

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

ITANAGAR PERMANENT BENCH

WP(c) NO. 590(AP)2017

- 1. Dr. Punga Marde**
Presently serving as the General Duty Medical Officer, Homeopathy, Community Health Center, Muri Mugli, PO/PS Daporijo, Upper Subansiri District, Arunachal Pradesh. Ph. 8415805423

- 2. Dr. Tadar Rupa**
Presently serving as the General Duty Medical Officer, Homeopathy, Urban Health Center, Kharsingsa, PO/PS Banderdewa, Papum Pare District, Arunachal Pradesh.

.....*Petitioners*

- *Versus* -

1. The State of Arunachal Pradesh, represented by the Commissioner, Health & Family Welfare, Government of Arunachal Pradesh, Itanagar.
2. The Under Secretary, Health & Family Welfare, Government of Arunachal Pradesh, Itanagar.
3. The Director, Health & Family Welfare, Government of Arunachal Pradesh, Naharlagun.
4. The Mission Director, National Health Mission, Government of Arunachal Pradesh, Naharlagun.
5. **Dr. Munmun Borang**, Medical Officer(RBSK), Homeopathy, C/o District Medical Officer, District – Upper Siang, Government of Arunachal Pradesh.
6. **Dr. Bombin Dai**, Medical Officer(RBSK), Homeopathy, C/o District Medical Officer, District – East Siang, Government of Arunachal Pradesh.
7. **Dr. Mem Perme**, Medical Officer(RBSK), Homeopathy, C/o District Medical Officer, District – Namsai, Government of Arunachal Pradesh.
8. **Dr. Tage Tagyang**, Medical Officer(RBSK), Homeopathy, C/o District Medical Officer, District – East Kameng, Government of Arunachal Pradesh.

9. **Dr. Hibu Doley**, Medical Officer(RBSK), Homeopathy, C/o District Medical Officer, District – Upper Subansiri, Government of Arunachal Pradesh.
10. **Dr. Ngilying Jasmina**, Medical Officer(RBSK), Homeopathy, C/o District Medical Officer, District – West Kameng, Government of Arunachal Pradesh.
11. **Dr. Tangseng Tech**i, Medical Officer(RBSK), Homeopathy, C/o District Medical Officer, District – Longding, Government of Arunachal Pradesh.
12. **Dr. Gyati Reena**, Medical Officer(RBSK), Homeopathy, C/o District Medical Officer, District – Upper Dibang Valley, Government of Arunachal Pradesh.
13. **Dr. Nyata Gadi**, Medical Officer(RBSK), Homeopathy, C/o District Medical Officer, District – Upper Subansiri, Government of Arunachal Pradesh.
14. **Dr. Oyimang Mize**, Medical Officer(RBSK), Homeopathy, C/o District Medical Officer, District – Lower Dibang Valley, Government of Arunachal Pradesh.
15. **Dr. Sang Droma Sermupa**, Medical Officer(RBSK), Homeopathy, C/o District Medical Officer, District – Tawang, Government of Arunachal Pradesh.
16. **Dr. Nabam Tupi**, Medical Officer(RBSK), Homeopathy, C/o District Medical Officer, District – Upper Subansiri, Government of Arunachal Pradesh.
17. **Dr. Hage Tama**, Medical Officer(RBSK), Homeopathy, C/o District Medical Officer, District – Tawang, Government of Arunachal Pradesh.

.....*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 : 25.04.2018

JUDGMENT AND ORDER(CAV)

Heard Mr. Kento Jini, learned counsel, appearing on behalf of the petitioners, in this writ petition. Also heard Mr. Taba Tagum, learned standing counsel, Health Department, appearing on behalf of State Respondents No. 1 to 4; Mr. Ninnong Ratan, learned counsel appearing on behalf of private respondents No. 5 to 14, 16 & 17; and Mr. A. K. Singh, learned counsel for private respondent No. 15.

2. By filing the present petition under Article 226 of the Constitution of India, the petitioners, herein, for the second time, have approached this Court, praying for quashing and setting aside of (i). the impugned seniority list, dated 01.02.2017, published by the respondent authority with regard to GDMO (Homeopathy); (ii). impugned appointment-cum-regularization orders of MO, RBSK, Homeopathy/private Respondents No. 5 to 17, dated 23.05.2017; and (iii). impugned order, dated 17.07.2017, by which the petitioners' representation, dated 25.05.2017, has been rejected by Respondent No. 1 viz. Commissioner & Secretary(H&FW), Government of Arunachal Pradesh, Itanagar.

