

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
O.A. Nos. 622 & 920 of 2018, 240, 241, 988, 989, 990 of 2019, 1108
& 1109 of 2021, 69, 266, 1021 & 1022 of 2022 (S.B.)

ORIGINAL APPLICATION NO. 622/2018

DISTRICT : AMRAVATI

Dr. Sanjay S/o Motikisan Ganorkar,
Age-59 years, Occ. Medical Officer (Group-B),
retired from office of Superintendent
Amravati Central Jail, Amravati,
(Now retired on 31.07.2017),
presently residing at r/o Plot No. 5,
Abhinav Colony, Shegaon Naka,
Amravati, District Amravati.

APPLICANT

VERSUS

1. The State of Maharashtra,
Through Principal Secretary,
Public Health Department,
Mantralaya, Mumbai-32.
2. Director of Health Service,
Arogya Bhavan, St. Georges Hospital Campus,
Near C.S.T. Mumbai.
3. Deputy Director of Health Services,
Akola Circle, Akola.
4. The Superintendent,
Amravati Central Jail, Amravati.
5. The Accountant General (A&E),
Civil Lines, Nagpur.

WITH

ORIGINAL APPLICATION NO. 920/2018

DISTRICT : AKOLA

Dr. Ashok S/o Madhukar Deshmukh,
Age-59 years, Occ. Medical Officer,
(retired on superannuation from P.H.C.,
Apatapa, Tq. & Dist. Akola)
at Present residing at Ratanlal Plot, Akola.

APPLICANT

VERSUS

1. The State of Maharashtra,
Through Principal Secretary,
Public Health Department,
Mantralaya, Mumbai-32.
2. Director of Health Service,
Arogya Bhavan, St. Georges Hospital Campus,
Near C.S.T. Mumbai.
3. Deputy Director of Health Services,
Akola Circle, Akola.
4. The Chief Executive Officer,
Zilla Parishad, Akola.
5. The District Health Officer,
Zilla Parishad, Akola.
6. The Accountant General (A & E),
Civil Lines, Nagpur

WITH

ORIGINAL APPLICATION NO. 240/2019

DISTRICT : AKOLA

Dr. Ashok S/o. Dhondoji Gavai,
Age-59 years, Medical Officer,

(retired on superannuation from Primary Health Centre, Pardi,
Tq. Murtijapur, Dist. Akola)
at Present residing at Court Colony,
Ahshray Nagar, Dabki Road, Akola.

APPLICANT

VERSUS

1. The State of Maharashtra,
Through Principal Secretary,
Public Health Department,
10th Floor, G.T. Hospital Building, New Mantralaya,
Mumbai-1.
2. Director of Health Service,
Arogya Bhavan, St. Georges Hospital Campus,
Near C.S.T. Mumbai.
3. Deputy Director Of Health Services,
Akola Circle, Akola
4. The Chief Executive Officer,
Zilla Parishad, Akola.
5. The District Health Officer,
Zilla Parishad, Akola.
6. The Accountant General (A & E),
Civil Lines, Nagpur

WITH

ORIGINAL APPLICATION NO. 241/2019

DISTRICT : AKOLA

Dr. Vijay S/o Vishwanath Jadhav,
Age-59 years, Medical Officer,
(retired on superannuation from Primary Health Unit,
Ugwa, Tq. & District Akola
at Present residing at Shakambari Vihar,
Bhagwatwadi, Akola.

APPLICANT

VERSUS

1. The State of Maharashtra,
Through Principal Secretary,
Public Health Department,
10th Floor, G.T. Hospital Building, New Mantralaya,
Mumbai-1.
2. Director of Health Service,
Arogya Bhavan, St. Georges Hospital Campus,
Near C.S.T. Mumbai.
3. Deputy Director of Health Services,
Akola Circle, Akola
4. The Chief Executive Officer,
Zilla Parishad, Akola.
5. The District Health Officer,
Zilla Parishad, Akola.
6. The Accountant General (A & E),
Civil Lines, Nagpur

WITH

ORIGINAL APPLICATION NO. 988/2019

DISTRICT : AKOLA

Dr. Vasant S/o Ayajirao Sarnaik,
Age-59 years, Medical Officer,
(retired on superannuation as Epidemic Medical Officer,
Health Department, Z.P. Akola, Dist. Akola)
at Present residing at 7, Datta Colony, Gorakshan Road,
Near Makhram Pawar House, Akola-4, District Akola.

