

**(2021) 01 KL CK 0587**

**In the High Court Of Kerala**

**Case No : Writ Petition (C) No. 32413 Of 2011**

L. Nagendra Sheno

APPELLANT

Vs

State Of Kerala And Ors

RESPONDENT

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**Date of Decision :** 27-01-2021

**Acts Referred:**

**Citation :** (2021) 01 KL CK 0587

**Hon'ble Judges :** Amit Rawal, J

**Bench :** Single Bench

**Advocate :** K.R. Rajkumar, R.Ranjini, Harish Kumar

**Final Decision :** Disposed Of

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## **Judgement**

1. Petitioner through the instant writ petition has sought indulgence of this Court seeking the following reliefs:

i) Call for the records leading to Ext.P12 and to quash the same as it violates the terms and conditions as agreed by the Government and the 4th

respondent as seen from Ext.P2 agreement.

ii) Issue a writ of mandamus directing the respondents to appoint the petitioner in the post of Attender which has fallen vacant, taking into account his

lien over the post as he has been for more than 12 years taking into account of Ext.P8.

iii) To disburse all the service benefits to the petitioner which he is legally due till date.

2. In the earlier round of litigations petitioner along with other similarly situated persons had approached this Court vide W.P.(c)No.25592/2000

claiming mandamus to include all the petitioners while fixing the staff strength and approve as staff and release salary, with a further prayer to follow

the staff pattern of the Central Council of Homoeopathy or the pattern envisaged by the Government, while fixing the staff strength of the fourth respondent educational agency.

3. The Government and the management of the college, namely Dr.Padiyar Memorial Homeopathic Medical College, on 24.1.2000, entered into an

agreement, whereby the Government was made liable to disburse the pay and allowances due to the staff of the college accrued from 1.1.2000

directly through the Principal of the Institution based on the existing staff pattern of the Government Homeopathic Medical College and the hospitals

attached therewith. There were litigations, the Government, directed the Principal and Controlling Officer, Government Homeo Medical College to

furnish the list of 40 senior most and qualified teaching staff based on departmental seniority and 50 non-teaching staff for consideration for fixation.

The grievance of the petitioner in the aforementioned writ petition was, since the Government decided to approve the staff pattern, taking into

consideration of the staff pattern of the Homeopathic Medical College, there was no justification in causing discrimination in the college in which the

petitioner was appointed as restriction in the agreement was only for future appointments, though it was refuted by the Government. The

aforementioned petition came to be decided by this Court vide judgement dated 3.3.2005, whereby direction was issued to consider the case of 11

petitioners including the petitioners herein for treating them similarly as to others and covered by Exts.P11 and P14 Government Orders in that writ

petition. The aforementioned petition was assailed in writ appeal No.1530/2004 and vide judgment dated 17.6.2005, the judgment of the Single Judge

was upheld. The matter was taken before the Supreme Court and the Supreme Court in Civil Appeal No.1152 & 1153 of 2009 dated 23.2.2009, found

that the direct payment system adopted by the Government in respect of Padiar Medical College, was only extended to the members of the staff of

the college, and not to the staff of the hospital. Even if they were accorded the benefit of direct payment system up to certain extent, that would not

entitle them to make the staff of the hospital eligible to claim such benefit. The staff of the college and the staff of the hospital are discharging

different kind of duties and responsibilities. The civil appeals were allowed and the writ petition was dismissed. The petitioner has sought lien on

creation of supernumerary post.

4. When the matter was taken up today, there is no representation on behalf of the petitioner as no further cause of action survives, in view of the

decision in Civil Appeal (ibid).

5. On perusal of the reply of the Government, it is evident that all the future appointments to the post of non-teaching staff of the institution has to be

made by the educational agency only from the list of the candidates. The newly arisen vacancy would not be considered as it had become invalid

owing to the judgment of the Hon'ble Supreme Court. The stand of the college also reveals that petitioner and similarly placed persons were retained

by the Management and paid salary.

6. The sum and substance of the claim in the present writ petition for implementation of Ext.P9 no longer subsists. It may be in that background the

petitioner is not interested in pursuing this writ petition. I am of the view that once the Supreme Court had already dismissed the decision rendered in

the writ petition as well as the writ appeal, the claim of the petitioner no longer survives. The writ petition is accordingly dismissed. Since I am

disposing the writ petition in the absence of the Counsel liberty is granted to the petitioner to revive the writ petition in case if something survives,

despite the reasoning aforementioned.