

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1264 OF 2013

DISTRICT : RATNAGIRI

Shri Rajendra M. Kashelkar.)
Age : 50 years, Occu.: Service as)
Orthotic-cum-Prosthetic Technician,)
Working in the Office of Civil Surgeon)
Ratnagiri, District : Ratnagiri 415 639.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Addl. Chief Secretary,)
Public Health Department,)
Mantralaya, Mumbai - 400 032.)
2. The Director of Health Services,)
St. Georges Hospital Compound,)
Near CST Station, Mumbai.)
3. The Joint Director of Health Services)
(Malaria), Pune.)
4. The Dy. Director of Health Services)
Mumbai Circle, Thane.)
5. The Civil Surgeon.)
District Civil Hospital Ratnagiri,)
District : Ratnagiri.)



6. The Additional Chief Secretary.)
 Finance Department, Mantralaya,)
 Mumbai.)...**Respondents**

Shri V.P. Potbhare, Advocate for Applicant.

Smt. K.S. Gaikwad, Presenting Officer for Respondents.

**CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)
 R.B. MALIK (MEMBER-JUDICIAL)**

DATE : 11.08.2016

PER : R.B. MALIK (MEMBER-JUDICIAL)

JUDGMENT

1. The dispute in this Original Application (OA) relates to the pay scale to be granted for the post of "Orthotic-cum-Prosthetist Technician, Class-III (the said post). That post is held by the original Applicant.

2. We have perused the record and proceedings and heard Mr. V.P. Potbhare, the learned Advocate for the Applicant and Shri N.K. Rajpurohit, the learned Chief Presenting Officer. The Respondent No.1 is the State of Maharashtra in Public Health Department (Pub.H). The Respondent No.2 is the Director of Health Services while the 3rd Respondent is the Joint Director of Health Services (Malaria). The 4th Respondent is the Deputy of the 2nd



Respondent. The 5th Respondent is the District Civil Surgeon, Ratnagiri. The 6th Respondent is the State of Maharashtra in Finance Department (Addl. Chief Secretary Finance).

3. It is not much in dispute that under 4th Respondent's delegated powers, the Applicant came to be appointed on the basis of 29 days with a day's technical break to the said post on 18.2.1994. On 10.4.1997, after a series of such appointments, he was appointed to the said post regularly at Ratnagiri under the 5th Respondent.

4. At Nashik and Ratnagiri, 4 posts (of the said posts) were created. The then pay scale was 1400-40-1800-50-2300. Handicapped Rehabilitation Centre came to be established. Creation of new posts became necessary as a result thereof. This was achieved by a G.R. dated 1.3.2006 (Exh. 'D', Page 41 of the Paper Book (P.B.)). The said post was at Serial No.2. At Serial No.1 was the post of Occupational Therapist, Class-III. The pay scale for the post of O.T.T. was Rs.5500-Rs.9000 while that of the said post was Rs.5000-Rs.8000. The two other posts so created were Leather Worker and Helper, Class-IV.

5. In Para 6.6 of the OA, it is pleaded as follows :

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“6.6 The Applicant states that the Respondent Nos. 1 to 5 has given the pay scales to the applicant as 4500-7000 as per 5th pay scale and Rs.5200-20200 as per 6th Pay Commission. The applicant is working under the kind control of the Respondent nos.1 to 5. After revision of pay scales the Govt. has issued revised pay Rules, 2009. The applicant submits that the applicant is getting the pay scales of Rs.4500-7000 (5th Pay) and Rs.5200-20200 (6th Pay). It is to point out that under the kind control of Respondent no.1 the Director of Medical Education and Research comes in. In this department as per the revised pay scales of 5th pay, the pay scales are shown as 5000-8000 and Rs.9300-34800 (6th Pay) to the post of “Prosthetic”. The pay scales to the post of “Orthotic-cum-Prosthetist Technician, shows as 5000-8000 (5th pay) and 9300-34800 (6th pay) Gr. Pay 4200 whereas the Respondent nos.1 to 5 have not given the above pay scales to the applicant. A copy of the relevant extract of revised pay scales provided as per Revision of Pay Rule 2009 is annexed at **Exhibit “E”**.”



