, 'GDMO'), Dental Surgeon.

Brief facts of the case, noted above, which is the leading case, is that, the Government of Arunachal Pradesh through the Mission Director, National Health Mission('NHM', for short), had issued an advertisement for appointment of contractual GDM, Dental Surgeon, in the Department of National Health Mission, Government of Arunachal Pradesh. The petitioners accordingly participated in the selection process. Thereafter, the petitioners were appointed to the post of GDMO, Dental Surgeon, on contractual basis under the NHM programme on a monthly fixed pay of Rs. 30,000/-.

In the meantime, the State Government, vide order, dated 14.04.2016, created the posts of GDMO, Dental Surgeon, for General Hospitals(GHs), District Hospitals(DHs), Community Health Centres(CHCs) and Primary Health Centres (PHCs). The State Government, vide Cabinet decision, dated 04.01.2017, decided to regularize the services of the contractual GDMO, Dental Surgeon, which was duly published by the State Government through the local dailies on 05.01.2017. However, the petitioners came to know that the respondent authorities are trying to manipulate the Cabinet decision, dated

04.01.2017, by preparing an illegal seniority list and clubbing the Dental Surgeons employed under the RBSK and the Dental Surgeons employed as GDMO, in one single group, on extraneous consideration.

According to the petitioners, the GDMOs, Dental Surgeon, render their services, round the clock, in GHs, DHs, CHCs, and PHCs, whereas the RBSK Dental Surgeons are not attached to any hospital establishments and their primary work is to visit Schools, once in a month, as they have been appointed under the School Health Programme(SHP). As such, the GDMO, Dental Surgeon and RBSK Dental Surgeon, form separate cadres. Being conscious of such development, the instant petitioners submitted a representation, dated 17.01.2017, before the Commissioner, Health & Family Welfare, Government of Arunachal Pradesh, for appropriate action prior to publication of the impugned seniority list.

3. The petitioners and the private respondents are working under the National Health Mission(NHM), a centrally sponsored scheme, which is headed by the Mission Director, NHM, Government of Arunachal Pradesh. The Mission Director is their appointing authority and hence, the ultimate authority to decide their seniority list. According to the petitioners, the Mission Director had already prepared the seniority lists of GDMOs, Dental Surgeon, and MO, RBSK, DS, separately, and submitted the same to the respondent Commissioner, Health & Family Welfare, Government of Arunachal Pradesh. It is alleged by the petitioners that the respondent No. 1 had prepared his own seniority list, dated 01.02.2017, impugned herein, wherein the Dental Surgeon employed under RBSK with the GDMOs, Dental Surgeon, were clubbed together. Being further aggrieved, the petitioners submitted another representation, dated 09.02.2017, stating, *inter alia* that the Dental Surgeon employed under RBSK(private respondents, herein), are totally different from the GDMO(petitioners, herein) and as such, the services of Dental Surgeon employed under RBSK cannot be equated with GDMOs, which can be very-well gathered from their appointment orders, and therefore, they cannot be clubbed in one group. The apprehension

of the petitioners is that the respondent authorities may regularize the services of Dental Surgeons under RBSK, on extraneous consideration and any time, soon.

4. The petitioners have fairly admitted that they were initially appointed as the Dental Surgeon under the RBSK which was earlier known as SHP, vide order, dated 20.12.2012. However, the petitioners participated in the selection process of GDMO and got appointment as such. It is the case of the petitioners that the private respondents i.e. Dental Surgeons under RBSK are paid with the monthly fixed remuneration of Rs. 15,000/- p.m., whereas the petitioners i.e. GDMOs, Dental Surgeon, were initially paid Rs. 30,000/- p.m. and presently, they are getting Rs. 38,000/-, p.m., with 5% annual increment. As stated above, the employment of private respondents as Dental Surgeons under RBSK programme is only confined to schools and as such, their duties are strictly mobile in nature and visiting schools only to carry-out child health screening activities. Despite such palpable differences between the job/responsibilities of the GDMOs, Dental Surgeon and Dental Surgeon, RBSK; the respondent authorities, most illegally, published the impugned seniority list, dated 01.02.2017. As regards the charter of duties, the Mission Director, National Health Mission, has issued an order, dated 14.03.2013, stating that "the SHP team/s posted at your district is solely for School Health Screening purpose and not for posting/catering services either in DHs, PHCs and CHCs".