APPLICANT

VERSUS

1. The State of Maharashtra,
Through Principal Secretary,

Public Health Department,
10th Floor, G.T. Hospital Building,
New Mantralaya, Mumbai-1.

2. Director of Health Service,
Vth Floor, Arogya Bhavan, St. Georges Hospital Campus,
Near C.S.T. Mumbai-1.
3. Deputy Director Of Health Services,
Akola Circle, Akola.
4. The Chief Executive Officer,
Zilla Parishad, Akola.
5. The District Health Officer,
Zilla Parishad, Akola.
6. The Accountant General (A & E),
Civil Lines, Nagpur

WITH

ORIGINAL APPLICATION NO. 989/2019

DISTRICT : AKOLA

Dr. Dharamnath S/o Baliram Ingle,
Age-59 years, Medical Officer,
(retired on superannuation from Ayurvedic Dispensary,
Dongargaon, under Primary Health Centre,
Ural (Bk), Tq. Balapur, Dist. Akola)
at Present residing at 28, Saraswati Nagar,
Dabki Road, Akola-2, District Akola.

APPLICANT

VERSUS

1. The State of Maharashtra,
Through Principal Secretary,
Public Health Department,
10th Floor, G.T. Hospital Building, New Mantralaya,

Mumbai-1.

2. Director of Health Service,
Vth Floor, Arogya Bhavan, St. Georges Hospital Campus,
Near C.S.T. Mumbai-1.
3. Deputy Director Of Health Services,
Akola Circle, Akola.
4. The Chief Executive Officer,
Zilla Parishad, Akola.
5. The District Health Officer,
Zilla Parishad, Akola.
6. The Accountant General (A & E),
Civil Lines, Nagpur.

WITH

ORIGINAL APPLICATION NO. 990/2019

DISTRICT : AKOLA

Dr. Tarachand S/o Yeshmaraji Akode,
Age-58 years, Medical Officer, Alopathic Dispensary,
Borgaon Manju, under Primary Health Centre,
Palso, Health Department, Z.P. Akola, Distrci Akola.

APPLICANT

VERSUS

1. The State of Maharashtra,
Through Principal Secretary,
Public Health Department,
10th Floor, G.T. Hospital Building, New Mantralaya,
Mumbai-1.
2. Director of Health Service,
Vth Floor, Arogya Bhavan, St. Georges Hospital Campus,
Near C.S.T. Mumbai-1.

3. Deputy Director Of Health Services,
Akola Circle, Akola.
4. The Chief Executive Officer,
Zilla Parishad, Akola.
5. The District Health Officer,
Zilla Parishad, Akola.
6. The Accountant General (A & E),
Civil Lines, Nagpur

WITH

ORIGINAL APPLICATION NO. 1108/2021

DISTRICT : AKOLA

Dr. Ashok S/o Sukhdeorao Paturde,
Age-60 years, Occ. Medical Officer,
(retired on superannuation from
Alopathic Dispensary Ghandhigram
under Primary Health Centre, Dahihanda,
Tq. & Dist. Akola at present at
C/o Dr. S. V. Nage, Wankhede Nagar, Dabki Road, Akola.

APPLICANT

VERSUS

1. The State of Maharashtra,
Through Secretary,
Public Health Department,
10th Floor, G.T. Hospital Building, New Mantralaya,
Mumbai-1.
2. The Commissioner of Heath Service & Director (N.H.M.),
3rd Floor, Arogya Bhavan, St. Georges Hospital Campus,
Near C.S.T. Mumbai-1.

3. Deputy Director Of Health Services,
Akola Circle, Akola.
4. The Chief Executive Officer,
Zilla Parishad, Akola.
5. The District Health Officer,
Zilla Parishad, Akola.
6. The Accountant General (A & E),
Civil Lines, Nagpur.