At Exh. 'E', there is a copy of Maharashtra Civil Services (Revised Pay) Rules, 2009 (Revised Pay Rules). There at Serial No.108 is the post of Prosthetist with pay scale of 5000-8000 under 5th Pay Commission and 9300-34800 under 6th Pay Commission (Grade Pay 4200). At Serial No.116 is the post of Orthorist with exactly the same pay scale as Prosthetist.

6. Quite pertinently, Para 12.1 (Page 56 of the P.B.) deals with the above quoted Para 6.6 of the OA.

“12.1 It is true that under the control of Medical Education and Research Department, there are two separate cadres one of Orthotic and one of the prosthetic, and as per 5th pay commission the pay scale is Rs.5000-8000 and the 6th pay commission Rs.9300-34800 + Gr. Pay Rs.4200, also the responsibilities and duties of those cadres are different. So it is clearly indicates that from beginning those cadres are in the high pay scale. The said pay scales and cadres are not shown in the booklet of Public Health Department published by finance department, hence respondent No.5 has not applied the said pay scale to the applicant.”

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At this stage itself, let us also examine as to what the Finance Department had to say about it comparatively recently on 27.5.2015 (Exh. 'R-1', Page 63). Let us reproduce a lengthy passage (in Marathi) therefrom.

“सार्वजनिक आरोग्य विभागाच्या दिनांक 9 मार्च, २००६ च्या शासन निर्णयाचे अवलोकन केले असता असे निदर्शनास आले आहे की, रुग्णालयातील मंजूर खाटा, एकूण उपलब्ध पदे, प्रमाणकानुसार सध्या उपलब्ध पदे अतिरिक्त पदे आणि अतिरिक्त निर्माण करावयाच्या पदांचा रुग्णालयनिहाय तपशील दर्शविण्यात आला आहे. त्यामध्ये ऑर्थोस्टिक कम प्रोथोटिक तंत्रज्ञ वर्ग-३ संवर्गाच्या नोंदीसमोर प्रमाणानुसार उपलब्ध पद (१) असे दर्शविण्यात आले आहे तर अतिरिक्त निर्माण करावयाच्या पदाच्या स्तंभामध्ये कोणतीही नोंद आढळून येत नाही म्हणजेच सदर शासन निर्णयान्वये ऑर्थोस्टिक कम प्रोथोटिक तंत्रज्ञ वर्ग-३ या संवर्गामध्ये नवीन पदनिर्मिती झालेली दिसून येत नाही, याचाच अर्थ सदर पद रु.५०००-८००० या वेतनश्रेणीमध्ये निर्माण झालेले नाही. मात्र विभागाने आस्थापनेवरील अस्तित्वात असलेल्या ऑर्थोस्टिक कम प्रोथोटिक तंत्रज्ञ या पदाची वेतनसंरचना रु. ४५००-७००० अशी असताना रु.५०००-८००० अशी चुकीची दर्शविली आहे.

वैद्यकीय शिक्षण व औषधी द्रव्ये विभागाच्या आस्थापनेवर ऑर्थोस्टिक कम प्रोथोटिक असे दोन वेगवेगळे संवर्ग आहेत व सदर संवर्गास (पाचव्या वेतन आयोगानुसार) रु.५०००-८००० व सहाव्या वेतन आयोगानुसार रु. ९३००-३४८०० + ग्रेड वेतन रु.४२०० अशी वेतनसंरचना अनुज्ञेय करण्यात आली आहे म्हणजेच ते संवर्ग पूर्वीपासूनच वरिष्ठ वेतनश्रेणीत आहेत.

यास्तव दिनांक 9 मार्च, २००६ च्या शासन निर्णयातील नोंदीच्या आधारे अथवा वैद्यकीय शिक्षण व औषधी द्रव्ये विभागातील ऑर्थोस्टिक कम प्रोथोटिक या पदांना असलेल्या वेतनश्रेणीच्या आधारे श्री. कशेळकर यांना ५ व्या वेतन

आयोगानुसार रु.५०००-८००० व ६ व्या वेतन आयोगानुसार रु.९३००-३४८०० + ग्रेड पे रु.४२०० याप्रमाणे वेतनश्रेणी मंजूर करण्याची मागणी समर्थनीय नसल्याने ती मान्य करता येणार नाही.’’