5. Being highly aggrieved, the petitioners had filed a writ petition before this Court being WP(c)209(AP)2017. It is contended that all the issues raised in the instant writ petition, were raised in the said writ petition, which was, disposed of, vide judgment & order, dated 04.05.2017, directing the respondent No. 1 to dispose of the representations of the petitioners, dated 17.01.2017 and 09.02.2017, within one month from the date of receipt of the said judgment & order. The impugned seniority list, dated 01.02.2017, was also suspended by the said order. The order was placed before the authority concerned i.e. respondent No. 1, on 05.05.2017. But the respondent authority without any

justification added one Sri Tali Mugli, who was never in service, in the seniority list, before disposing of the representations in terms of the judgment & order, dated 04.05.2017. In that regard, the petitioners have also filed an RTI.

6. The said representations, dated 17.01.2017 and 09.02.2017, were finally disposed of by the authority concerned vide order, dated 09.06.2017, and a copy of the same were furnished to the petitioners only on 12.06.2017. In the said order, which is alleged to be vague, the respondent No. 1 without any rationale, equated the services of the GDMOs, Dental Surgeon with the service of the Medical Officers, RBSK, Dental Surgeon, despite acknowledging the fact that they have separate charter of duties.

7. According to the petitioners, the proposed regularization under the Dental Branch meant only for the GDMOs and not for the Medical Officers, Dental Surgeon serving under the RBSK. In fact, the MO, RBSK, Dental Surgeon, does not come within the meaning of the GDMO. By preparing the impugned seniority list, dated 01.02.2017, the respondent authorities are making an effort to give the benefit of the Cabinet decision, dated 04.01.2017, to the MOs, RBSK, Dental Surgeon, and the writ petitioners may be denied of their legal regularization. It is the claim of the petitioners that though the petitioners and private respondents possess equal qualification, however, they cannot be combined in the same seniority list as their charter of duties, pay scale and initial appointments were made separately for separate posts.

8. It is the further case of the petitioners that though the list prepared by the respondent authority is said to be based on merit as per the *viva voce* interview, however, two candidates, namely, Dr. Chahon Matey and Dr. Mamin Tayeng do not have any record of selection process in the office of the National Health Mission.

9. The petitioners, in this case i.e. WP(c)308(AP)2017, have, therefore, pleaded for the following reliefs:

- (i).** That this Court may set aside the impugned seniority list, dated 01.02.2017, and any other seniority list of the GDMO(Dental Surgeon);
- (ii).** That this Court may set aside the subsequent disposal order, dated 09.06.2017, passed on the representations, dated 17.01.2017 and 09.02.2017, by the respondent No. 1;
- (iii).** That this Court may set aside the appointment order of Dr. Tali Mugli as Dental Surgeon;
- (iv).** For a direction to the respondent authorities to separate the seniority list of the Dental Surgeons employed under the RBSK from the list of GDMOs; and
- (v).** For a direction to the respondent authorities to accept and rely on the seniority list of the GDMOs prepared by the Mission Director, National Health Mission for regularization of the GDMOs.

10. Mr. Tagum, learned standing counsel, Health Department, by relying on the affidavit-in-opposition filed by the State Respondents No. 1 to 3, has specifically averred that the appointment/recruitment and promotion of Doctors in the State of Arunachal Pradesh is governed by the Arunachal Pradesh Health Services Rules, 2000, wherein, there is no cadre like GDMO under Dental Surgeon. The only recognized cadre under the Rules is 'Dental Surgeon'. The expression "GDMO" is a common phrase which indicates the nature of duty of the Medical Officer. Therefore, the Dental Surgeon under the RBSK is also the GDMOs at field level performing similar nature of duty as of the GDMOs attached to any Hospital establishments.

11. Mr. Tagum, has also specifically pleaded that there is no separate cadre like GDMO(Dental Surgeon) and Dental Surgeon(RBSK). According to him, the Dental Surgeon attached to a Hospital is called GDMO and he performs curative

curativeservices, whereas the Dental Surgeon under the RBSK is engaged for rendering preventive medical services at schools and field levels as per the programme of National Health Mission.

