

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 488 OF 2013

DISTRICT: - BEED.

- 1) Dr. Anil Rangnathrao Joshi,**
Age-52 years, Occu. : Associate Professor,
Pathalogy, Swami Ramanand Teerth Rural
Government Medical College, Ambajogai,
District Beed. R/o. Ground floor,
Kailas Building, SRTR Campus,
Ambajogai, District Beed
PIN 431517.
- 2) Dr. Varsha Sharadrao Nandedkar,**
Age: 47 years, Occu. Professor & Head,
Ophthalmology Swami Ramanand
Teerth Rural Government Medical
College, Ambajogai, Dist. Beed.
R/o. Ground floor, Kailas Building, SRTR
Campus, Ambajogai, Dist. Beed.
PIN 431517.
- 3) Dr. Sadhana Sudhit Kulkarni,**
Age: 60 years, Occu. Professor & Head,
Swami Ramanand Teerth Rural
Government Medical College,
Ambajogai, Dist. Beed.
R/o. Kailas-3, SRTR Campus,
Ambajogai, Dist. Beed.
PIN 431517.
- 4) Dr. Shankar Sambhajirao Dhapate,**
Age: 45 years, Occu. Professor & Head,
Anatomy, Swami Ramanand
Teerth Rural Government Medical
College, Ambajogai, Dist. Beed.
PIN 431517.
- 5) Dr. Pradip W. Sambrey,**
Age: 57 years, Occu. Professor,

Gynecology, Swami Ramanand
Teerth Rural Government Medical
College, Ambajogai, Dist. Beed.
R/o. A-3, 'Satpuda', SRTR Campus,
Ambajogai, Dist. Beed.
PIN 431517.

- 6) Dr. Mohammad Aneesur Raheman,**
Age: 40 years, Occu. Associate Professor,
Anatomy, Swami Ramanand Teerth
Rural Government Medical College,
Ambajogai, Dist. Beed.
R/o. House No. 97-136, Hyderabadh
No. 1, Degloor Naka, Nanded.

.. APPLICANTS.

V E R S U S

- 1) The State of Maharashtra,**
Through the Secretary,
Department of Medical Education &
Drugs Department,
Mantralaya, Mumbai – 32.
- 2) The Director of Medical Education,**
Government Dental College and
Hospital Building, St. George's
Hospital Compound,
Mumbai – 400 001.
Through
The Director
- 3) Swami Ramanand Teerth Rural
Government Medical College,**
Ambajogai, District Beed.
Through
The Dean.

.. RESPONDENTS.

APPEARANCE : Shri Milind Patil, learned Advocate
for the applicants.

: Shri V.R. Bhumkar – learned
Presenting Officer for the respondents.

CORAM : **V.D. DONGRE, MEMBER (J)**
AND
BIJAY KUMAR, MEMBER (A)
DATE : **01.10.2021**

ORDER

[Per : Shri V.D. Dongre, Member (J)]

By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, the present Original Application is filed challenging the Government Resolution dated 24th July, 2012 issued by the respondent No. 1 (Exhibit 'L') thereby restricting payment of the Non-Practicing Allowance (for short "NPA") proportionate to the VIth pay commission basic and allowances from 1st July 2012 with application of unreasonable ceiling of Rs. 85,000/- and seeking declaration that the applicants are entitled to non-practicing allowance proportionate to their VIth revised pay, i.e. 50% of their VIth revised pay as provided under the prevailing Government policy enumerated in the Government Resolutions dated 27th March, 2008 (Exhibit 'F') and 18th August, 2010 (Exhibit 'G') and ancillary relief of interim stay to the said Government Resolution dated 24th July, 2012 and

restraining the respondents from effecting any recovery of difference of arrears of already paid NPA to the applicants.

2. The facts in brief giving rise to this proceeding can be summarized as follows: -

(a) The applicants are Teachers discharging duties as Associate Professors and Professors with the Government Medical College. All of them are discharging their duties with the respondent No. 3 College situated at Ambajogai, District Beed. The applicants are discharging their duties in the rural area and as per the Government policy they are entitled to receive NPA @ 50% of their basic pay.

(b) The policy to pay NPA to the Medical and Ayurvedic Teachers is longstanding policy. Vide Government decision dated 1.10.1977 the State of Maharashtra had made applicable U.G.C pay scales. After 4th report of the Pay Commission, the State of Maharashtra, vide Government Resolution dated 27.3.1989 (Exhibit 'B') applied revised pay scales to the Medical Teachers in State. In the said decision the

Government provided for continuation of NPA at revised rates. As per corrigendum dated 19.10.1989 (Exhibit 'C') to the Government Resolution dated 27.3.1989 (Exhibit 'B') the NPA was treated for pensionable pay. NPA was being paid to the Medical and Ayurvedic Teachers even on the revised 4th & 5th pay commissions scales.

