

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 805/2017 (S.B.)

- 1) Dr. Ashok Tarachand Kamble, aged 67 yrs., Occ. retired, r/o 1, Old Subhedar layout extension, Nagpur-24.
- 2) Dr. Vijay Vishwanathrao Akulwar, aged 67 yrs., Occ. retired, r/o 64, Hindusthan Colony, Wardha Road, Nagpur-15.
- 3) Dr. Mrs. Surekha Ramesh Borkute, aged 68 yrs., Occ. retired r/o 217, Chhatrapati Nagar, Nagpur-440 015.
- 4) Dr. Mrs. Nivedita Prabhakar Kulkarni, aged 69 yrs., Occ. retired, r/o 331, Gandhi Nagar, North Ambazari Road, Nagpur-10.
- 5) Dr. Mrs. Vibhaari Sharad Dani, aged 66 yrs., Occ. retired, r/o 7, Gandhi Sagar, East Mahal road, Nagpur-32.
- 6) Dr. Mahadeo Shrawanji Walde, aged 67 yrs., Occ. retired, 54, South of Ridge Road Layout, Vishwakarma Nagar, Nagpur-27.
- 7) Dr. Bandu Disanrao Dhamne, aged 67 yrs., Occ. retired, r/o 103, Aura Elegance, Wadgaon-Budruk, near Hotel Dawat, Pune-Bangalore Highway, Pune-41.
- 8) Dr. Bapuji Shrawan Gadam, aged 65 yrs., Occ. retired, r/o 127, Suyog Nagar, Nagpur-15.
- 9) Dr. Mrs. Zahida Faiyaz Husain, aged 69 yrs., Occ. retired, r/o 21/A, New Colony, Sadar, Nagpur-01.
- 10) Dr. Babarao Tulsiram Jambhulkar, aged 68 yrs., Occ. retired, r/o Manapure Road, Malgajari Pura, Wardha-442 001. M.No.823550991.
- 11) Dr. Mrs. Krishna Satish Kale, aged 68 yrs., Occ. retired, 238, Empress Mill Colony, Shri Nagar, Ring Road, Nagpur-15.
- 12) Dr. Ms. Mala Anandrao Kamble, aged 69 yrs., Occ. retired, r/o Plot No.14, Anand Niwas, Jetwani Society, Shashtri Layout, Nagpur-25.

- 13) Dr. Ashok Mitaram Takhalate, aged 69 yrs., Occ. retired,
r/o Rajat Hills, Ring No.2, Flat No.101, Opp. N.B.S.S.,
Amravati Road, Nagpur-33.
- 14) Dr. Ashok Gajanan Lanjewar, aged 68 yrs., Occ. retired,
r/o C-42, Yashoda Nagar, Phase-I, Hingna Road, Nagpur-36.
- 15) Dr. Nandkishor Rajeshwar Belorkar, aged 67 yrs. Occ. retired,
r/o B/6, Suyash Co-operative HSG Society, Hills Road,
Sitabuldi, Nagpur-12.
- 16) Dr.Hiresh Ramdas Nagrale, aged 68 yrs., Occ. retired,
99 "Sankalp", Old Subhedar Layout, Nagpur-24.
- 17) Dr. Hemant Nevendram Chhabrani, 61 yrs., Occ. retired,
r/o 220, K.T. Nagar, Gittikhadan, Katol Road, Nagpur-13.
- 18) Dr. Smt. Pratibha Shrinivas Pendharkar, aged 68 yrs., Occ.retired,
r/o 404/b, Vaishali Appt., Tilak Nagar, Amravati Road, Nagpur-33.
- 19) Dr.Ms. Manorama B. Purwar, aged 68 yrs., Occ. retired,
r/o B-302, Neelgagan Housing Society, Dhantoli, Nagpur-12.
- 20) Dr. Mrs. Varsha Nishikant Sagdeo, aged 68 yrs.,Occ. retired,
r/o 13, Nargundkar Colony, Khamla Road, Nagpur-15.

Applicants.

Versus

- 1) State of Maharashtra, its Secretary,
Department of Medical Education
and Drugs through Mantralaya, Mumbai-32.
- 2) State of Maharashtra,
through its Secretary, Director of Medical
Education and Research, St. George's Dental
Hospital Building, near CST, Mumbai.

Respondents.

S/Shri B.G. Kulkarni, R.V. Shiralkar, Advocates for the applicants.