12. The other categorical averment of Mr. Tagum, is that the term 'GDMO' is not the name of any cadre but it is simply a term being used in respect of nature of duty of the Medical Officer. In fact, the Medical Officer attached to a Hospital and Medical Officer at field level(RBSK), are in general duty and they are, therefore, called 'GDMO' and in other States of India, both are known as GDMO.

13. It is also pleaded by Mr. Tagum, learned standing counsel, that various contractual doctors and other sub-ordinate staff working under different vertical programmes like Non-communicable Diseases(NCD), Revised National Tuberculosis Control Programme(RNTCP), and Arunachal Pradesh State Aids Control Society(APSACS), which are not under the National Health Mission (NHM) were also regularized along with the GDMOs(allopathy) and other staff, by treating them at par and by following the same pattern of combined *inter-se* seniority list.

14. The other germane argument advanced by Mr. Tagum, learned standing counsel, in the affidavit-in-opposition is that, in the Cabinet Note initiated by the respondent No. 1 i.e. Commissioner, Health & Family Welfare, there is no specific mention about the term GDMO(Dental Surgeon), but a mention has been made only as regards 16(sixteen) Dental Surgeons. Against the allegation that the APPSC has declined to conduct the interview in terms of the Cabinet Meeting, dated 04.01.2017, it has been clarified by the learned standing counsel that the respondent APPSC declined to conduct the interview as the same was not meant for a fresh recruitment process and the process of regularization was meant only for the serving contractual MOs. Therefore, the said interview was done away by the State Government vide Cabinet Decision, dated 21.04.2017, and the power/authority to regularize the MOs, was given to

the Department concerned. According to him, the Dental Surgeon(GDMO) and Dental Surgeon(RBSK) stand on the same footing as in respect of requisite qualification and cadre, hence, they cannot be discriminated, consequently, the *inter-se* seniority list prepared by the respondent No. 1 has been accepted as the criteria for regularization/absorption of their service in the Health & Family Welfare Department.

15. In the said affidavit-in-opposition, more specifically, in Paragraph No. 5.2, the State Respondents have contended that it is an admitted fact that the private respondents were appointed prior to the petitioners and as such, seniority cannot be given to them who were not even borne in the cadre. It is a well-settled position of service jurisprudence that amongst members of the same grade, seniority is reckoned from the date of their initial entry into the service. This being the settled position of law, Mr. Tagum contended that the petitioners cannot be made senior to the private respondents. According to the said respondents, the Commissioner and Secretary(Health & Family Welfare), being the Head of the Department and an ex-officio Chairperson of the State Health Mission is an authorized representative and the competent authority of the State Government to prepare and approve the final seniority list as per the Rules. It is emphatically stated that the Mission Director is not the appointing authority as has been stated by the petitioners. That being the situation, any appointment under the National Health Mission(NHM) is approved by the Commissioner(Health & Family Welfare), who is the Chairman of the Executive Committee of the State Health Society(SHS).

16. Pursuant to the one-time relaxation granted by the State Government in exercise of the powers conferred under Rule 16 of the APHS Rules 2000, the competent authority had prepared a combined draft seniority list of the Doctors serving under various programmes of the National Health Mission(NHM) and the same was published vide circular, dated 01.02.2017. As in the case of other cadres serving under various programmes of NHM, all contractual Dental Surgeons serving under NHM were also brought under one combined inter-se

seniority list, and as such, the respondent authorities have not committed any illegality by preparing the seniority list, dated 01.02.2017.

17. As against the allegation that Dr. Tali Mugli was never in service, to be included in the seniority list of the Dental Surgeons, Mr. Tagum has clarified that Dr. Mugli was appointed as Dental Surgeon on officiating basis against a clear vacant post in the Department, vide order, dated 23.08.2009. Taking into consideration that he served as Dental Surgeon in the Department for 8(eight) years without any break, his service was regularized, vide order, dated 22.05.2017 and his appointment/regularization has nothing to do with the newly created post of Dental Surgeon.

18. In view of the above averments as made in the affidavit-in-opposition, Mr. Tagum, learned standing counsel, submits that the petitioners have failed to make-out any case for interference of this Court, and therefore, the petition may be dismissed at the threshold.

