

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD.

COMMON ORDER IN ORIGINAL APPLICATION NOS. 753,
754 & 808 ALL OF 2012

1. ORIGINAL APPLICATION NO. 753 OF 2012

DIST.: NANDED

- (1) Dr. Subhash Ramrao Saley,
Age:58 years,
Occupation – Professor (Rognidan).
- (2) Dr. Maifujullah Jilani Quadri,
Age:55 years,
Occupation – Professor (Shalya-Tantra).
- (3) Dr. Sampada Sandip Sant,
Age: 43 years,
Occupation – Professor (Sharir-Kriya).
- (4) Dr. Dilip Siddheshwar Wadodkar,
Age: 53 years,
Occupation – Professor (Ras-Shastra).
- (5) Dr. Dilip Keshavrao Puri,
Age: 55 years,
Occupation – Associate Professor (Rognidan).
- (6) Dr. Ramesh Madhavrao Bansode,
Age: 52 years,
Occupation – Assistant Professor (Sharir-Karya).
- (7) Dr. Shivaji Venkatrao Bhosle,
Age: 54 years,
Occupation – Assistant Professor (Pancha-Karma).

- (8) Dr. Ashok Bhaurao Deshmukh,
Age: 55 years,
Occupation – Assistant Professor (Shalaky-Tantra).
- (9) Dr. Shashikant Krishnanth Muley,
Age: 52 years,
Occupation – Assistant Professor (Sharir-Rachana)
- (10) Dr. Yeshwant Rajpul Patil,
Age: 49 years,
Occupation – Assistant Professor (Swastha-Vritta)
- (11) Dr. Chatragun Eaknathrao Lagad,
Age: 52 years,
Occupation – Assistant Professor (Ras-Shastra)
- (12) Dr. Milind Vithalrao Rampurkar,
Age: 54 years,
Occupation–Assistant Professor (Samhita-Siddhant).)....-
- (13) Dr. Vijay Padmakarrao Ukhalkar,
Age: 47 years,
Occupation –Professor (Shalya-Tantra).
- (14) Dr. Chandrashekar Dattatraya Vaikos,
Age: 52 years,
Occupation – Assistant Professor (Sharir Rachana).
- (15) Dr. Jatved Janardanrao Pawar,
Age: 46 years,
Occupation – Assistant Professor (Sharir-Kriya)
- (16) Dr. Digamber Shankarrao Chothe,
Age: 53 years,
Occupation – Assistant Professor (Dravyaguna).
- (17) Dr. Muneshwar Bhajandas Shende,
Age: 53 years,
Occupation – Assistant Professor (Dravyaguna)

- (18) Dr. Rajendra Haribhau Amilkanthwar,
Age: 53 years,
Occupation – Assistant Professor (Shalya-Tantra)
- (19) Dr. Bhagwan Kondiba Timmewar,
Age: 55 years,
Occupation – Assistant Professor (Shalya-Tantra)
- (20) Dr. Chaya Madhavrao Nandedkar,
Age: 49 years,
Occupation – Assistant Professor (Smahita-Siddhant)
- (21) Dr. Vishwas Eknathrao Gogte,
Age: 46 years,
Occupation – Assistant Professor (Kaya-Chikitsa)
- (22) Dr. Samsherkhan Ibrahimkhan Pathan,
Age: 51 years,
Occupation – Assistant Professor (Kaya-Chikitsa)
- (23) Dr. Ashok Prabhakarrrao Vaijwade,
Age: 47 years,
Occupation – Assistant Professor (Shalakyia-Tantra)
- (24) Dr. K.S. Wakode,
Age: 43 years,
Occupation – Assistant Professor (Shalakyia-Tantra)
- (25) Dr. Dattatrya Bhaurao Chavan,
Age: 50 years,
Occupation – Assistant Professor (Bal-Roga)
- (26) Dr. Nisarali Jafarali Khan,
Age: 48 years,
Occupation – Assistant Professor (Shalakyia-Tantra)
- (27) Dr. Bhagwan Kondiba Timmewar,
Age: 55 years,
Occupation – Assistant Professor (Shalya Tantra)

- (28) Dr. A.V. Waghchoure,
Age: 52 years,
Occupation – Assistant Professor (Sharir Rachana)

All,
Employed with,
Government Ayurvedic College, Nanded.