3. The petitioners have further prayed for issuing directions to the respondent authorities to separate the seniority list of MO(Homeopathy) employed under RBSK from the seniority list of GDMO(Homeopathy); to uphold the seniority list prepared by the Mission Director, National Health Mission; and to appoint/regular the services of the petitioners as per the Cabinet decision, dated 04.01.2017.

4. The petitioners, herein, are presently serving as the General Duty Medical Officer(for short, 'GDMO Homeopathy').

5. Brief facts of the case, at hand, is that, the Government of Arunachal Pradesh through the Mission Director, National Health Mission, had issued an advertisement for appointment of contractual GDMO, Homeopathy, in the Department of Health & Family Welfare, Government of Arunachal Pradesh. The petitioners accordingly participated in the selection process. Thereafter, the petitioners were appointed to the post of GDMO, Homeopathy, on contractual basis under NRHM programme on monthly fixed pay of Rs. 30,000/- and/or Rs. 33,000/-. Subsequently, they joined their respective place of posting at Urban Health Centre(UHC), Karsingsa, Papum Pare District and Community Health Centre(CHC), Parbuk, Lower Dibang Valley District, on 16.02.2015 and 14.09.2015.

6. In the meantime, the State Government, vide order, dated 14.04.2016, created the posts of GDMO, Homeopathy of 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 GDMOs (Allopathy, Dental and AYUSH), which was duly published by the State Government through the local dailies on 05.01.2017. According to the petitioners, they come under the AYUSH, which stands for Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homeopathy.

7. According to the petitioners, there are two categories of Doctors of Homeopathy under the National Health Mission. The GDMO, Homeopathy, render their services, round the clock, in various hospital establishments like PHC, CHC, DHs, and GHs, whereas the MO(Homeopathy) appointed under the RBSK, are not attached to any hospitals and their primary duty is to visit Schools and Anganwadi Centres once in a year as they have been appointed under the School Health Programme and send the patients to the various hospital establishments

as the case may be. Upon the Cabinet meeting, dated 04.01.2017, regarding regularization of services of various Doctors, stated above, the petitioners came across the communication, dated 09.02.2017, issued by the Mission Director, National Health Mission, wherein the Director had submitted the separate seniority list of GDMO (Homeopathy) and MO(RBSK)(Homeopathy) to the respondent No. 1 viz. Commissioner, Health & Family Welfare, Government of Arunachal Pradesh. It is reiterated that the nomenclature and charter of duties of GDMO(Homeopathy) and MO(RBSK)(Homeopathy) are totally different to the extent that they are paid Rs. 30,000/- and Rs. 15,000/-, respectively, and the MO under RBSK cannot be transferred to the post of GDMO. They, therefore, form part of a separate cadre. In the meantime, acknowledging various illegalities, the Mission Director, National Health Mission, has issued an order, dated 14.03.2013, as regards the charter of duties, 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." However, the petitioners came to know that the respondent authorities in order to manipulate the Cabinet decision, dated 04.01.2017, by preparing and publishing the illegal seniority list, dated 01.02.2017, clubbed the Homeopathy Doctors employed under the RBSK and the Homeopathy Doctors employed as GDMO in one group, on extraneous consideration. As such, the GDMO, Homeopathy and RBSK Homeopathy form separate cadres.

8. Being aggrieved by the impugned seniority list, dated 01.02.2017, the instant petitioners submitted the representation, dated 14.02.2017, before the respondent No. 1, that is Commissioner, Health & Family Welfare, Govt. of Arunachal Pradesh, for re-consideration of the impugned seniority list. Despite the above representation, the respondent Commissioner went ahead and appointed/regularized the services of MO(RBSK) (Homeopathy) that is, private respondents No. 5 to 17, vide the appointment orders, dated 23.05.2017, illegally and on extraneous consideration. Being further aggrieved, the petitioners submitted another representation, dated 25.05.2017, before the same respondent Commissioner, pleading him to cancel the appointment-cum-

regularization order of the said private respondents. Finding no other alternative, the petitioners have filed this writ petition, making the prayers, as stated above.