19. Mr. Ratan, learned counsel appearing for private respondents No. 4 to 12, by filing his affidavit-in-opposition, have primarily contended, as follows:

(i). As per the A.P. State Health Society Rules, 2000, there is no post called or designated as GDMO. The petitioners have been appointed as 'Dental Surgeon' only and they cannot take advantage of the term 'GDMO' which term is simply a *misnomer*. Since both the petitioners and private respondents are contractual Dental Surgeons serving under the National Health Mission, as such, the State Government cannot make any distinction between two sets of contractual employees.

(ii). The contention that the services rendered by the petitioners as GDMO(DS) and the private respondents as MO(RBSK)(DS) cannot be equated, has no substance, inasmuch as, all were appointed as contractual Dental Surgeons under the same Scheme i.e. National

Health Mission(erstwhile NRHM) and possess the same requisite qualifications for filling up the regular post of Dental Surgeon.

(iii). The respondent No. 1 i.e. Commissioner(Health & Family Welfare), Government of Arunachal Pradesh, while disposing of the petitioners' representations, dated 17.01.2017 and 09.02.2017, vide order, dated 09.06.2017, has declined to distinguish between the MO(RBSK) (DS) and the GDMO(DS) as both of them are contractual Dental Surgeons having the same requisite qualifications as per the A.P. State Health Society Rules, 2000.

(iv). Since the GDMO(DS) and MO(RBSK)(DS) are contractual employees, therefore, no one has the right to claim for regularization of their services.

20. Mr. Hussain, learned counsel appearing for private respondents No. 15 & 16, by filing a short affidavit-in-opposition, has contended, that:

(i). The private respondents, noted above, are the senior to the petitioners in their posts since their date of joining in the cadre of GDMO(Dental).

(ii). In fact, the private respondents No. 15 & 16 are the senior most, they are placed at Sl. Nos. 2 and 3 of the gradation list, prepared by the Mission Director, National Health Mission, Government of Arunachal Pradesh.

21. Mr. Panging, learned counsel appearing for private respondent No. 17, namely, Dr. Tali Mugli, by filing his affidavit-in-opposition, has primarily contended, as follows:

(i). That the said respondent was appointed as a Dental Surgeon, on officiating basis, against a clear vacant post in the Department of Health and Family Welfare, Government of Arunachal Pradesh, vide order, dated 23.08.2009, issued by the respondent No. 1, and his service was

extended from time to time and his service was regularized by the State Government vide order, dated 26.05.2017, considering his seniority amongst the temporary doctors, which goes to show that it has nothing to do with the newly created posts. The State Respondents in their affidavit-in-opposition have also revealed that a Cabinet Note was put up for regularization of the contractual services of various categories of Doctors including 16(sixteen) Dental Surgeons against the clear vacant posts, and as such, there is no illegality in the action of the State respondent authorities.

(ii). That while disposing of the petitioners' representations, the authority concerned has rightly clubbed together the seniority list of the temporary Dental Surgeons serving under the Department including GDMO and MO(RBSK), on the basis of their date of appointment and date of joining, etc.. in line with the combined seniority list of all temporary Medical Officer(Allopathy & Homeo), Health Assistant, GNM, ANM, Pharmacist and Drivers by clubbing their seniority list and regularizing their services, thereafter, on the basis of the combined seniority list maintaining their distinguished categories.

(iii). That the A.P. State Health Society Rules, 2000, does not provide for any post called as GDMO(Dental Surgeon), as such, the term GDMO (Dental Surgeon) is a misnomer used by the respondent authorities.

(iv). That in terms of the Cabinet decision, all temporary Doctors, serving in officiating capacity or on contractual basis under various schemes, are being regularized considering their seniority position as per their date of initial appointment on temporary basis. Furthermore, there can be no distinction between contractual GDMO(NHM) and temporary Dental Surgeons serving under the same Department for regularization of their services when they possess the same requisite qualification for appointment to the post. Hence, the instant writ petition filed by the petitioners may be dismissed.

22. Against the affidavits-in-opposition filed by the respondents No. 1 to 3; 4 to 12; and 15 & 16, respectively, the petitioners have filed 3(three) separate affidavits-in-reply wherein they have strongly raised objection to the averments pleaded by the petitioners, which, this Court, have taken into consideration but does not feel it necessary to jot down the same, in whole at this stage.