WITH

ORIGINAL APPLICATION NO. 1109/2021

DISTRICT : AMRAVATI

Dr. Mohan S/o Uttamrao Khadatkar,
Age-61 years, Occ. Medical Officer,
(retired on superannuation from
Ayurvedic Dispensary Rohankheda
under Primary Health Centre, Shirala,
Tq. & Dist. Amravati at present
residing at Plot No. 12, Maa Jijau Colony,
Arjun Nagar, Morshi Road, Amravati.

APPLICANT

VERSUS

1. The State of Maharashtra,
Through Secretary,
Public Health Department,
10th Floor, G.T. Hospital Building,
New Mantralaya, Mumbai-1.
2. The Commissioner of Health Service & Director (N.H.M.),
3rd Floor, Arogya Bhavan,
St. Georges Hospital Campus, Near C.S.T. Mumbai-1.
3. Deputy Director of Health Services,
Akola Circle, Akola.

4. The Chief Executive Officer,
Zilla Parishad, Amravati.
5. The District Health Officer,
Zilla Parishad, Amravati.
6. The Accountant General (A & E),
Civil Lines, Nagpur.

WITH

ORIGINAL APPLICATION NO. 69/2022

DISTRICT : AKOLA

Dr. Suresh S/o Ramrao Dhore,
Age-60 years, Occ. Medical Officer,
(retired on superannuation from
Ayurvedic Dispensary Roundala,
under Primary Health Centre, Mundgaon,
Tq. Akot, Dist. Akola at present residing at Dattatray Apt.,
Jyoti Nagar, Jatharpeth, Akola-444 001.

APPLICANT

VERSUS

1. The State of Maharashtra,
Through Secretary,
Public Health Department,
10th Floor, G.T. Hospital Building,
New Mantralaya,
Mumbai-1.
2. The Commissioner of Health Service & Director (N.H.M.),
3rd Floor, Arogya Bhavan, St. Georges Hospital Campus,
Near C.S.T. Mumbai-1.
3. Deputy Director Of Health Services,
Akola Circle, Akola.
4. The Chief Executive Officer,
Zilla Parishad, Akola.

5. The District Health Officer,
Zilla Parishad, Akola.
6. The Accountant General (A & E),
Civil Lines, Nagpur.

WITH
ORIGINAL APPLICATION NO. 266/2022

DISTRICT : AMRAVATI

Dr. Mukund S/o Sadashiv Dhere,
Age-60 years, Occ : Medical Officer,
(retired on superannuation from
Primary Health Centre, Loni,
Dist. Amravati at present residing at Village Vadura,
District Amravati.

APPLICANT

VERSUS

1. The State of Maharashtra,
Through Secretary,
Public Health Department,
10th Floor, G.T. Hospital Building,
New Mantralaya,
Mumbai-1.
2. The Commissioner of Health Service & Director (N.H.M.),
3rd Floor, Arogya Bhavan, St. Georges Hospital Campus,
Near C.S.T. Mumbai-1.
3. Deputy Director Of Health Services,
Akola Circle, Akola.
4. The Chief Executive Officer,
Zilla Parishad, Amravati.
5. The District Health Officer,

Zilla Parishad, Amravati.

6. The Accountant General (A & E),
Civil Lines, Nagpur.

WITH

ORIGINAL APPLICATION NO. 1021/2022

DISTRICT : AKOLA

Dr. Trymbak S/o. Ramkrishna Akhre,
Age-64 years, Occ. Medical Officer,
(retired voluntarily from Primary Health Centre,
Sati, Dist. Akola) at present residing at Village Batwadi Bk.,
Tq. Balapur, Dist. Akola.

APPLICANT

VERSUS

1. The State of Maharashtra,
Through Secretary,
Public Health Department,
10th Floor, G.T. Hospital Building,
New Mantralaya, Mumbai-1.
2. The Commissioner of Health Service & Director (N.H.M.),
3rd Floor, Arogya Bhavan,
St. Georges Hospital Campus,
Near C.S.T. Mumabi-1.
3. Deputy Director Of Health Services,
Akola Circle, Akola.
4. The Chief Executive Officer,
Zilla Parishad, Akola.
5. The District Health Officer,
Zilla Parishad, Akola.
6. The Accountant General (A & E),

Civil Lines, Nagpur.

