

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 767/2016 (S.B.)

Dr.Pundlik S/o. Ramaji Gabhane,
Aged about 61 years, Occ. : retired
As Medical Officer, R/o. Plot No.1,
Unik Co-operative Housing Society,
Chiranjivi Nagar, Narendra Nagar,
Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Department of Public Health,
Mantralaya, Mumbai- 32.
- 2) The Director of Health Services.
Maharashtra State, Mumbai.
- 3) The District Health Officer,
Zilla Parishad, Chandrapur.
- 4) The Accountant General (A & E) II,
Maharashtra, Nagpur.
- 5) Treasury Officer, Treasury,
Nagpur.
- 6) Senior Account Officer,
Zilla Parishad, Chandrapur.

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Respondents

Shri N.R.Saboo, counsel for the applicant.
Shri S.A.Sainis, Ld. P.O. for the respondents.

Coram:-Hon'ble Shri M.A.Lovekar, Member (J).

Dated: - 29th November 2022.

JUDGMENT

Judgment is reserved on 18th October, 2022.

Judgment is pronounced on 29th November, 2022.

Heard Shri N.R.Saboo, learned counsel for the applicant and Shri S.A.Sainis, learned P.O. for the Respondents.

2. Case of the applicant is as follows.

The applicant was initially appointed in Zilla Parishad, Chandrapur. By G.R. dated 17.10.2014 (Annexure A-1) 869 Medical Officers were absorbed in Government service w.e.f. 28.05.2001. In this list name of the applicant featured at Sr.No.55. While in service his pay was fixed in the pay scale of Rs.15,600 – 39,100 + G.P. Rs.6,600 w.e.f. 01.01.2006. On the basis of this pay fixation, vide order dated 29.10.2014 (Annexure A-2) monthly pension payable to the applicant was fixed at Rs.27,547/- and other retiral benefits were accordingly calculated. The applicant retired on superannuation on 31.10.2014 (Annexure A-3). Till February 2015 the applicant regularly received pension. Retiral benefits were also received as per fixation made on 29.10.2014. Thereafter, pension was withheld. By communication dated 02.06.2016 (Annexure A-4) the applicant was informed that from 01.01.2006 to 31.10.2004 he was not entitled to get pay

scale of Rs.15,600 – 39,100 + G.P. 5,400, said pay scale was not applicable to the post held by him, because of this excess payment of Rs.13,34,738/- was made to him and it was liable to be recovered. Said communication was based on the communication dated 20.07.2015 (Annexure A-5). By order dated 17.10.2016 (Annexure A-6) respondent no.4 informed as follows –

1) The earlier note of recovery noted on PPO no. 1116010153126 may be treated as cancelled and fresh recovery @ Rs.5000/- in 264 instalments and Rs. 4790/- in last instalment may be made from monthly pension payable.

2) Since the pension has been revised downwards to Rs. 22397/- the commuted pension is calculated to Rs. 8958/- and reduced pension to Rs. 13439/-.

Before such adverse step of recovery and re-fixation of pension was taken, no opportunity of hearing was given to the applicant. By letter dated 19.09.2016 (Annexure A-7) respondent no.3 requested respondent no.4 as follows-

तरी कृपया से.पु.पान क्रमांक-55 वरील सुधारीत वसुली प्रस्तावीत केल्यानुसार व अंशराषीकरण मुल्य रक्कम रूपये-11018/-ऐवजी सुधारीत रूपये 8958/- वसुल करण्यास जिल्हा कोषागार अधिकारी, नागपूर यांचे नावे प्राधिकारपत्र निर्गमित व्हावे ही विनंती.

By order dated 25.06.2012 (Annexure A-8) the applicant was fixed in the pay scale of Rs.10,000 - 325 - 15,200 w.e.f. 01.10.1994. Accordingly, entries were taken in his service book (Annexure A-9).