23. The second writ petition i.e. WP(c)709(AP)2017, is an off-shoot of the earlier writ petition i.e. WP(c)308(AP)2017 and it has been filed by the same set of writ petitioners. The case as well as the grievance of the petitioners, projected in WP(c)709(AP)2017 is identical to that of WP(c)308(AP)2017, except, modification in prayer No. III by inserting the date of appointment of private respondent Dr. Tali Mugli and insertion of a new prayer No. IV in the prayer portion of WP(c)709(AP)2017, which are, reproduced herein below:

"III. A Writ in the nature of the certiorari shall not be issued, quashing and setting aside the impugned appointment order of Dr. Tali Mugli as the Dental Surgeon dated 26.05.2017.

IV. A Writ of Mandamus shall not be issued directing the respondent authority to derecognize the seniority of the private respondent No. 5 and 15 from the list of the GDMO Dental Surgeon."

24. I have heard the rival submissions of the parties at length and have also gone through the relevant materials appended to this petition.

25. Mr. Pertin, learned counsel for the petitioners, in support of his submissions, has placed reliance on the following citations of the Hon'ble Apex Court:

- 1. Naseem Bano v. State of U.P. & Ors. [(1993) Supp(4) SCC 46]***
- 2. Dr. Rashmi Srivastava v. Vikram University & ors. [(1995) 3 SCC 653]***

26. Mr. Ete, learned Addl. Senior Advocate General, Arunachal Pradesh, in support of the policy decision taken by the State Government for regularization of the Dental Surgeons, has placed his arguments, in depth. It is to be noted that Mr. Tagum, learned standing counsel, Health Department, has placed his submissions before the Court, as stated-above, under the effective guidance of

Mr. Ete. In addition to the submissions of Mr. Tagum, learned standing counsel, which have been noted by this Court in the preceding paragraphs; the basic contention of Mr. Ete is that this is not simply a case of amalgamation of different cadres in view of various schemes operating under the same NHM. However, the other specific contention of Mr. Ete is that if the petitioners are actually aggrieved by the policy decision of the State Government, referred to above, they ought to have challenged the legality and validity of the said policy decision before the Court. But having not done so, both these writ petitions filed by the present petitioners are misconceived, devoid of merit, and deserved to be dismissed, summarily.

27. In support of his submissions, Mr. Ete, learned Addl. Senior Advocate General, has placed reliance on the ratio of the following judgments rendered by the Apex Court:

- 1. *Reserve Bank of India & Ors. v. C.N. Sahasranaman & Ors.*[(1986) Supp SCC 143]**
- 2. *Director, Lift Irrigation Corporation Ltd. & Ors. v. Pravat Kiran Mohanty & ors.*[(1991) 2 SCC 295]**

28. I have given due consideration to the rival contentions made by the parties and perused copy of the relevant documents appended thereto.

29. On a detail scrutiny of the rival contentions along with the documents relevant thereto, it is noticed that an advertisement, dated 24.06.2013, for, *inter alia*, filling up of 12 posts of GDMO(Dental Surgeon), under NRHM, was issued by the Secretary (H&FW)-cum-MD(NRHM), Arunachal Pradesh. The petitioners were appointed to the said posts, on contractual basis, at a consolidated fixed pay of Rs. 30.000/-, initially till 30.09.2013 vide order, dated 01.08.2013, which has been extended from time to time, till date, subject to certain terms and conditions. As per the advertisement, dated 24.06.2013, the minimum prescribed qualification for the said post was BDS degree and registered under the State Dental Council of Arunachal Pradesh/Indian Dental Council. In the meantime, the Governor of Arunachal Pradesh accorded sanction to the creation of temporary Group A, B, C Non-plan posts inclusive of