WITH

ORIGINAL APPLICATION NO. 1022/2022

DISTRICT : AKOLA

Dr. Nanda W/o Trymbak Akhre,
Age-62 years, Occ. Medical Officer,
(retired voluntarily from Primary Health Centre,
Sati, Dist. Akola) at present residing at Village Batwadi Bk.,
Tq. Balapur, Dist. Akola.

APPLICANT

VERSUS

1. The State of Maharashtra,
Through Secretary,
Public Health Department,
10th Floor, G.T. Hospital Building, New Mantralaya,
Mumbai-1.
2. The Commissioner of Health Service & Director (N.H.M.),
3rd Floor, Arogya Bhavan,
St. Georges Hospital Campus,
Near C.S.T. Mumbai-1.
3. Deputy Director Of Health Services,
Akola Circle, Akola.
4. The Chief Executive Officer,
Zilla Parishad, Akola.
5. The District Health Officer,
Zilla Parishad, Akola.
6. The Accountant General (A & E),
Civil Lines, Nagpur.

**Shri J.S.Deshmukh, ld. counsel for the applicants.
Shri M.I.Khan, ld. P.O. for the respondents 1 to 3 & 6.
Shri S.R.Bhakar, Shri M.V.Bute, Shri A.S.Deshpande & Shri
B.N.Jaipurkar, ld. counsel for the respondents 4/5.**

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

JUDGEMENT

Judgment is reserved on 08th June, 2023.

Judgment is pronounced on 10th Oct., 2023.

Heard Shri J.S.Deshmukh, ld. counsel for the applicants, Shri M.I.Khan, ld. P.O. for the respondents 1 to 3 & 6 & Shri S.R.Bhakar, Shri M.V.Bute, Shri A.S.Deshpande & Shri B.N.Jaipurkar, ld. counsel for the respondents 4/5.

2. Identical grievance of the applicants is being decided by this common judgment.

3. At the time of their retirement the applicants were holding the post of Medical Officer - Group B. According to the respondents, while fixing their pay as per 5th and 6th Pay Commissions error was committed, excess payment was made to them and this amount was directed to be recovered from their retiral benefits by issuing the impugned orders. According to the applicants, their pay fixation was

rightly made, there was no excess payment, there was no question of effecting recovery and such recovery, in any case, was impermissible in view of ratio laid down in the case of **State of Punjab & Ors. Vs. Rafiq Masih & Ors., (reported in 2015) 4 SCC, 334.**

4. Following table contains necessary details:-

O.A.Nos.	Date of retirement	Date of order	Amount
622/2018	31.07.2017	29.06.2018	2,72,214/- 7,69,841/-
920/2018	31.03.2018	16.11.2018	6,42,292/-
240/2019	31.10.2018	29.01.2019	4,79,877/-
241/2019	30.06.2018	24.12.2019	4,84,917/-
988/2019	31.10.2019	23.05.2014	6,36,908/-
989/2019	31.10.2019	23.05.2014	2,31,795/-
990/2019	31.01.2020	23.05.2014	6,06,610/-
1108/2021	30.06.2020	04.03.2021	4,21,119/-
1109/2021	31.07.2019	25.06.2020	6,17,513/-
69/2022	31.12.2020	---	9,27,423/-
266/2022	31.08.2020	15.12.2022	17,29,318/-
1021/2022	11.12.2013 (V.R.)	---	3,66,891/-
1022/2022	15.12.2014 (V.R.)	---	3,36,733/-

5. Grievance of the applicant:-

O.A. No. 622 of 2018:-

Applicant says that, by recent pay fixation his pay is revised in pay scale of Rs. 6500-10,500/- in Vth pay instead of 8000-

13,500/-. So also he is placed in pay scale of Rs. 9300-34,800/- G.P.Rs.4400/- instead of Rs. 15,600-39,100/- G.P.Rs.5400/- after his retirement and total recovery of Rupees 2,74,214/- (Rupees Two lakh Seventy four thousand and two hundred fourteen) and Rupees 7,69,841/- (Rupees Seven lakh sixty nine thousand eight hundred forty one only) i.e. Rupees 10,44,055/- (Rupees Ten lakh forty four thousand & fifty five only) sought from applicant towards alleged excess payment.