The State of Maharashtra had appointed State Pay Improvement Committee and Anomalies Committee known as "Sharad Kale Committee" for the purpose of removing the anomalies that had remained at the time of implementation of 5th Pay Commission w.e.f. 01.01.1996. The said Committee recommended the scale of Rs.8000-13,500 to the Medical Officers who were appointed against the District Technical Services, Class-III category. The State of Maharashtra (Finance Department) vide G.R. dated 27.02.2016 (Annexure A-12) also approved recommendation of the Committee for pay scale of Rs.8000-13,500 and in concurrence thereof the respondent - Health Department vide G.R. dated 09.08.2006 granted pay scale of Rs.8000-13,500 (Annexure A-11).

In view of removal of the anomalies that had remained at the time of implementation of 5th Pay Commission w.e.f. 01.01.1996, revised pay in the pay scale of Rs.8000-13,500 was granted to Medical Officers. The applicant who had completed service of 12 years was thus found entitled under Assured Progress Scheme (Time Bound Promotion Pay) for scale of Rs.10,000-325-15,200 w.e.f. 01.08.2001. However, as per policy of the Government actual arrears were paid w.e.f. 01.04.2006.

The Finance Department of the State of Maharashtra vide G.R. dated 27.02.2009 in para 3.13 of Appendix issued direction to fix the scale of Medical Officer in District Technical Services in the scale of Rs.6,500-10,500. This act of the State to withdraw the pay scale of Rs.8000-13,500 which was fixed after the recommendation of 5th Pay Commission, was challenged by several Medical Officers. In fact the respondent, the State of Maharashtra had issued said G.R. based on recommendation of Hakim Committee. So far as para 43 of Appendix to G.R. dated 27.02.2009 is concerned, it is apparent that 'Hakim Committee' did not change revised pay fixed under Assured Progress Scheme (Time Bound Promotion Pay).

The State of Maharashtra appointed Anomaly Committee (Bakshi Committee) Said Committee, after considering earlier decision of including decision of the Hakim Committee made recommendation on the basis of expert Committee decision and this was followed by issue of policy decision dated 11.02.2013. The Committee had recommended pay scale of Rs.15,600-39,100 + G.P. Rs.5400 to the Medical Officer in District Technical services. Bakshi Committee did not make any recommendation so far as revised pay under Assured Progress Scheme (Time Bound Promotion Pay) was concerned. The policy decision referred to above was incorporated in G.R. dated 11.2.2013 (Annexure A-13).

As per G.R. dated 27.02.2006, although pay of the Medical Officers was revised w.e.f. 01.01.1996 in the pay scale of Rs.8000-13,500, under the Assured Progress Scheme the eligible Medical Officers were held entitled to pay scale of Rs.10,000 – 15,200. The applicant who was serving in the Zilla Parishad was found entitled to benefit of Assured Progress Scheme and accordingly, under the said scheme pay scale of the applicant was fixed at Rs.10,000 – 15,200.

The respondent State having granted pay scale to the applicant of Rs.10,000 – 15,200 under the Assured Progress Scheme as per recommendation of 6th Pay Commission, his pay was rightly fixed in the pay scale of Rs.15,600 – 39,100 + G.P. Rs.6,600/-.The respondent Zilla Parishad accordingly forwarded proposal for release of pension and other retiral benefits. The applicant stood retired on superannuation on 31.10.2014.

So far as G.R. dated 17.10.2014 issued by the respondent-Health Department is concerned, it pertains to absorption of Medical Officers in the said department w.e.f. 28.05.2001. Said G.R. to which a reference is made in the impugned communication has no concern with the pay fixation of the applicant particularly when his pay scale was revised based on recommendation of Commission and by giving benefit of revised pay as per Assured Progress Scheme.

Communication dated 20.05.2015 in relation to revision of pay scale of Medical Officers under Assured Progress Scheme specifically stated that such Medical Officers were entitled to revised pay under Assured Progress Scheme as per G.R. dated 20.07.2001. In the impugned communication there is reference to G.R. dated 20.07.2001 (Annexure A-14) and G.R. dated 20.05.2015 (Annexure A-15).

Similarly situated Medical Officers were granted revised pay scale of Rs.15,600- 39,100 + G.P. Rs.6,600/- and while fixing and finalizing their pension the same grade pay was maintained. In the absence of any hearing the decision to reduce his salary, the action of the Department to initiate recovery is in violation of provision of natural justice. Hence, this O.A. for quashing and setting aside Annexures A-5, A-6 and A-7 and direct the respondents to release pension and other benefits as per order dated 29.10.2015 (Annexure A-2).