--

APPLICANTS**VERSUS**

- (1) The State of Maharashtra,

Through
The Secretary,
Department of Medical Education & Drugs
Department,
Mantralaya, Mumbai.

- (2) The Director of Ayurveda,
Government Dental and Hospital Building,
St. George's Hospital Compound,
Mumbai- 400 001.

Through
The Director.

- (3) Government Ayurvedic College,
Nanded.

Through
The Dean.

--

RESPONDENTS**WITH****2. ORIGINAL APPLICATION NO. 754 OF 2012****DIST. : NANDED.**

- (1) Dr. Ansari Majid,
Age. 35 years,
Occupation : Assistant Professor.

- (2) Dr. Barde S.B.,
Age. 33 years,
Occupation : Assistant Professor.
- (3) Dr. Bhosale S.H.,
Age. 29 years,
Occupation : Assistant Professor.
- (4) Dr. Bhurke D.P.,
Age. 36 years,
Occupation : Assistant Professor.
- (5) Dr. Chaudhari Swati S.,
Age. 41 years,
Occupation : Assistant Professor.
- (6) Dr. Dake M.D.,
Age. 32 years,
Occupation : Assistant Professor.
- (7) Dr. Degaonkar A.S.,
Age. 41 years,
Occupation : Assistant Professor,
- (8) Dr. Deshmukh J.B.,
Age. 39 years,
Occupation : Assistant Professor.
- (9) Dr. Dimple Vijay,
Age. 32 years,
Occupation : Assistant Professor.
- (10) Dr. Dube S.P.,
Age. 30 years,
Occupation : Assistant Professor.
- (11) Dr. Dulewad S.S.,
Age. 34 years,
Occupation : Assistant Professor.

- (12) Dr. Fasiha Tasneem,
Age. 35 years,
Occupation : Assistant Professor.
- (13) Dr. Fayyaz Ali,
Age. 31 years,
Occupation : Assistant Professor,
- (14) Dr. Gadekar R.D.,
Age. 35 years,
Occupation : Assistant Professor.
- (15) Dr. Ghadlinge M.S.,
Age. 32 years,
Occupation : Assistant Professor.
- (16) Dr. Gujar V.M.,
Age. 37 years,
Occupation : Assistant Professor.
- (17) Dr. Gujrathi A.B.,
Age. 31 years,
Occupation : Assistant Professor.
- (18) Dr. Hanumante R.D.,
Age. 30 years,
Occupation : Assistant Professor.
- (19) Dr. Humera Khan,
Age. 39 years,
Occupation : Assistant Professor.
- (20) Dr. Inamdar Ismail,
Age. 36 years,
Occupation : Assistant Professor.
- (21) Dr. Kapse V.R.,
Age. 34 years,
Occupation : Assistant Professor.

- (22) Dr. Karandkhedkar S.S.,
Age. 41 years,
Occupation : Assistant Professor.
- (23) Dr. Kelkar V.P.,
Age. 41 years,
Occupation : Assistant Professor.
- (24) Dr. Kulkarni Sonali,
Age. 30 years,
Occupation : Assistant Professor.
- (25) Dr. Kulkarni M.B.,
Age. 40 years,
Occupation : Assistant Professor.
- (26) Dr. Mane U.W.,
Age. 30 years,
Occupation : Assistant Professor,
- (27) Dr. More Kapil,
Age. 33 years,
Occupation : Assistant Professor.
- (28) Dr. Manoorkar G.S.,
Age. 39 years,
Occupation : Assistant Professor,
- (29) Dr. Muddamwar V.G.,
Age. 35 years,
Occupation : Assistant Professor.
- (30) Dr. Mudholkar V.G.,
Age. 32 years,
Occupation : Assistant Professor.
- (31) Dr. Muley P.S.,
Age. 51 years,
Occupation : Assistant Professor.