16 posts of GDMO(Dental Surgeon) under the Health & Family Welfare Department, Government of Arunachal Pradesh, for a period till 28.02.2017, vide order, dated 14.04.2016, issued by the Commissioner, Health & Family Welfare Department, Government of Arunachal Pradesh, for rendering services in GHs/DHs/CHCs/PHCs, on scale of pay of Rs.15,600-39,100+5,400/-. In the meantime, by Agenda Item No. 17 of the minutes of the Cabinet Meeting, held on 04.01.2017, the Government of Arunachal Pradesh decided to regularize the services of the contractual GDMOs(Allopathy, Dental & Ayush). The said cabinet approval for regularization of GDMOs, reads, as extracted hereinbelow:

"AGENDA ITEM NO. 17: Regularisation of services of Contractual General Duty Medical Officers(allopathy, Dental and Ayush)

17.1 The Cabinet approved that regularization of doctors should be in conformity with the APHS Rules, 2000 otherwise this would be legally untenable. The Cabinet further approved that the cases of regularization be sent to Arunachal Pradesh Public Service Commission who should hold an interview (viva voce) within 30 days from the date of approval of the Cabinet so that the provision of consultation with Commission is completed. The selected GDMOs shall be on probation for three years and shall mandatorily serve in the remote areas failing which they will not be confirmed in service."

30. A bare reading of the above Cabinet Resolution shows that the procedure for regularization of the services of the Doctors, should be, as per the Rules contained in the Arunachal Pradesh Health Service Rules, 2000(for short 'APHS Rules, 2000'), on consultation with the Arunachal Pradesh Public Service Commission(for short 'APPSC'). However, the APPSC, as submitted by the State Respondents, declined to conduct the interview on the ground of the same being a matter of regularization of service of the contractual MOs instead of fresh recruitment, for which reason, the process was undertaken by the State Government vide cabinet decision, dated 21.04.2017, approved the regularization, through the Department, that is, through the Departmental Promotion Committee(for short 'DPC').

31. It is worthwhile to mention that that the Arunachal Pradesh Health Service Rules, 2000, recognize 7(seven) categories of 'Grade', specified in Schedule I and the list of the 'Grade' includes a separate Dental Surgeon Grade, which has 3(three) sub-grades, namely, (1) Junior Dental Surgeon, (2) Senior Dental Surgeon, and (3) Senior Dental Surgeon(Selection Grade). The prescribed

minimum qualification for the post of Dental Surgeon is a recognized medical qualification in Dentistry, included in the Part-I or Part-III of the Schedule to the Dentist Act, 1948, and completion of the compulsory internship, with maximum age of 30 years, which is, of course, relaxable by 5 years for ST/SC candidates. The Rules provide for appointment or promotion to such Group 'A' post of Dental Surgeon through prescribed method of recruitment too, by direct recruitment/experience on the basis of a written examination, followed by an interview or selection conducted by the APPSC. In case of selection to the post on the basis of experience, the Rules provide that the exact method of recruitment to be followed is to be decided by the controlling Authority.

32. Be it mentioned here that the word 'regular or regularization' does not connote permanence, but, is meant to condone any procedural irregularity in regard to methodology followed in making the appointments as is envisaged impliedly in the Cabinet Decision, dated 04.01.2017 and 21.04.2017. There is, however, no dispute that the petitioners and the private respondents possess equal eligibility qualifications as per the A.P.H.S. Rules of 2000, except on the issues of charter of duties, pay-scales and their cadres of service as separate units. In both the writ petitions, it is noticed that the petitioners have not challenged the legality and validity of the policy decision adopted by the State Government to regularize the services of the contractual GDMOs(Allopathy, Dental & Ayush) against the existing vacancies in their respective disciplines, under the Health & Family Welfare Department, Govt. of Arunachal Pradesh.

33. The APHS Rules, 2000, do not provide for any post with nomenclature, 'GDMO', in the Dental Surgeon Cadre, but provides distinctly for 'Dental Surgeon' as stated above. The respondents pleaded that the expression 'GDMO' is a common expression indicating the nature of duty assigned to be performed by the Medical Officers at their respective field of duty and as such, there is no separate cadre with the nomenclature of designation, like, 'GDMO (Dental Surgeon)' and 'Dental Surgeon (RBSK)'. According to the respondents, the Dental Surgeons attached to the hospitals like CHCs/PHCs, etc., are also referred to as GDMO and similarly, as the Dental Surgeons under RBSK also