O.A. No. 920 of 2018:-

Applicant says that, office of respondent no. 5 revised pay fixation of applicant as Rs. 6500-10,500/- instead of Rs. 8000-13,500/- w.e.f. 01.01.1996 (Vth Pay Commission) and granted scale of Rs. 8000-13,500/- as higher pay scale towards benefits of Assured Careers Progressive Scheme and directed recovery of excess amount paid to applicant. In fact applicant is entitled to Pay scale of Rs.10,000- 325-15,200/- according to Assured Progressive Scheme, however he is granted pay scale of Rs.8000-13,500/- by way of A.C.P.S.

which is not correct and lower pay scale as they are entitled for Pay scale of Rs.10,000-325- 15,200/-. Respondent not only revised their pay fixation in lower pay scale than admissible pay scale but also sought recovery of amount Rs.6,42,292/- (Rupees Six Lakh Forty two thousand two hundred ninety two only) from applicant on account of alleged excess payment paid to him.

O.A. No. 240 of 2019:-

Applicant says, that, office of respondent no. 5 revised pay fixation of applicant as Rs.6500-10,500/- instead of Rs.8000-13,500/- w.e.f.01.01.1996 (Vth Pay Commission) and granted scale of Rs.8000-13,500/- as higher pay scale towards benefits of Assured Careers Progressive Scheme and directed recovery of excess amount paid to applicant. In fact applicant is entitled to Pay scale of Rs.10,000- 325-15,200/- according to Assured Progressive Scheme, however he is granted pay scale of Rs.8000-13,500/- by way of A.C.P.S. which is not correct and lower pay scale as they are entitled for pay scale of Rs.10,000-325- 15,200/-. Respondent not

only revised their pay fixation in lower pay scale than admissible pay scale but also sought recovery of amount Rs.4,79,877/- (Rupees Four Lakh seventy nine thousand eight hundred seventy seven only) from applicant on account of alleged excess payment paid to him. Respondents going adjust the said amount from his D.C.R.G. amount as per his Pension Payment order (P.P.O.).

O.A. No. 241 of 2019:-

Applicant says, that, office of respondent no. 5 revised pay fixation of applicant as Rs.6500-10,500/- instead of Rs.8000-13,500/- w.e.f.01.01.1996 (Vth Pay Commission) and granted scale of Rs.8000-13,500/- as higher pay scale towards benefits of Assured Careers Progressive Scheme and directed recovery of excess amount paid to applicant. In fact applicant is entitled to Pay scale of Rs.10,000- 325-15,200/- according to Assured Progressive Scheme, however he is granted pay scale of Rs.8000-13,500/- by way of A.C.P.S. which is not correct and lower pay scale as they are entitled for pay scale of Rs.10,000-325- 15,200/-. Respondent not

only revised their pay fixation in lower pay scale than admissible pay scale but also sought recovery of amount Rs.4,84,917/- (Rupees four lakh eighty four thousand nine hundred seventeen only) from applicant on account of alleged excess payment paid to him. Respondents going adjust the said amount from his D.C.R.G. amount as per his Pension Payment order (P.P.O.).

O.A. No. 988 of 2019:-

Applicant says that, pursuant to order dtd. 23.05.14, applicant was placed in the pay scale of Rs.8000-13,500/- as promotional pay scale of A.C.P. W.E.F. 01.08.2001 instead of 16.06.98 and by way of revised pay fixation in lower pay scale recovery of Rs.6,36,908/- (Rupees six lakh thirty six thousand nine hundred eight only) is sought from applicant on account of alleged excess payment paid to him for the period Nov-99 to February-15 as informed by office of Respondent no. 5.

The fixation was carried out by giving lower pay scale Rs.6500-10,500/- & Rs. 9300- 34,800/- G.P.4600/- instead of

8000-13500/- & 9300- 34,800/- G.P.5400/- in Vth & VIth Pay and recovery of Rs.6,36,908/- (Rupees six lakh thirty six thousand nine hundred eight only) is sought from applicant on account of alleged excess payment paid to him which is impermissible and illegal.