(c) It is further contention of the applicant that the quantum of the NPA was revised to induce the qualified medical graduates to join employment in Government Medical Colleges at Dhule, Yavatmal, Nanded and Ambajogai. The quantum of the NPA payable to them was increased from earlier 25% to 50% for those working at Nanded, Dhule, Yevatmal & Ambajogai and for others, it was increased from 25% to 35%. That was done as per Government Resolution dated 27.3.2008 (Exhibit 'F'). As per the Government policy there was option for Medical and Ayurvedic Teachers either to engage themselves in private practice or in lieu of that to opt for NPA. However, as per the Government Resolution dated 18.8.2010 (Exhibit 'G') issued by the

respondent No. 1 the option for the Medical and Ayurvedic Teachers to engage themselves in private practice was foreclosed and thereby the NPA became mandatory part of the salary. In view of this, it is the contention of the applicant that NPA is a part of service condition.

(d) It is further contended that as per the Government Resolution dated 10.11.2009 (Exhibit 'K') issued by respondent No. 1, 6th Pay Commission report was made applicable to the applicants w.e.f. 1.1.2006 for all the benefits except NPA. In view of the same, the applicants were paid NPA calculated as per 5th Pay Commission pay scale till March, 2009 and thereafter they are paid NPA based on 6th Pay Commission report.

(e) It is further contended that thereafter vide impugned Government Resolution dated 24.7.2012 (Exhibit 'L') the Government applied ceiling of Rs. 85,000/- on the total salary by considering the NPA as a part of pay for the purposes of ceiling and not for payment of allowances. This is totally prejudicial to the interest of the applicant. It is unreasonable and illegal

and in direct conflict with clause 9(A)(b)(iii) of the Government Resolution dated 10.11.2009 issued to extend benefit of 6th pay to the Teachers in the Government Medical / Dental and Ayurvedic Colleges in the State of Maharashtra. In view of the same, the applicants are entitled only for the meager NPA amount of Rs. 5,000 /- per month as revised basic pay and such other emoluments was to be paid not exceeded Rs. 80,000/- as per clause 9 (A)(b)(c) as per Government Resolution dated 12.11.2009. In view of the same, all these senior teachers are brought down to the level of junior teachers ignoring more number of years of experience of the senior Associate Professors and Professors. Hence, this Original Application.

3. In the affidavit in reply on behalf of the respondents is filed by Medha Anant Gadgil, I.A.S., Additional Chief Secretary to the Government of Maharashtra, Medical Education and Drugs Department, Mantralaya, Mumbai, thereby the action of the Government by way of issuing Government Resolution dated 24.7.2012 (Exhibit 'L') is justified contending that the same has been issued in the

background of the contents of paragraph 2 of the Government of India, Ministry of Finance, office memorandum F No. 7(19)/2008-E III(Aai) dated 30.8.2008 and as per sanction of the Finance Department vide Unofficial Reference No.116/Services-5, dated 6.7.2012 and Unofficial Reference No.492/2012/Expenditure-13, dated 11.7.2012.

4. We have heard arguments advanced by Shri Milind Patil, learned Advocate for the applicants and Shri V.R. Bhumkar, learned Presenting Officer for the respondents at length.

5. Learned Advocate for the applicant fairly submitted before us that in the past similar type of OAs namely O.A. Nos. 753, 754 & 808 all of 2012 were dismissed by this Tribunal by judgment and order dated 15.2.2017 and O.A. No. 296/2012 with O.A. No. 321/2012 were also decided by this Tribunal by order dated 17.2.2017. Learned Advocate for the applicant has placed on record a copy of the judgment and order dated 17.2.2017 passed in O.A. No. 296/2012 with O.A. No. 321/2012. The said OAs are dismissed by making observations in paragraph Nos. 6, 7 & 8 of the said O.A., which are as follows: -

“6. We find that the issues raised in these Original Applications are identical with those raised in O.A. Nos. 753/2012, 754/2012 and 808/2012, which were dismissed by judgment of this Tribunal dated 15.2.2017. This Tribunal has summarized the recommendations of the 5th Central Pay Commission as follows :