perform general duty of rendering medical services at schools and at field level as per the programme need, are often referred to as 'GDMO', although they do not constitute a separate health service cadre. Thus, both the Medical Officers under the RBSK and Medical Officers attached to hospitals, under the National Health Mission, are known as 'GDMOs', to which, both the petitioners and the private respondents belonged. Therefore, the designation by whatever nomenclature called, is of general significance, only symbolizing its nature of duty assigned to be performed and no further, and as such, the designative nomenclature, which is recognized by the service Rules, is to be accepted. Considered thus, in the instant case, prefixing 'GD' to the designation 'MO' working under RBSK and NHM, does commonly signify the nature of general duty attached to the doctors, recognized in Rules of 2000 as 'Medical Officer' or 'Dental Surgeon', although, such indiscriminate use of designation, which is a departure from the existing Service Rules, 2000, in official correspondence, should in all cases, be avoided to rule-out the possibility of confusion created thereby.

34. Be it stated that the NRHM is a centrally sponsored programme, which was launched on 12.04.2005 to address the health needs of the under-served rural areas and its implementation was extended to the State of Arunachal Pradesh through a registered society by framing a constitution, Memorandum of Association(MoA) and the Rules and Regulations of the State Health Mission as well as the State Health Society. The State Health Society, under the State Health Mission, is under the State Government, that is, under the control of the Department of Health & Family Welfare, Govt. of Arunachal Pradesh, more particularly, in respect of supervision of the implementation of the various public health schemes by it in the State and thus, its management is, in fact, vested in the State Government, through a Governing Body, composed of the Chief Secretary/Development Commissioner & others, such as the Principal Secretary, Health & Family Welfare, Govt. of Arunachal Pradesh, who, by virtue of being the *ex-officio* Chairperson of the State Health Mission, acts as the final approving authority on behalf of the State Government in respect of all appointments under the NRHM, whereas the Mission Director looks after the

day-to-day management of the Society and acts as Convenor of the Governing Body and the Executive Committee in terms of the MoA. There is no dispute that the recruitment of the petitioners as GDMO (Dental Surgeon) was initiated, as stated above, by the Secretary, Health & Family Welfare-cum-MD(NRHM), Arunachal Pradesh, and issued order of appointment , dated 30.07.2013, on behalf of the State Health Society of which the Commissioner, Health & Family Welfare, Government of Arunachal Pradesh, is the Chairman of its Executive Committee, indicating thereby the NRHM's character of a State agency or self-governing part of the government, responsible for administration/ implementation of specific public health programmes attributable to the government.

35. I have carefully gone through the judgments of the Apex Court relied upon by the learned counsel for the petitioners and found the same applicable to different contexts, not similar to the fact situations of the instant proceedings, and as such, it is respectfully submitted that the ratio laid down therein, could not be applied herein. It is, however, noticed that the ratio of the judgment rendered by the Apex Court in the cases of ***Reserve Bank of India & Ors. v. C.N. Sahasranaman & Ors.***(supra) and ***Director, Lift Irrigation Corporation Ltd. & ors.***(supra), can appropriately be applied in the context of the facts averred by the petitioners. The relevant paragraph No. 58 of the judgment as rendered in the case of ***Reserve Bank of India & Ors. v. C.N. Sahasranaman & Ors.***(supra), is extracted herein below:

"58. Whether there has been denial of equality of the view of the promotion or any constitutional right infringed or not, cannot be judged, where interest of large number of people are concerned, in the abstract. Vast majority, indeed the overwhelming majority of the workmen are in favour of the scheme as evolved by the Bank as modified as it would be apparent from the submissions urged on behalf of All India Reserve Bank Employees' Association – impleaded as party-respondent in this appeal as well as All India Reserve Bank Employees' Federation, Hyderabad. It has to be borne in mind that in service jurisprudence, there cannot be any service rule which would satisfy each and every employee and its constitutionality has to be judged by considering whether it is fair, reasonable and does justice to the majority of the employees and fortunes of some individuals, is not the touchstone."