Shri S.A. Sainis, P.O. for respondents.

**Coram :- Hon'ble Shri Anand Karanjkar,
Member (J).**

Date of Reserving for Judgment : 3rd September,2019.

Date of Pronouncement of Judgment : 19th September, 2019.

JUDGMENT

(Delivered on this 19th day of September,2019)

Heard Shri R.V. Shiralkar, Id. counsel for the applicants and Shri S.A. Sainis, Id. P.O. for the respondents.

2. The applicants were in service of the Government and they were discharging duties in various Medical Colleges as Professors/ Associate Professors. All the applicants were holding the Post Graduate degree MD/MS duly recognised by the Medical Council of India.

3. It is grievance of the applicants that for giving effect to the recommendation of the 6th Pay Commission, G.R. dated 10/11/2009 was issued by the respondent no.1. In the G.R. it was mentioned that the G.R. shall be applicable w.e.f. 1/1/2016, so far as Pay Scales and the other recommendations of the 6th Pay Commission were concerned, it is submitted that in the said G.R. provision was made to give incentives to the teachers in the medical collages who were possessing MD/MS/DNB/DM/MCh/Ph.D. or other higher qualification.

It was provided in the G.R. that the Teachers, who were in service of the Medical Colleges and holding the Post Graduate degree or Super Speciality degree mentioned above, shall be entitled to three non-compounded increments. It is grievance of the applicants that for giving benefits, the G.R. dated 10/11/2009 was issued by the respondent no.1 and as per the G.R. the revised scales of pay and revised rates of Dearness Allowance were given w.e.f. 1/1/2006, but the benefit of incentives i.e. non-compounded advance increments / special allowances was given w.e.f. 1/9/2008. It is submission of the applicants that the policy not giving the benefits of non-compounded advance increments w.e.f. 1/1/2006 was discriminatory and the discrimination was irrational and consequently that part of the G.R. be declared discriminatory and direction be given to the respondent nos. 1 and 2 to revise the cut off date 1/9/2008 as 1/1/2006 and all consequential benefits be given to the applicants.

4. The respondent nos. 1&2 have submitted their reply on affidavit which is at page no.76. It is contention of the respondents that the Government has rightly taken decision to give effect for giving the benefit of non-compounded advance increments w.e.f. 1/9/2008 because it has nothing to do with the recommendation of the Pay Commission. It is submitted that the G.R. dated 10/11/2009 was issued as per the direction of the Government of India, Ministry of

Human Resource Development, Department of Higher Education in letter dated 31/12/2008. It is submitted that in letter dated 31/12/2008 it was mentioned that the benefit of non-compounded advance increments be given w.e.f. 1/9/2008. It is denied by the respondents that the G.R. issued by the respondent no.1 was discriminatory and the discrimination was irrational. It is contended that the benefit was given only to the Teachers in the Medical Colleges who were possessing MD/MS/DNB/DM/MCh/Ph.D. degree and therefore, action was taken by the Government in pursuance of the letter dated 31/12/2008 received from the Government of India, Ministry of Human Resource Development, Department of Higher Education, therefore, there is no illegality in it and therefore there is no substance in the application and it is liable to be dismissed.

5. I have perused G.R. dated 10/11/2009. On page no.2 of the G.R. in Para-2 (vii) it was cleared that the revised Pay Scales will be implemented from w.e.f. 1/1/2006. In Para-8 of the G.R. provision was made to give incentives to the Teachers in the Medical Colleges who were holding degree MD/MS/DNB/DM/MCh/Ph.D. and in Para-10 (i) it is mentioned as under –

“10 Date of Implimentation of revised pay and allowance and payment of arrears :-

(i) *The revised scales of pay and revised rates of Dearness Allowance under this scheme shall be effective from 1/1/2006 and the non-compounded advance increments/ special allowances as applicable shall take effect from 1/9/2008."*

6. It is contention of the applicants that as the Pay Scales were made applicable w.e.f. 1/1/2006 there was no reason for not giving the incentives from 1/1/2006. It is submitted that no proper justification is shown by the respondents for not giving the incentives w.e.f. 1/1/2006

7. The learned counsel for the applicants have placed reliance on the Judgment delivered by the Hon'ble Apex Court in Civil Appeal No. 908/2013 between **Association of College and University Superannuated Teachers Vs. Union of India & Ors.,** decided on 30/01/2013.