- (32) Dr. Mungal S.U.,
Age. 34 years,
Occupation : Assistant Professor.
- (33) Dr. Nagrik Arun,
Age. 29 years,
Occupation : Assistant Professor.
- (34) Dr. Najma Y. Memon,
Age. 34 years,
Occupation : Assistant Professor.
- (35) Dr. Potulwar M.P.,
Age. 32 years,
Occupation : Assistant Professor.
- (36) Dr. Rathod K.G.,
Age. 34 years,
Occupation : Assistant Professor.
- (37) Dr. Rathod Pralhad,
Age. 34 years,
Occupation : Assistant Professor.
- (38) Dr. Santre M.S.,
Age. 36 years,
Occupation : Assistant Professor.
- (39) Dr. Shirure P.A.,
Age. 35 years,
Occupation : Assistant Professor.
- (40) Dr. Siddiqui Mubashir,
Age. 35 years,
Occupation : Assistant Professor.
- (41) Dr. Sohail Khan,
Age. 39 years,
Occupation : Assistant Professor.

- (42) Dr. Sonkar V.K.,
Age. 32 years,
Occupation : Assistant Professor.
- (43) Dr. Tambe Salim,
Age. 39 years,
Occupation : Assistant Professor.
- (44) Dr. Tilak M.R.,
Age. 29 years,
Occupation : Assistant Professor.
- (45) Dr. Totawar S.R.,
Age. 32 years,
Occupation : Assistant Professor.
- (46) Dr. Md. Ubaidulla,
Age. 36 years,
Occupation : Assistant Professor.
- (47) Dr. Umrajkar H.G.,
Age. 40 years,
Occupation : Assistant Professor.
- (48) Dr. Sirsam S.S.,
Age. 39 years,
Occupation : Associate Professor.
- (49) Dr. Bharat B. Chavan,
Age. 47 years,
Occupation : Associate Professor.
- (50) Dr. Kusumkumar S. Ghorpade,
Age. 46 years,
Occupation : Associate Professor.
- (51) Dr. Vivek M. Sahasrabudhe,
Age. 50 years,
Occupation : Professor.

- (52) Dr. Mohan Kondiba Doibale,
Age. 51 years,
Occupation : Professor.
- (53) Dr. Sharmila S. Raut,
Age. 46 years,
Occupation : Professor.
- (54) Dr. Shubha A. Deshpande,
Age. 56 years,
Occupation : Professor.
- (55) Dr. Deelip G. Mhaisekar,
Age. 52 years,
Occupation : Professor.
- (56) Dr. Milind B. Kamble,
Age. 44 years,
Occupation : Professor.
- (57) Dr. Hemant V. Godbole,
Age. 47 years,
Occupation : Professor.
- (58) Dr. Rajesh K. Ambulgekar,
Age. 43 years,
Occupation : Professor.
- (59) Dr. Vijaylaxmi K. Ambulgekar,
Age. 47 years,
Occupation : Professor.
- (60) Dr. Wakode Shyam Ramji,
Age. 51 years,
Occupation : Professor.
- (61) Dr. Nandkumar R. Aswar,
Age. 49 years,
Occupation : Associate Professor.