9. In the meanwhile, before filing this writ petition, the petitioners in the instant case, being highly disappointed with the illegal act of the State Respondents, had filed a writ petition before this Court being WP(c)263(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 05.06.2017, directing the respondent No. 1 to dispose of the petitioners' representation, dated 25.05.2017, within 30(thirty) days from the date of receipt of the said judgment & order. The said representation, dated 25.05.2017, was finally disposed of by the authority concerned vide order, dated 17.07.2017. In the said order, which is alleged to be vague; the respondent No. 1 without any rationale, equated the services of the GDMO, Homeopathy, with the service of the Medical Officer(RBSK), Homeopathy, despite acknowledging the fact that they have separate charter of duties.

10. It is the case of the petitioners that though the private respondents possess same qualifications, however, the charter of duties and pay scale of the petitioners are totally different and as a matter of fact, they, therefore, form part of the separate cadre and hence, there cannot be a combined seniority list for separate employees working under different cadres. According to the petitioners, the respondent No. 1, that is, Commissioner(Health & Family Welfare), Government of Arunachal Pradesh, has no authority to prepare any seniority list of the petitioners/private respondents as the Mission Director is their appointing authority and hence, the ultimate authority to prepare the seniority list of the petitioners. However, the respondent authorities, on extraneous consideration, regularized the services of the private respondents, herein, who were serving as MO(RBSK), Homeopathy, thereby depriving the petitioners of their right of appointment as per policy adopted in the Cabinet Decision, dated 04.01.2017. The petitioners have, therefore, pleaded for the directions/reliefs, as stated above.

11. The State Respondents No. 1 & 2, represented by Mr. Tagum, learned standing counsel, Health Department, by relying on the affidavit-in-opposition has specifically averred, at the very outset, that 33(thirty three) posts of GDMO (Homeopathy) which were created for General Hospitals/District Hospitals/Community Health Centres/PHCs, has nothing to do with the regularization of the contractual staff. As per the Arunachal Pradesh Health Services Rule, 2000, the mandatory qualification for appointment as GDMO(Homeopathy) is Medical Qualification in Homeopathy with completion of internship. Since the above condition is fulfilled by both categories of MO, that is, M.O. RBSK and GDMO, therefore, they cannot be differentiated by the State Government merely on the ground that the MO(RBSK), Homeopathy, are being paid less remuneration. Accordingly, a draft inter-se seniority list of contractual GDMO(Homeopathy) and MO(RBSK) (Homeopathy), was published in the first week of February, 2017, and upon receipt of claims/objections, the final seniority list was published wherein the original merit list was the basis for inter-se seniority list within a batch and the joining date/selection result publication date, were the basis for inter-se seniority list among different batches.

12. The State Respondents in the said affidavit-in-opposition, have specifically pleaded that the nature of duties of GDMO(Homeopathy) and MO(RBSK) (Homeopathy), as projected by the petitioners, to be totally different, cannot be accepted since both categories are basically Doctors with same educational qualification and entrusted with, either, curative treatment, or, preventive treatment at Hospitals/CHCs/PHCs, or, at school and field level, as per the programme, under National Health Mission (NHM) and therefore, seniority cannot be denied due to pay difference as there is no separate cadre for contractual staff as alleged by the petitioners.

13. It is the specific averment of the State Respondents that regularization of GDMO(Homeopathy) and MO(RBSK)(Homeopathy) on the basis of inter-se

seniority, was done in pursuance of Cabinet Decision, dated 04.01.2017, which was modified later on vide Cabinet Decision, dated 21.04.2017.

14. It is also the pleaded case of the State Respondents that the Commissioner(Health & Family Welfare) being the Head of the Department of Health & Family Welfare, is the authorized representative of the Government Department, to decide seniority of officers which is done under the existing Relevant Rules. It is the further contention that the Mission Director is not the appointing authority and all appointments are approved by the Commissioner (Health & Family Welfare), he being the Chairman of the Executive Committee of the State Health Society.

15. Mr. Ratan, learned counsel appearing for private respondents No. 5 to 14 & 17, by filing his affidavit-in-opposition, have primarily contended, as follows:

(i). Earlier, the National Health Mission was known as NRHM and it is the umbrella organization aimed at improving the deficiencies in the healthcare programmes. The petitioners as well as the private respondents are serving as Medical Officers, on contractual basis, under the NHM and RBSK/State Health Programme of NHM. Since both the petitioners and private respondents are contractual MOs serving under the various schemes of NHM, as such, the State Government cannot make any distinction between two sets of contractual employees having same requisite educational qualifications.