8. It is submitted that in case before the Hon'ble Apex Court, the Hon'ble Division Bench of the High Court held that the decision of the Government to raise the ceiling of gratuity had no nexus with the State Government to specify the particular date for determining the eligibility of the employees to get enhanced gratuity. In that matter the G.R. was issued by the Government on 21/8/2009 and ceiling of retirement gratuity and death gratuity was further raised from 5 lacs to 7 lacs, but the same was made effective from 1/9/2009. It was contended by the Petitioners in that matter that the act of the

Government implementing the provision relating to enhancement of gratuity w.e.f. 1/9/2009 was discriminatory, it was irrational discrimination and they were entitled for the enhanced gratuity Rs.7 lacs w.e.f. 1/1/2006.

9. The learned counsel for the applicants submitted that the Hon'ble Apex Court upheld the contention of the Petitioners in that matter and held that the Petitioners were entitled for the enhanced gratuity w.e.f. 1/1/2006 and to that extent the cut off fixed by the Government as 1/1/2006 was held unconstitutional. It is contended by the applicants that the Judgment delivered by the Hon'ble Apex Court is squarely applicable to their case.

10. It is contention of the respondents that by issuing the G.R. dated 10/11/2009 the Government implemented the recommendations of the 6th Pay Commission and when this G.R. was issued, the applicants were not entitled for any incentives for holding the MD/MS/DNB/DM/MCh/Ph.D. degrees or other higher qualification and therefore, it is submitted that as this decision was taken by the Government in pursuance of the letter received from Government of India, Ministry of Human Resource Development, Department of Higher Education dated 31/12/2008 it was applicable to only particular class and therefore, the action of the Government is not discriminatory.

11. The learned P.O. invited my attention to Annex-R-1 the letter dated 31/12/2008. It is submitted that the Para-9 (i) is very material in this regard. The Para-9 (i) is as under -

“9 (i) The revised Pay and revised rates of Dearness Allowance under the scheme shall be effective from 1/1/2006. The revised rates of all other applicable allowances such as House Rent Allowance, Transport Allowance, Children Education allowance etc. and the non-compounded advance increments shall take effect from 1/9/2008”.

12. Thus, it seems that the action of the Government to extend the benefit of incentives non-compounded advance increments was as per the letter issued by the Government of India and in the same letter the date of implementation was fixed as 1/9/2008.

13. In this regard, I would like to point out that the Hon'ble Apex Court on the last page of the Judgment has observed as under –

“The appellant’s case falls in category I identified in the judgment of V. Kasturi’s case because the retiring/retired teachers of Colleges and Universities were already getting gratuity and they were granted the benefit of higher gratuity in terms of Government Resolution dated 5/5/2009. Thus, there is no justification, legal or otherwise to deny them benefit of higher gratuity with effect from 1/1/2006”.

14. The Hon'ble Apex Court observed that the case of the Petitioners was covered by the Judgment in case of V.Kasturi's. It was observed that the retiring/retired teachers of the Colleges and the Universities were already getting gratuity and they were granted the

benefit of higher gratuity in terms of Government Resolution dated 5/5/2009. For this reason, it was held by the Hon'ble Apex Court that there was no justification for denying them the benefit of higher gratuity w.e.f. 1/1/2006.

15. So far as the applicants before the Court are concerned, it is not their case that before issuance of the G.R. dated 10/11/2009, the applicants were entitled for incentives and non-compounded advance increments on account of their higher education. Thus, it is cleared that in pursuance of the letter received from the Government of India dated 31/12/2008, decision was taken by the Government of Maharashtra to extend these incentives to the Members of the Teaching Staff in the Medical Colleges/ Dental Colleges. Even the Government of Maharashtra implemented this provision as per the direction in para-9 of the letter w.e.f. 1/9/2008. The learned counsel for the applicants was unable to point out that this benefit was extended to any Teacher in the Medical College w.e.f. 1/1/2006. Under these circumstances, the Judgment delivered by the Hon'ble Apex Court is of no help of the applicants.

16. In view of this discussion, I hold that no case is made out for holding that the action of the respondents is discriminatory, in not extending the benefit to pay non-compounded advance increments

w.e.f. 1/1/2006. Hence, the O.A. stands dismissed. No order as to costs.

Dated :- 19/09/2019.

**(A.D. Karanjkar)
Member (J).**

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I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 19/09/2019.

and pronounced on

Uploaded on : 20/09/2019.