- (66) Dr. Sanjauy Kumar R. More,
Age. 45 years,
Occupation : Associate Professor.
- (63) Dr. Anjali R. Wasadikar,
Age. 45 years,
Occupation : Associate Professor.
- (64) Dr. Vaishali V. Inamdar,
Age. 46 years,
Occupation : Associate Professor.
- (65) Dr. Mohammed A,. Sameer,
Age. 36 years,
Occupation : Associate Professor.
- (66) Dr. Saleem B. Tamboli,
Age. 37 years,
Occupation : Associate Professor.
- (67) Dr. Avinash Sham Motewar,
Age. 39 years,
Occupation : Associate Professor.
- (68) Dr. Shridhar D. Yennawar,
Age. 56 years,
Occupation : Associate Professor.
- (69) Dr. Anuja G. Deshmukh,
Age. 36 years,
Occupation : Associate Professor.
- (70) Dr. Suvernakar Suparna Vishwanath,
Age. 40 years,
Occupation : Associate Professor.
- (71) Dr. Prasad P. Deshpande,
Age. 39 years,
Occupation : Associate Professor.

- (72) Dr. Zanjad Naresh Prabhakarrrao,
Age. 36 years,
Occupation : Associate Professor.
- (73) Dr. Vijay B. Gaikwad,
Age. 48 years,
Occupation : Associate Professor.
- (74) Dr. Meenakshi G. Narkhede,
Age. 41 years,
Occupation : Associate Professor.
- (75) Dr. Atul S. Raut,
Age : 45 years,
Occupation : Associate Professor.

All,
Employed at,
Dr. SHANKARRAO CHAVAN GOVERNMENT MEDICAL
COLLEGE, Nanded.

--- **APPLICANTS**

VERSUS

- (1) The State of Maharashtra,

Through
The Secretary,
Department of Medical Education & Drugs
Department,
Mantralaya, Mumbai.
- (2) The Director of Ayurveda,
Government Dental and Hospital Building,
St. George's Hospital Compound,
Mumbai- 400 001.

Through
The Director.
- (3) Dr. SHANKARRAO CHAVAN GOVERNMENT MEDICAL

COLLEGE, Nanded.

Through
The Dean.

--

RESPONDENTS

WITH

3. ORIGINAL APPLICATION NO. 808 OF 2012

DIST. : DHULE

1. Dr. Vijay Madhukar Mulay,
Age : 50 Years,
Occupation- Associate Professor,
Government Medical College, Aurangabad.
R/o Plot No. 17, Sector A, CIDCO-N-1,
Aurangabad.
2. Dr. Rajendra Tulshiram Ankushe,
Age : 48 Years,
Occupation- Associate Professor,
Government Medical College, Aurangabad.
R/o – 31, Tantradnyanagar, Satara Parisar,
Aurangabad.
3. Dr. Vaishali Lalit Une,
Age : 43 Years,
Occupation- Associate Professor,
Government Medical College, Aurangabad.
R/o – ‘Salonika’, B-6, Khinvasara Nilgiris,
Ulkanagari, Aurangabad.
4. Dr. Vilas Ganesh Jaltade,
Age : 53 Years,
Occupation- Professor & HoD,
Shri Bhausahab Hire,
Government Medical College, Dhule
r/o- 70, Madhumandar, Vaibhav Nagar,
Dhule.

5. Dr. Sandeep Dhondiram Gundre,
Age : 39 Years,
Occupation- Associate Professor,
Shri Bhausahab Hire,
Government Medical College,Dhule
r/o-c/o- Mr. Babar, '38', Jamanagirti Road,
Gopalnagar, Dhule.
6. Dr. Bharati Machindra Patil,
Age : 30 Years,
Occupation- Associate Professor (Pathology),
Shri Bhausahab Hire,
Government Medical College,Dhule
r/o- 4, Sarweshwar Nagar, Wadibhokar Road,
Deopur, Dhule.
7. Dr. Ajit Ragunath Patil,
Age : 42 Years,
Occupation- Associate Professor,
(Forensic Medicine & Toxicology),
Shri Bhausahab Hire,
Government Medical College,Dhule
r/o- 'Trupti', 37, Kshire Colony,
Deopur, Dhule.
8. Dr. Naosheen Inamul Bari,
Age : 38 Years,
Occupation- Lady Medical Officer,
(P.S.M.)
Shri Bhausahab Hire,
Government Medical College,Dhule
r/o-60, Government Housing Society, Phari Pool,
Dhule.
9. Dr. Shilpa Chetan Pawar,
Age : 34 Years,
Occupation- Doctor,
r/o – 3, Rupa Apartment,
In Front of Jain Mandir,
Santoshi Mata Chowk, Dhule. --