3. Reply of respondents 3 and 6 which is at pp.110 to 114 contains following averments. By communication dated 08.09.2015 certain discrepancies in fixation of pension were brought to the notice of respondent no.3 by respondent no.4. In pursuance of said communication the service book of the applicant was forwarded to the Accounts officer (Pay Verification Unit), the discrepancies were removed and accordingly pay of the applicant as on 01.01.2006 was verified by Accounts Officer (Pay

Verification Unit) and the entry thereof was taken in the service book and the pension case was again forwarded to respondent no.4. By communications dated 18.06.2015 and 23.07.2015 the answering respondent was informed that pay scale of Rs.15,600 – 39,100 + G.P. Rs.6,600 was not applicable and therefore, by communication dated 11.01.2016 pension case was revised by applying correct pay scale of Rs.9300- 34,500 + G.P. 5400 and monthly pension was reworked at Rs.22,397/-. This reworking was forwarded to respondent no.4.

Accordingly the answering respondent corrected pay scale of the applicant and calculated excess amount paid to the applicant between 01.01.2006 to 31.10.2014 at Rs.10,76,299/-, Rs.2,69,931 towards gratuity and Rs.41,560 towards excess pension from 01.11.2014 to 28.02.2015. Thus, the total amount paid in excess came to Rs.13,34,738/-. It was required to be recovered from the applicant. Such recovery was proposed to respondent no.4. Respondent no.4, by communication dated 08.07.2016 approved recovery of Rs.13,34,738/- in 266 monthly instalment of Rs.5000/- each and the remaining amount of Rs.4738 was to be recovered by way of the last instalment. This was duly communicated to the applicant by letter dated 08.07.2016. By communication dated 19.09.2016 explanations were submitted to respondent no.4 in respect of revised

pension case of the applicant. Revised pension of Rs.22,397/- was approved as becomes clear from communication dated 19.09.2016.

Contention of the applicant that his pay fixation at Rs.15,600- 39,100 + G.P. of Rs.6,600 is on the basis of Assured Progress Scheme is misconceived as the applicant has already received two promotions in the intervening period. Consequently benefit of Assured Progress Scheme could not have been extended to him in view of G.R.dated 20.07.2001 (Annexure A-14).

4. Reply of respondent no.5 at pp.92 to 95 reiterates the chronology set out by respondents 3 and 6 in their reply.

5. In his rejoinder at pp.123/124 the applicant has averred as follows-

At the time fixation of pay as per recommendation of 6th Pay Commission the applicant was granted first time bound promotion claim. Even after Scrutiny by pay verification unit said remark of time bound promotion pay is noted

Entitlement of Medical Officers for pay after 5th pay & 6th Pay Commission Recommendations is no more res Integra and is decided by this Hon'ble Tribunal in a catena of cases & such pay fixation as sought to be done by Pay Verification Unit is erroneous. Reliance on communication

dated 11.01.16 and communication dated 23.07.15 issued by Pay Verification Unit by the respondents in fixing his pay in pay scale of Rs. 9300-34800 Grade pay 4600/- is thus erroneous. The applicant was not granted any opportunity or heard before such rectification. Even otherwise in view of judgment of Hon'ble Apex Court in White washer's Case, impugned recovery after retirement of the applicant is not permissible.

6. The applicant has relied on the following rulings-

(1) Judgment dated 27.01.2017 passed by this Bench of the Tribunal in O.A.No.633/2014. In this case facts were set out as follows-

On 28.5.2001 the Respondent no.1 took policy decision and confirmed status of Gazetted employee Group-B to those Medical Officer's group "C" working under Zilla Parishad in technical cadre of non-revised pay scale of RS. 2000-3500 satisfying terms and conditions of the G.R. They were promoted and upgraded as Group-B and were brought at par with MBBS Medical Officers. As many as 869 Medical Officers including the applicants were absorbed under

Public Health Department in consultation with M.P.S.C w.e.f. 28.5.2001 as per G.R dated 17.10.2014. On 27.2.2006 the Govt. has taken a policy decision and granted revised pay scale of Rs. 8000-13,500 to the Medical Officers working in the cadre of District Technical Services Group "C" under Zilla Parishad. The applicant and similarly situated Medical Officers were given pay scale of Rs. 15600-39,100/- with Grade Pay of Rs.5400/- w.e.f 1.1.2006 as per 6th pay Commission, which was parallel to pay scale of Rs. 8000- 13,500/- in 5th Pay Commission. The pay fixation was accordingly revised vide order dated 9.3.2010 .