(ii). The contention of the private respondents, noted above, is that the petitioners have misled the Court by claiming to be GDMOs, whereas their appointment orders clearly specified that they are the MOs (Homeo/AYUSH) and therefore, they cannot claim for regularization as the State Cabinet has decided to regularize only the GDMOs (Homeopathy). In fact, the appointment of respondent No. 2 Sri Tadar Rupa was not done by any selection process. Further, there is no such post as GDMO(Homeopathy) under the A.P. State Health Society Rules, 2000, and therefore, the term 'GDMO' itself is a misnomer. The Cabinet has, in fact, decided to regularize all the

doctors, who are serving under NHM, RBSK(NHM), on contractual/ adhoc/officiating basis, based on seniority only.

(iii). The private respondents contended that simply because the charter of duties, nature of work and the remuneration of the petitioners are different from them, that itself, do not entitle them to any right to claim regularization as both categories are being employed on contractual basis, possessing the same educational qualifications and performing identical job responsibilities.

(iv). The private respondents further contended that the Medical Officer(Allopathy), Health Assistant, GNM, ANM, Pharmacist and Drivers have been regularized by the State Government by clubbing the seniority list on the basis of appointments irrespective of whether they served under the NHM or RBSK(NHM).

(v). That while disposing of the petitioners' representation, the authority concerned has rightly declined to recall the regularization order of the private respondents No. 5 to 17 and also declined to distinguish between GDMO (Homeopathy) and MO (RBSK) (Homeopathy), as both of them are contractual MOs(Homeopathy) possessing the same requisite educational qualifications as per the A.P. State Health Society Rules, 2000.

16. Mr. Singh, learned counsel appearing for private respondent No. 15, by filing a short affidavit-in-opposition, has contended, that:

(i). The cabinet meeting, dated 04.01.2017, was conveyed to discuss about regularization of contractual posts and it only formulated the procedures and necessary requirements as to the regularization of their service, which is subject to fulfilment of certain criteria.

(ii). Both the posts are one and same, under the cadre of Medical Officers with same qualification. There is no separate cadre and qualifications required for both posts are common and same, but it is only due to the nature of their duties that they are grouped into two classes which, however, does not entitle any special treatment with regard to their service or regularization.

(iii). As a matter of fact, the seniority list was not the final list or gave any finality to regularization and it even called for any claims and objections. The final seniority list was prepared only after due recommendation and consultation and proper scrutiny by the respondent authorities.

(iv). The Commissioner(Health & Family Welfare), Govt. of Arunachal Pradesh, is the senior most official and Head of the Department, who is also the ultimate authority vested with the power and authority with regard to the services of the staff under his good office.

(v). Regularization of GDMO(Homeopathy) and Medical Officer (RBSK) (Homeopathy) was done on the basis of inter-se seniority in view of the cabinet decision, dated 04.01.2017, which was modified later vide Cabinet decision, dated 21.04.2017.

17. Hence, Mr. Singh, learned counsel, prayed that the writ petition may be dismissed by the Court with heavy cost as the petitioners have not come with clean hands.

18. Mr. Jini, learned counsel appearing for the petitioners, by filing separate affidavits-in-reply against the affidavits-in-opposition, have reiterated, as under:

(i). The petitioners and the private respondents are the subject of NHM which is headed by the Mission Director, NHM. The petitioners are appointed as the GDMO(Homeopathy) and posted at Hospital establishments to perform OPD duty and the private respondents were appointed as Medical Officer(Homeopathy), under RBSK to perform their duties at Schools and Anganwadi Centres, twice, in a year.

(iii). It has been emphasized that unequals cannot be treated equally. The respondent No. 4, after analyzing the nature of duties performed by the petitioners, have prepared the separate seniority list, which clearly indicates that the Mission Director, NHM, is the

competent person to categorize the GDMO(Homeopathy) and MO(RBSK) (Homeopathy).