APPLICANTS

VERSUS

1. The State of Maharashtra,
Through the Secretary,
Department of Medical Education & Drugs
Department,
Mantralaya, Mumbai.
2. The Director of Medical Education,
Government Dental and Hospital Building,
St. George's Hospital Compound,
Mumbai- 400 001.
Through
The Director.
3. Shri Bhausahab Hire Government Medical College,
Dhule,
Through
The Dean.
4. The Dean,
Government Medical College & Hospital,
Aurangabad.

-- **RESPONDENTS**

APPEARANCE : Shri Milind Patil, Learned Advocate for the
Applicants in all these O.As.

: Shri M.P. Gude, Learned Presenting Officer
for the Respondents in all these O.As.

**CORAM: HON'BLE SHRI RAJIV AGARWAL,
VICE CHAIRMAN (A)
AND
HON'BLE SHRI J.D. KULKARNI,
MEMBER (J)**

DATE : 15.02.2017.

COMMON ORDER

[Per- Hon'ble Shri Rajiv Agarwal, Vice-Chairman (A)]

1. Heard Learned Advocate Shri Milind Patil, for the Applicants in all these O.As. and Shri M.P. Gude, learned Presenting Officer in all these O.As.
2. These O.As. were heard together and are being disposed of by a common order as the issues to be decided are identical.
3. Learned counsel for the Applicant argued that the Applicants are doctors in Government Medical/Aurvedic Colleges in Maharashtra. They are by compulsion, required to accept non-practicing allowance forgoing option to engage in private medical practice. This Non-Practicing Allowance (N.P.A.) is part of pay and service conditions of the applicants and the State Government is precluded from taking away or decreasing its proportion to the basic pay to the disadvantage of the Medical Teachers. Learned Counsel for the Applicants argued that the Rule 15 of the Maharashtra Civil Services (Pay) Rules, 1981 states that holder of post, the pay of which

is changed, shall be treated as if he were transferred to a new post. Therefore, restricting the N.P.A. is not permissible.

4. Learned counsel for the Applicants argued the payment of N.P.A. is a longstanding policy and has become part of service conditions of the Medical Teachers. After 4th Pay Commission, Government of Maharashtra applied revised Pay Scales to Medical Teachers by G.R. dated 27.03.1989. By G.R. dated 19.10.1989, it was decided to count N.P.A. for the purpose of 'Pensionable Pay'. The quantum of N.P.A. has been revised from time to time and for teachers in rural areas by G.R. dated 22.2.2007, it is at the rate of 50% of basic pay in Nanded, Dhule, Yavatmal and Ambejogai, Medical Colleges. By G.R. dated 18.03.2000, N.P.A. was revised for teachers in Aurvedic College, and it was fixed at 25% of the basic Pay. The medical teachers were given facility to do private practice by G.R. dated 27.03.2008, which was withdrawn by G.R. dated 18.08.2010. Learned Counsel for the Applicants contended that the Central Government counts N.P.A. for calculating T.A./D.A. etc. as can be seen in Office Memorandum of Ministry of Health,

Government of India dated 29.09.2008. Government of Maharashtra, by G.R. dated 10.11.2009, implemented Pay Scales recommended by the University Grants Commission (U.G.C.) in Maharashtra Medical, Dental and Aurvedic Colleges. The State Government issued G.R. dated 24.07.2012, by which maximum limit for the Pay plus Grate Pay plus N.P.A. has been fixed at Rs. 85000/-. This is not permissible. Learned counsel for the Applicants argued that N.P.A. is a contract between employee and employer, it is superior to the service conditions. He cited various judgments in support of his claim that the Government has no authority to limit payment of N.P.A.