The Apex Court, in paragraph No. 4 of the judgment in the case of **Director, Lift Irrigation Corporation Ltd. & ors.**(supra), observed as under:

"4. The writ petitioner holds only Diploma in Electrical Engineering. Shri Bidura Charan Mohapatra and Parijat Ray hold double diploma of Mechanical and Electrical Engineering. It is settled law that the Government or the Corporation, due to administrative exigencies, is entitled to and has power to reorganise the existing cadres or amalgamate some or carve out separate cadres. The pre-existing three separate cadres, namely, Electrical, Mechanical and the composite cadre, namely, Electrical-Mechanical were sought to be amalgamated into two cadres by absorbing the personnel working in the composite cadre, namely, Electrical-Mechanical in either Electrical cadre or Mechanical cadre. Options have been called for in that regard from all the persons working in the Electrical-Mechanical cadre and the appellants exercised their options for absorption in Electrical cadre. The employees working in the Electrical and Mechanical cadres were also aware of the same. It was, therefore, open to the respondent to raise any objection to the policy at that stage. But he failed to do so. The decision to amalgamate the existing cadres by reorganising into two cadres was a policy decision taken on administrative exigencies. The policy decision is not open to judicial review unless it is mala fide, arbitrary or bereft of any discernible principle. On account of the amalgamation and adjusting the composite Electrical-Mechanical cadre in either of the Electrical or Mechanical cadre as per the options given, the order of seniority of the employees working in Electrical or Mechanical cadres is likely to be reviewed. When the persons in the composite Electrical-Mechanical cadre opted to the Electrical cadre, they are entitled to be considered for their fitment to the cadre as per the seniority from the date of their initial appointment vis-a-vis their scale of pay. This was the procedure adopted by the Corporation in fixing the inter se seniority. The procedure adopted is just, fair and reasonable and beneficial to all the employees without effecting their scales of pay or losing the seniority from the date of initial appointment. Undoubtedly, in this process the respondent/writ petitioner lost some place in seniority which is consequential to amalgamation. He has not been deprived of his right to be considered for promotion, only his chances of promotion have been receded. It was not the case of the respondent that the action was actuated by mala fide or colourable exercise of power. There is no fundamental right to promotion, but an employee has only right to be considered for promotion, when it arises, in accordance with the relevant rules. From this perspective in our view, the conclusion of the High Court that the gradation list prepared by the Corporation is in violation of the right of the respondent/writ petitioner to equality enshrined under Article 14 read with Article 16 of the Constitution, and the respondent/writ petitioner was unjustly denied of the same is obviously unjustified."

36. On anxious consideration of the averments made by the rival parties, this Court finds that due to administrative exigencies, the Government of

Arunachal Pradesh have decided to absorb/regularize the services of the contractual GDMOs(Dental Surgeon) working under the National Health Mission (NHM) and MOs(Dental Surgeon) in various RBSK hospitals, preparing their *inter-se* seniority list maintaining distinct categories of such employment, based on merit list in the interview, date of appointment, date of joining and date of birth, besides the GDMOs(Allopathy), working under other health programmes. As observed by the Apex Court, in the above noted case of ***Director, Lift Irrigation Corporation Ltd. & ors.***(supra), such a procedure adopted by the Government as State policy to bring them within and in consonance with, the APHS Rules, 2000, is just, fair and reasonable and beneficial to all concerned, which is, of course, not challenged by the petitioners. On the other hand, perusal of the Gradation List of GDMO(Dental Surgeon) prepared by the Mission Director, reveals that it is undated and with remark 'subject to correction if found erroneous', indicating thereby its non-finality or draft in nature and further, it is not ascertainable, as to when it was drafted and published. The aforesaid Cabinet decisions is to regularize the services of all categories of contractual Doctors, on the basis of their seniority, without any distinctions among such categories. Therefore, in the aforesaid process, the regularization of service and inclusion of the name of one Dr. Tali Mugli in the *inter-se* seniority list of Dental Surgeons, based on consideration of the aforesaid same factors, cannot be said to be an illegal and arbitrary act on the part of the Government, warranting any interference.

37. Thus, in view of the aforesaid observations/findings, this Court does not find any merit in the contentions of the writ petitioners of the instant petitions. Resultantly, the 2(two) writ petitions, being WP(c)308(AP)2017, and WP(c)709(AP)2017, are hereby dismissed as bereft of merit.

38. Interim order(s) passed by this Court, if any, stands vacated. Parties shall bear their own cost.

JUDGE

Bikash