(iv). The NHM in the State of Arunachal Pradesh, is run by a registered Society, being the in-charge of the Mission, performs its functions independently as envisaged in the "Rules and Regulations of the State Health Society, Arunachal Pradesh, 2005". On the above mentioned power and considering the Cabinet decision, dated 04.01.2017, the respondent No. 4 had prepared a seniority list of the GDMO (Homeopathy) and RBSK.

(v). It has also been contended that the post of GDMO (Homeopathy) and MO(RBSK)(Homeopathy) are not governed by the Arunachal Pradesh Health services Rules, 2000, therefore, reliance on various provisions of the said Rules do not hold any ground.

19. On a detail scrutiny of the rival contentions along with the documents relevant thereto, it is noticed that an advertisement was issued by the Govt. of Arunachal Pradesh through the Mission Director NHM for appointment of contractual GDMO, Homeopathy in the Department of Health and Family Welfare, Government of Arunachal Pradesh. After successful completion of the selection process, the petitioner No. 1 Dr. Punga Marde was appointed to the post of MO (Homeo) vide Order No. APRHM/2009/100 (pt), dated 07.09.2015, and the petitioner No. 2 Dr. Tadar Rupa was appointed as MO (Ayush) vide Order No. APRHM/NUHM-2015/29, dated 10.02.2015, by the Secretary (H&FW), Govt. of Arunachal Pradesh and Mission Director (NHM), Govt. of Arunachal Pradesh respectively under the NHM on contract basis till March, 2015, which has been extended from time to time till date, subject to terms and conditions and the letters of undertaking signed by the appointees. Accordingly, the petitioner No. 1 joined against the post on 14.09.2015 and the petitioner No. 2 on 16.02.2015 at their respective places of posting. While working as such, the Governor of Arunachal Pradesh accorded sanction to the creation of temporary Group-A, B, C Non-plan post inclusive of 33 posts of GDMO (Homoeo) under the Health & Family Welfare Department, Govt. of Arunachal Pradesh for a period till 28.02.2017, issued by the Commissioner, Health & Family Welfare Department,

Govt. of Arunachal Pradesh, for rendering services in GHs/ DHs/CHCs/PHCs, on scale of pay of Rs.15,600-39100+5400/-. In the meantime, by Agenda Item No. 17 of the minutes of the Cabinet Meeting held on 04.01.2017, the Govt. 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: Regularization of services of contractual General Duty Medical officers (Allopathy, Dental & 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".

20. Be it mentioned here, vide the charter of duties, that there are two types of Doctors of Homeopathy under the National Health Mission (NHM), one set of such Doctors render services in the various Hospital Establishments as GDMO (Homoeo) and another set of Doctors appointed under the Rashtriya Bal Swasthya Karyakaram (RBSK) as MO (Homoeo) to visit Schools and Anganwadi Centres as they have been appointed under the School Health Programme (SHP) with specific duty to send the patients to the Govt. Hospital Establishments such as PHC, CHC, DH & GH.

21. A bare reading of the above Cabinet decision 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 Doctors instead of fresh recruitment, for which reason, the process was undertaken by the State Govt. vide Cabinet decision, dated 21.04.2017, whereby regularization of Doctors was approved, through the Department, i.e. through the Departmental Promotion Committee (for short, 'DPC').

22. It is worthwhile to mention that the APHS Rules, 2000 recognized 7 (seven) categories of 'Grade' of Doctors, specified in Schedule-1 and the list of the 'Grade' includes a separate Medical Officers (Homeopathy & ISM Grade), which has 3 (three) Sub-Grades, namely, (1) Senior Medical Officer (Selection Grade), (2) Senior Medical Officer and (3) Medical Officer. The prescribed minimum qualification for the post of Medical Officer (Homeopathy) is a recognized Medical Qualification in Homeopathy, included in the 2nd or 3rd Schedule to the Homeopathy Central Council Act, 1973, with completion of compulsory rotation internship with maximum age of 30 years, which is, of course, relaxable by 5 years for ST/ SC Candidates. The Rules provide for direct recruitment to the post of Medical Officer (Homeopathy), on the basis of a written examination to be conducted by the APPSC to be followed by interview or by selection by the APPSC by interview only. The aforesaid process of recruitment is also subject to the opinion of the Government, in case of exigency, for relaxation of any of such Rules under the APHS Rules, 2000 as deemed necessary.