5. Learned Presenting Officer (P.O.) argued on behalf of the Respondents that in these O.As., the Applicants are pleading that N.P.A. is part of Pay and Service Conditions. Nowhere as it is claimed that N.P.A. is a contract between the Government and the doctors. Learned Presenting Officer (P.O.) argued that N.P.A. has always been treated as a service condition and as 'Pay' for certain purposes. There is no legal basis to claim that it is a contract between the Government

and doctors. Learned Presenting Officer argued that all the judgments cited by the Applicants in this regard are not applicable in the present O.As. Learned Presenting Officer argued that the State Government of Maharashtra has taken a policy decision not to appoint any Pay Commission for its employees and whenever any Central Pay Commission submits its recommendations, Maharashtra Government appoints Pay Equalization Committee to implement the recommendations of Central Pay Commission to its employees. As regards quantum of N.P.A., G.R. dated 24.07.2012 is based on the decision of Government of India, by Office Memorandum dated 30.08.2008 issued by Ministry of Finance, Government of India.

6. We have carefully gone through the pleadings in all the three O.As. O.A. No. 753/2012 is filed by teachers in Government Aurvedic Colleges. In synopsis, points for consideration no. 1, it is stated that:-

“This forclosing of the option taking away the existing right to engage in private practice has made the non-practicing allowance as a mandatory part of pay and a part of service condition thereby precluding the

State Government from withdrawing on decreasing its proportionate (sic) relation to the pay scale to the disadvantage of the Medical Teachers.”

7. In other two O.As. also identical submissions are made. We could not find any reference to N.P.A. being a contract between the Applicants and the Government. As such, we have to ignore submissions made by learned Advocate Shri Milind Patil in this regard, as this was never pleaded in any O.A.

8. The Applicants have claimed that the Pay of the Medical Teachers were fixed as per G.R. dated 10.11.2009 as recommended by U.G.C. Para 9(A)(b)(iii) of this G.R. reads as follows:-

“(9)(A)(iii) The sum total of the revised basic pay and such other emoluments (on which allowances are payable treating them as a part of pay) shall not exceed Rs. 80,000/-.”

9. The Applicants claim that letter dated 17.1.2012 issued by the Medical Education and Drugs Department regarding implementation of 6th Pay Commission has clarified

that the limit for Pay + N.P.A. will remain at Rs. 44250/-.
This is in violation of G.R. dated 10.11.2009. We are not
impressed by this argument. The letter dated 17.1.2012 has
given the following clarification :

| अ.क्र | मुद्दा | अभिप्राय |
|-------|--|--|
| 3 | सहाय्या वेतन आयोगानुसार व्यवसायरोध भत्ता मूळ वेतनावर ३५% किंवा ५०% (अनुज्ञेय असेल त्याप्रमाणे) लागू करण्यात यावा किंवा कसे दंत शल्यचिकित्सकांना ३५% दराने व्यवसायरोध भत्ता अनुज्ञेय करण्यात यावा किंवा कसे | सहाय्या वेतन आयोगानुसार व्यवसायरोध भत्ता अदा करण्याबाबत तसेच व्यवसायरोध भत्त्याच्या कमाल मर्यादित सुधारणा करण्याचा प्रस्ताव विचाराधीन आहे. त्यास शासन मान्यता मिळाल्यानंतर त्याबाबतचे आदेश यथावकाश निर्गमित करण्यात येतील. सहाय्या वेतन आयोगाच्या वेतनश्रेणीत अध्यापकांना व्यवसायरोध भत्ता अनुज्ञेय नाही. त्यामुळे सध्या शासकीय वैद्यकीय, दंत व आयुर्वेद महाविद्यालयातील अध्यापकांना व्यवसायरोध भत्ता ५ व्या वेतन आयोगानुसार असुधारित वेतनश्रेणीत सध्याच्या रु. ४४२५०/- या कमाल मर्यादित अनुज्ञेय असल्याप्रमाणे अदा करण्यात यावा. शासकीय वैद्यकीय व दंत महाविद्यालयातील दंतशल्यचिकित्सकांना २५% दराने व्यवसायरोध भत्ता अनुज्ञेय राहिल. |