The Principal reliefs claimed in the O.A. were as follows-

"b) The impugned orders dtd. 19th of August 2014 (ANNEX-A colly) served on applicants in last week of September, 14 issued by Respondent no.5 by which revised pay Fixation of applicants carried out in lower pay scale of Rs. 9300-34800/- G.P. Rs. 4400/- instead of their existing pay scale of Rs. 15600-39100/- G. P Rs. 5400/- as per VI th pay since July-14, may kindly be quashed and set aside as same is issued in violation of

Principles of natural justice, without having any jurisdiction.

- “C) The Respondents be directed to pay salary in pay scale of Rs. 15600- 39100/- G.P. Rs.5400/- as per earlier pay fixation dtd. 7.3.2010 and same is paid to other similarly situated Medical Officers working under state of Maharashtra by protecting their earlier pay fixation which already carried out as per orders dtd. 9.3.2010 pursuant to various policy decisions dated 27.2.06, 11.2.13 communication dtd 31.10.14 taken by Govt.*
- “d) Respondent be directed to refund the amount which is paid to applicants less by refixing their pay scale in the lower pay scale since July 14 forthwith till today.*

In para 7 the Tribunal observed as under –

7. The leaned Advocate for the applicant submits that, the case of the applicant has been covered by the judgment in OA Nos.159/10 with 341/10 with 425/2015. The said judgment has been delivered in the case of Dr.Prakash Anandrao Sawant & Ors Vs. The state of Maharashtra and Ors., a

common judgment delivered by this Tribunal on 18.10.2016 by this Bench. In the said Judgment in paras.5 & 6 this Tribunal has observed as under:-

“5. We find that the applicants in the original applications were also recruited as Medical Officers in District Technical Services, Class III in various Zilla Parishads. G.R. dated 17.10.2014 has finally absorbed such Medical Officers as Group B Medical Officers in the State Government. These Officers were given the pay scale of Rs. 8000-13500 by G.R dated 27.2.2006 which is applicable to Group A employees. This Tribunal has held that those Medical Officers whose names appear in the list of 869 Medical Officers in GR dated 17.10.2014 are entitled to get pay in the scale of Rs. 8000-13500 in the fifth pay Commission and in the Pay Band of Rs. 9300-34800 plus grade pay of Rs. 5400 in the Sixth Pay Commission. They will, however, remain in Group-B as they have been absorbed in Group-B posts as per Recruitment Rules. Pay has been granted to them by GR dated 27.2.2006, which is applicable to Group-A Officers. A similar order was

passed on 8.8.2016 in O.A.No. 160/2016 by the Principal Bench of this Tribunal. In the present Original Applications, we cannot take any other view.

6. Having regard to the aforesaid facts and circumstances of the case, Medical Officers who were recruited in the District Technical Service Class III, and whose names figure in the list of 869 Medical Officers absorbed as Group -B Medical Officers in terms of G.R dated 17.10.2014, are eligible to get pay in the scale of Rs. 8000-13500 in the Fifth Pay Commission. They are also entitled to get pay in the Pay Band of Rs. 9300-34800 + grade pay of Rs. 5400/- in the 6th Pay Commission. The present applicants, are also entitled to the above pay scale/ pay band if their names figure in the list of Medical Officers, Group -C working in Zilla Parishad, who were absorbed in Group B posts by G.R dated 17.10.2014. These Original Applications are accordingly disposed of with no order as to costs."

The O.A. was allowed in terms of prayer clauses b, c and d which are quoted above.