“ From this it is clear that 5th Pay Commission recommended that Pay plus N.P.A. should not exceed Rs. 29,500/- i.e. it should remain below the pay of the Cabinet Secretary in Government of India, who is the highest ranking Civil servant in Government of India. It is also recommended that N.P.A. be continued to be counted towards all service and pensionary benefits as at present. ”

7. This Tribunal has further held as follows:-

“Hon’ble Supreme Court has upheld Office Memorandum dated 7.4.1998, which was issued by the Government of India for implementing recommendations of 5th Pay Commission, and which restricted pay + N.P.A. to Rs. 29,500/- (less than the Basic Pay of the Cabinet Secretary) in the case of K.C. Bajaj (Supra). In fact, other Office Memorandum dated 7.6.1999 was held to be invalid as that was not in consonance with Office Memorandum dated 7.4.1998. State Government is not bound to accept

the recommendation of the Central Pay Commission in toto. After 6th Pay Commission, Government of India decided by Office Memorandum dated 30.08.2008 (referred to in G.R. dated 24.07.2012) to grant N.P.A. @ 35% of Pay plus Grade Pay subject to limit of Rs. 8500/- p.m. The Government of Maharashtra was well within its power to apply it from 1.7.2012. Before that date, the old rate as per G.R. dated 18.8.2010 would be applicable. We reject the contention of the Applicants that G.R. dated 29.7.2012 is in conflict with G.R. dated 10.11.2009. We are unable to accept the demand of the Applicants to apply N.P.A. @ 35% from 1.1.2006. In short, we do not find any merit in those O.As.”

8. Having regard to the aforesaid facts and circumstances of the case, both the O.As. are dismissed with no order as to costs.”

6. Learned Advocate for the applicant further submitted that the judgment and order dated 15.2.2017 rendered in O.A. Nos. 753, 754 & 808 all of 2012 and judgment and order dated 17.2.2012 rendered in O.A. No. 296/2012 With O.A. No. 321/2012 were challenged before the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad by preferring W.P. Nos. 6261/2017, 9302/2017 , 9446/2017 & 11911/2018 the Hon'ble High Court was pleased to decide

the said WPs by order dated 26.4.2019 thereby orders of dismissal of OAs were upheld holding that those orders are legal and proper. Paragraph Nos. 14, 15 & 16 of the order of the Hon'ble High Court in the said WPs are reproduced.

“14. The Tribunal has not committed any error in negating the contention of the petitioner.

15. Some of the petitioners have been paid non-practicing allowance at the revised rate with effect from 01.09.2008 and some from 01.01.2006. It appears that Government Resolution dated 10.11.2009 was interpreted by the authorities to the effect that the non-practicing allowance would be paid from 01.09.2008. It appears that the authorities interpreted clause 10(i) of Government Resolution dated 10.11.2009 in a manner that non-practicing allowance also would be included in the special allowance and shall take effect from 01.09.2008. The said interpretation was erroneous. However, some of them have been given the benefit of non-practicing allowance from the earlier date than prescribed under the Government Resolution dated 24.07.2012.

16. We do not find that petitioners in any way had misrepresented the authorities. It is probably on interpretation (though erroneous) of the Government Resolution dated 10.11.2009 the benefit was

accorded to some of the petitioners of payment of non-practicing allowance as per the revised pay scale. In view of that, we direct that if the recovery has not been made by the respondents from petitioners regarding the excess amount of non-practicing allowance paid, the same shall not be made as the same would be inequitable.”

7. Learned Advocate for the applicant submitted that while disposing of the present O.A. directions may be given to the respondents that if the recovery has not been made by the respondents from the applicants regarding the excess amount of NPA paid, the same shall not be made as the same would be inequitable.

8. In the circumstances as above, the applicants through the statement made by their learned Advocate submit to the dismissal of their claim in view of the order of the Hon'ble High Court upholding the decision of dismissing of similar types of OAs.

9. In view of the above said circumstances, which are on record in respect of earlier proceedings we find that there is no merit in the O.A. and the O.A. is liable to be dismissed, but with the directions to the respondents on the footing as

that of directions issued by the Hon'ble High Court in order to have parity of the present applicants with the applicants in previously instituted similar litigations. We, therefore, proceed to pass the following order: -

ORDER

The present Original Application is dismissed but with the directions to the respondents that if the recovery has not been made by the respondents from the applicants regarding the excess amount of NPA paid, the same shall not be made as the same would be inequitable.

There shall be no order as to costs.

MEMBER (A)

MEMBER (J)

PLACE : AURANGABAD.

DATE : 01.10.2021

O.A.NO.488-2013(DB-)-HDD-2021