From the aforesaid, it is clear that 6th Pay Commission had not made any recommendation about N.P.A. and the matter regarding payment of N.P.A. was under

consideration of Government. Till then, the payment of N.P.A. on old pay scales as per 5th Pay Commission with limit of Rs 44250/- was continued. This limit of Rs. 44250/- was not on the pay under 6th Pay Commission. We reject the contention that this letter dated 17.1.2012 has in any manner diluted provision of G.R. dated 10.11.2009.

10. The Applicants are relying on Rule 15 of the Maharashtra Civil Services (Pay) Rules, 1981. This Rule reads as under:-

“15. When pay of a post is changed. -

The holding of a post, the pay of which is changed, shall be treated as if he were transferred to a new post on the new pay :

Provided that, except in cases where the pay-scale of the post has been changed as a result of change in its duties or responsibilities, he may at his option, retain his old pay until the date on which he has earned his next or any subsequent increment, on the old scale or until he vacates his post or ceases to draw pay in that time-scale. The option once exercised is final.”

11. This Rule is applied when the pay scales undergo change due to implementation of recommendations of Pay Commission or revision of pay scales due to any other reason. The option to continue in the old scale is always available. If the Applicants wanted to continue Pay + N.P.A. at the old rates, they could have continued to so. We are unable to see as to how the decision to restrict Pay + Grade Pay + N.P.A. to Rs. 85000/- p.m. will attract this rule or contradict this Rule.

12. The Applicants have claimed that N.P.A. is a part of Pay and Service conditions. They have relied on the judgment of Hon'ble Supreme Court in the case of **K.C. Bajaj and Ors. Vs. Union of India and Ors. in Civil Appeal Nos. 10640-46 of 2013 (Arising out of SLP (C) Nos. 3358-64 of 2011)**. In para No. 2 of this judgment, Hon'ble Supreme Court has reproduced the recommendation of 5th Pay Commission on this issued contained in para 52.16 of its report :-

“52.16 Non-practicing allowance Non-practicing allowance is presently granted under a slab system

with amounts ranging from Rs. 600 per month at the lowest level to Rs. 1000 at the highest. It has been represented to us that prior to the Third CPC, NPA was granted as a percentage of basic pay, ranging from 25 to 40% at different levels, working out to an average of about 27%, which has, under the present arrangements dropped to as low as 12.5 to 16%. Doctors are also aggrieved that it does not count forwards Housing accommodation, though it is countable for all other purpose, including person. There are also related demands for extension of NPA to other categories of professionals and Government servants who have opportunities to earn in the open market, as also the demand for discontinuance of NPA by permitting private practice. The Third CPC observed that NPA was granted to doctors in lieu of private practice on account of a traditionally enjoyed privilege as well as lesser effective service and promotion prospects caused by late entry into service. It did not favor private practice by doctors, and favored NPA as a separate element from Pay-scales. It suggested a switchover to a slab system instead of the existing rates with monetary limits. The Fourth CPC enhanced the rates under the different slabs, besides granting it uniformly to all medical officers. The administrative Ministry has suggested that NPA should be continued and also be

counted for purposes of housing accommodation eligibility. In the matter of permitting limited private practice we have been advised by expert opinion that it could be permitted in a limited form provided malpractices could be curbed. We also note that it is only doctors who are required to devote a lifetime to health care and life sustenance under oath as a part of their qualifications. We do not recommend extension of NPA to any other category. We recommended that the slab system of granting NPA to doctors may be dispensed with and NPA be granted at a uniform rate of 25% of basic pay subject to the condition that pay plus NPA does not exceed Rs. 29,500/- , i.e. less than the maximum proposed for the Cabinet Secretary. It will continue to Count towards all service and pensionary benefits as at present. No other change is called for, as it would disturb relatives with other services. We are also not in favour of permitting private practice in any form at this stage. ”

From the aforesaid paragraph, it is clear that 5th Pay Commission recommended that Pay plus NPA 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. Third Pay Commission has observed that N.P.A. was granted to doctors in lieu of private practice on account of a traditionally enjoyed privilege as well as lesser effective service and promotion prospects caused by late entry into service.