7. Now, the kind of justification sought to be advanced in the 1st extract from Affidavit-in-reply as well as from Exh.‘R-1’ is clearly not only untenable but also illogical. A regularly created post cannot be left in the lurch unattended and uncared just because it did not appear in the book let in that nomenclature. The posts though with some kind of bifurcation were there. The functions thereto attached must be the same as attached to the said post. Further, there is unambiguous record to show that eversince 1994 and then 1997, the said post had always carried a particular pay scale which corresponded with some other posts. One post Occupational Therapist has already figured in the above discussion. That post is at Serial No.106 in Revised Pay Rules carrying the pay scales in 5th and 6th Pay Commission of 5500-9000 and 9300-34800 respectively. In fact, the same pay scale was given to Prosthetist and Orthorist well. In this background, the stand taken in the Finance Department communication (Exh. ‘R-1’) above quoted is that the Government decided to create additional posts carrying higher pay scales. Elsewhere on record, there is material to show that these additional posts did not become



functional at Ratnagiri. But then to contend that the holder of the posts already created for some completely obscure reason could not be given higher pay scale is as we mentioned illogical. The crux of the matter is not whether the additional post became functional at Ratnagiri or not. Even otherwise from 1994 itself, the said posts were sanctioned only at Ratnagiri and Nashik. The point is that taken *ex-facie* without anything else, the Respondents were envisaging a situation whereby the post originally created would carry lower pay scale than the additional post. To say it was hostile discrimination was to state the obvious.

8. The Applicant by his representation (Exh. 'F', Page 45) made to the 4th Respondent requested that the two posts viz. Orthotist and Prostetist be amalgamated and the Government be moved to give him a pay scale of 5500-9000 (5th Pay Commission) and 9300-34800 with grade pay of 4200 (6th Pay Commission). Now, from the communications dated 28.6.2012 from Civil Surgeon, Ratnagiri to Dy. Director of Health Services (Exh. 'F' colly, Page 47 of the P.B.) and from Dy. Director to Jt. Director (Exh. 'G', Page 49 of the P.B.), it would become clear that those authorities were not opposed to the demands of the Applicant. In fact, they also expressed and which is the



case of the Respondent that Applicant's undoing was that his post had been omitted from the Revised Pay Rules (Exh. 'E', Page 42 of the P.B.).

9. The Applicant in his communication to the Secretary, Finance Department emphasized that the two posts above described were equivalent to the said post and to them, higher pay scale was given. He, therefore, requested for himself higher pay scale. In this view of the matter, therefore, we are unable to accept Respondents' case that the pay scale of Rs.5000-8000 was a mistake of the Office and it should have been 4500-7000.

10. This OA is being decided by taking the documents and circumstances as they are. The conclusion is axiomatic with regard to the approach of the Respondent being unreasonable and prone to result in injustice and hostile discrimination. That can be rectified even under our jurisdiction of judicial review of administrative actions. The whole thing is so simple as that we have quite certainly not trampled on the toes of the executive in the matter of pay fixation. Therefore, to this OA **Hariyana Secretariate Staff, (2002) AIR SCW 2896** and **Union of India Vs. Makhan Chandra Roy (1997) 11 SCC 182** will not apply.




11. The Applicant is held entitled to the revised pay scale. There is, on facts, no reason why he should be denied the arrears (monetary relief).

12. It is held and declared that the Applicant is entitled to get his pay fixed at Rs.5000-8000 (5th Pay Commission) and Rs.9300-34800 (6th Pay Commission). His pay scale shall be reworked out and the consequent relief including the arrears be paid over to him. Respondents to comply within eight weeks from today.

13. This Original Application is allowed in these terms with no order as to costs.

Sd/-


(R.B. Malik)
Member-J
11.08.2016

Sd/-

(Rajiv Agarwal)
Vice-Chairman
11.08.2016

Mumbai

Date : 11.08.2016

Dictation taken by :

S.K. Wamanse.

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