(2) Common Judgment dated 13.12.2016 in O.A.Nos.108, 176 and 197 of 2016 delivered by this Bench of the Tribunal. In this O.A. it is held-

7. Having regard to the aforesaid facts and circumstances of the case, Medical Officers who were recruited in the District Technical Service, Class III and whose names figure in the list of 869 Medical Officers absorbed as Group 'B' Medical Officers in terms of G.R dtd. 17.10.2014 are eligible to get pay in the scale of Rs. 8000-13500 in the 5th Pay Commission. They are also entitled to get pay in the Pay Band of Rs. 9300-34800 + grade pay of Rs. 5400/- in the 6th Pay Commission. The present applicants are also entitled to the above pay scale/pay band if their names figure in the list of Medical Officers Group 'C' working in Zilla Parishads, who were absorbed in Group 'B' posts by G.R dated 17/10/2014. These original applications are accordingly disposed of with no order as to costs.

(3) Judgment dated 15.06.2017 delivered by this Bench of the Tribunal in O.A.Nos.162 and 163 of 2016. In this case it is held –

8. In the case of **State of Punjab and Ors. etc. V/s Rafiq Masih (White Washer)** as referred (cited supra), the Hon'ble High Court has observed as under :-

“12. It is not possible postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may as a ready reference, summarize the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group “C” and Group “D” service).*
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
- (iii) Recovery from the employees when the excess payment has been made for a*

period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employees would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

9. The ld. P.O. submits that the case of **State of Punjab and Ors. etc. V/s Rafiq Masih (White Washer)** is not applicable to Group-B employees, but this aspect has been considered by this Tribunal in O.A.No.1102/2015 decided on 14/06/2016 in the case of

Syed Maqbol Hashmi Vs. State of Maharashtra and Ors. as (cited supra).

(4) Judgment dated 21.12.2015 delivered by Aurangabad Bench of the Hon'ble Bombay High Court in Writ Petition No.11228/2015. In this case it is held-

It is not in dispute that, the petitioner got retired from the employment of Respondent No.6 on 31.08.2016 after attaining the age of superannuation. There is further no dispute that the order of recovery has been passed on 12.05.2015. From the order of recovery, it is further quite clear that, the excess payment alleged to have been made to the petitioner, because of wrong fixation, has been made in the period from 2007 to 2013. Thus, the case of the petitioner falls within categories (ii) and (iii) delineated in para 18 of the Judgment of the Hon'ble Apex Court in the case of State of Punjab and Others, reproduced hereinabove.

(5) Judgment dated 17.11.2016 delivered by this Bench of the Tribunal in O.A.No.175/2014. In this case it is held-

The learned Advocate for the applicant has placed reliance on the order passed by this Tribunal in

O.A.Nos. 126, 129 & 215 all of 2014, wherein very similar order of recovery of excess amount was challenged. The said Original Applications were allowed & disposed of by the Aurangabad Bench of this Tribunal vide its order dated 16th August, 2016. The learned Advocate for the applicant submits that similar order can be passed in the present Original Application also.

(6) Common judgment dated 04.01.2022 delivered at Principal Bench of this Tribunal in O.A.Nos.469/2012, 682/2013 and 879/2015. In this case the facts in brief were as follows-

Initially, all the applicants appointed as Ayurvedic Vaidya, Group-C in District Technical Services claim their entitlement in Group-A with Pay Band of Rs.15000 - 39100 + Grade Pay Rs.5400.

While partly allowing the original applications it was held in Clauses c and d of the operative part-

(c) The applicants are entitled to pay scale in the pay band of Rs.15600 - 39100 with Grade pay of Rs.5400, with effect from 18.7.2013.

(d) The payments made, if any, earlier from 2006 in the pay band of Rs.15600 - 39100 with grade pay of Rs.5400, should not be recovered from the applicants.

7. In view of position of law crystallized by aforementioned rulings, the O.A. deserves to be allowed. The O.A. is accordingly allowed in terms of prayer Clauses i, ii and iii with no order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 29/11/2022

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

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Member (J).
Judgment signed on : 29/11/2022.
and pronounced on
Uploaded on : 29/11/2022.