13. Office Memorandum dated 7.4.1998 issued by the Government of India, is also reproduced from the aforesaid judgment of Hon'ble Supreme Court. It reads:

“Office memorandum Dated 07.04.1998 To All Participating Unit of Central Health Service
Subject: Recommendation of the 5th Central Pay Commission-Grant of Non Practicing Allowance at revised rates to Central Health Service Officers.

S/Madam, In supersession of this Ministry's letter of even number dated the 20th March, 1998 on the above subject I am directed to say that the President is pleased to decide that Central Health Service officers may be paid Non Practicing Allowance @ 25% of their Basic

Pay subject to the condition that Pay plus Non Practicing Allowance, does not exceed Rs. 29500/-. 2. The Non Practicing Allowance shall count as 'pay' for all service benefits including retirement benefits as hitherto. 3. This issue with the approval of Ministry of Finance (Department of Expenditure) U.O. No.7 (25)E-III A-97 dated 7.4.1998.

Yours faithfully,

Sd/-
(H.N.Yadav)
Under Secretary to
The Government of India.
(Emphasis supplied)”

14. Government of India has treated NPA as pay for all service benefits except House Rent Allowance. It appears that Government of Maharashtra did not fully accept recommendations of 5th Pay Commission in this regard. By G.R. dated 18.3.2000, the rate of NPA was increased to 25% of the Basic Pay subject to Pay plus NPA not exceeding Rs.29,500/-. Earlier by G.R. dated 19.10.1989, it was clarified that:

“The Non-practicing Allowance should be counted for the purpose of “Pensionable

Pay” and recovery of License fee for Government accommodation only, and not for any other service purpose such as Travelling Allowance, Dearness Allowance, House Rent Allowance, City Compensatory Allowance, etc.”

15. G.R. dated 24.7.2012, revises the rate of NPA to 35% (except some Medical Colleges in rural areas where the rate is 50%) subject to the condition that Pay plus grade pay plus NPA would not exceed Rs.85,000/-. This limit is prescribed to ensure that this is less than the Basic Pay of Cabinet Secretary, which was fixed at Rs.90,000/- p.m. This G.R. dated 24.7.2012 has only continued the past practice, traditionally being followed in the State. The Applicants have claimed in para 6(b) of O.A.No.753/2012 that the policy to pay Non-practicing Allowance to the Medical and Ayurvedic Teachers is a long standing policy and by consistency has become part of service condition of the Medical teachers. It has to be appreciated that this G.R. dated 24.7.2012 does not change the long standing policy in this regard. The policy of limiting pay (which in 6th Pay Commission included

Grade Pay) plus NPA to a sum below the Basic Pay of Cabinet Secretary of Government of India is also a long standing policy. The Applicants cannot pick and choose. Hon'ble Supreme Court has upheld Office Memorandum dated 07.04.1998, which was issued by the Government of India for implementing recommendations of 5th Pay Commission, and which restricted Pay + NPA to Rs.29,500/- (less than the Basic Pay of 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 30.8.2008 (referred to in G.R. dated 24.7.2012) to grant NPA @ 35% of Pay plus Grade Pay subject to limit of Rs. 85,000/- 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 contentions of the Applicants that G.R. dated 24.7.2012 is in conflict with G.R. dated 10.11.2009. We are unable to accept

the demand of the Applicants to apply NPA @ 35% from 1.1.2006. In short, we do not find any merit in these O.As.

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

MEMBER (J)

VICE CHAIRMAN (A)

Kpb/DB OA No 753, 754 & 808 all of 2012 RA 2017