23. 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. There is, however, no dispute that the petitioners possessed eligibility qualifications as per the APHS Rules, 2000. It is noticed that there are some differences of charter of their duties, pay

scales and without specific cadres of service as separate units. It is noticed that the petitioners have not challenged the legality and validity of the policy decision adopted by the Govt. of Arunachal Pradesh to regularize the services of the Contractual Doctors against the newly created vacancies in their respective disciplines, under the Health & Family Welfare Department, Govt. of Arunachal Pradesh.

24. The APHS Rules, 2000 do not provide for any post with nomenclature as 'GDMO', in the Homeopathy cadre, but provides distinctly for Medical Officer (Homeopathy) as stated above. The respondents pleaded that the expression 'GDMO' is a common expression indicating the nature of duty assigned to be performed by such Medical Officers, Homeopathy, at their respective field of duty and therefore, there is no separate cadre with the nomenclature of designation like GDMO (Homeopathy). The designation by whatever nomenclature called, is of general significance, only symbolising 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 (Homeopathy)' working under RBSK and NHM, does commonly signify the nature of general duty attached to the Homeopathic Doctors, recognized in Rules of 2000 as 'Medical Officer (Homeopathy)', 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.

25. Be it stated that the NHM is a centrally sponsored programme, which was launched on 12.04.2005, to address the health needs of the underserved rural areas and its implementation was extended to the State of Arunachal Pradesh through a registered society by framing its 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 and 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 of Arunachal Pradesh and thus, its management is, in fact, vested in the State Government, through a Governing Body, composed of the Chief Secretary/ Development Commissioner and 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 NHM, 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. It is noticed that the appointment orders, aforementioned, were issued either by the Mission Director (NHM), Govt. of Arunachal Pradesh or Secretary (H & FW), Govt. of Arunachal Pradesh on behalf of the Arunachal Pradesh State Health Society, of which, the Commissioner, Health & Family Welfare, Govt. of Arunachal Pradesh is the Chairman of its Executive Committee, indicating thereby the NHM'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 State Govt.

26. It is seen that the regularization of GDMO (Homeopathy) and M.O. (Homeopathy), RBSK, on the basis of the inter-se-seniority has been done, in pursuance to the Cabinet decisions, dated 04.01.2017, which was modified later on vide another Cabinet decision, dated 21.04.2017, by the respondent No. 1/ the Commissioner, Health & Family Welfare, Govt. of Arunachal Pradesh, being the competent authority. Mr. K. Jini, learned counsel for the petitioners, has referred to the principles laid by the Apex Court in ***Naseem Bano (Smt)-vs-State of U.P. & Ors.***, reported in ***1993 Supp (4) SCC 46*** and ***Dr. Rashmi Srivastava-vs-Vikram University & Ors.***, reported in ***(1995) 3 SCC 653***. On reading of the said 2 (two) citations, I find that the propositions of law laid down therein are in different contexts, not similar to the fact situation of the instant proceeding and as such, it is respectfully submitted that the ratio of the said 2

(two) judgments 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.,-vs-C. N. Sahasranaman & Ors.**, reported in **(1986) Supp SCC 143 (supra)** and **Director, Lift Irrigation Corporation Ltd. & Ors.**, reported in **(1991) 2 SCC 295**, cited by Mr. K. Ete, learned Sr. Addl. Advocate General, in support of the averments made in the affidavit-in-opposition filed by the State respondents, 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.-vs-C. N. Sahasranaman & Ors.(supra)**, is extracted hereinbelow:-

"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-impealed 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".

27. 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 cadre 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 discernable 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 affecting 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

vide 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”.

28. As stated earlier, the State Cabinet has approved the regularization of all contractual/ temporary Doctors, irrespective of their categories and irrespective of in what fields they are working or nature of duties they are rendering and accordingly their inter-se-seniority list has been prepared by the Govt. of Arunachal Pradesh maintaining distinct category, based on merit list in interview, date of appointment, date of joining, date of birth and after inviting objections, if any. The writ Court cannot substitute its judgment for that of the legislative policy/ Cabinet decision and cannot direct or advise in such matters, when it has acted within the sphere of its authority, which is duly exercised in conformity with the constitution or the governing Act/ Rules in public interest.

29. Therefore, the multiple reliefs, as prayed for, by the petitioners in the instant writ proceeding cannot be granted.

30. Consequently, the writ petition stands dismissed.

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JUDGE