O.A. No. 989 of 2019:-

Applicant says that, pursuant to order dtd. 23.05.14, applicant was placed in the pay scale of Rs.8000-13,500/- as promotional pay scale of A.C.P. W.E.F. 01.08.2001 instead of 16.06.98 and by way of revised pay fixation in lower pay scale recovery of Rs.2,31,795/- (Rupees two lakh thirty one thousand seven hundred ninety five only) is sought from applicant on account of alleged excess payment paid to him for the period June-98 to February-15 as informed by office of Respondent no. 5.

Applicant says that, Respondents implemented the order dtd. 23.05.14 after retirement of applicant on 31.10.19 and revised his pay in lower pay scale in Vth & VIth Pay commission than the admissible pay scale and directed

appropriate action. The fixation was carried out by giving lower pay scale Rs.6500-10,500/- & Rs.9300- 34,800/- G.P.4600/- instead of 8000-13500/- & 9300- 34,800/- G.P.5400/- in Vth & VIth Pay.

O.A. No. 990 of 2019:-

Applicant says that, i) In Vth Pay commission, the Medical officers, District Technical service (Group-C) working under Zilla Parishad, were given pay scale of Rs.6500-10,500/- w.e.f. 01.01.1996.

ii) The Kale Pay Anomaly Committee (High Power committee) vide policy decision dtd. 27.02.2006, modified/ revised the pay scale of these Medical Officers as Rs.8000-13,500/- w.e.f. 01.01.1996 in Vth Pay Commission.

iii) Accordingly, Respondents are bound revised fixation of applicant in pay scale of Rs.8000-13,500/- in Vth Pay Commission w.e.f. 01.01.1996 which is not done by the respondents and the said pay scale made applicable towards

benefit of Assured Careers Progress Scheme after completion of 12 years.

iv) As per decision of Pay anomaly committee applicant is placed in the pay scale of Rs.8000-13500/- in Vth Pay w.e.f. 01.01.1996 instead of Rs. 6500-10,500/-. Therefore action of respondents granting pay scale of Rs.8000- 13,500/- by way of promotional pay scale of Assured Careers Progress Scheme & again reducing the same in pay scale of Rs.6500-10,500/- till 01.08.2001 is illegal

v) In fact applicant was entitled for pay scale of Rs. 10,000-325-15200/- which is next promotional pay scale of Rs.8000-13,500/- while granting benefits of Assured Careers Progress Scheme which is given to similarly situated employees working in said cadre by way of time bound promotion.

O.A. No. 1108 of 2021:-

Applicant says that, he is placed in pay scale of Rs.8000-13,500/- w.e.f. 01.01.1996 (Vth Pay Commission) and

granted scale of Rs.8000-13,500/- & Rs.15,600-39,100/- G.P.Rs.5400/- in Vth Pay and granted G.P.Rs.6600/- in same pay scale towards benefits of Assured Careers Progressive Scheme. However, pursuant to some irrelevant communications not applicable to applicant the pay fixation of applicant was revised by office of Res.nos.4 and 5 in lower pay scale in Vth & Vth Pay and recovery for the period 02.11.99 to 31.12.2015, Rs.4,21,119/- (Rupees four lakh twenty one thousand one hundred nineteen only) was directed towards excess amount paid to applicant. No undertaking whatsoever at that relevant time while giving pay fixation w.e.f. 02.11.1999 is taken from applicant in respect of recovery. Moreover he is granted the pay scale which is admissible & given to other similarly employees. Therefore, there is no question of recovery from applicant on account of wrong pay fixation.

O.A. No. 1109 of 2021:-

Applicant says that, he is placed in pay scale of Rs.8000-13,500/- w.e.f. 01.01.1996 (Vth Pay Commission) and

granted scale of Rs.8000-13,500/- & Rs.15,600-39,100/- G.P.Rs.5400/- in VIth Pay and granted G.P.Rs.6600/- in same pay scale towards benefits of Assured Careers Progressive Scheme. However, pursuant to some irrelevant communications not applicable to applicant the pay fixation of applicant was revised by office of Res.nos.4 and 5 in lower pay scale in VIth Pay and recovery for the period 23.04.2013 to 31.10.2013, Rs.6,17,613/- (Rupees six lakh seventeen thousand six hundred thirteen only) was directed towards excess amount paid to applicant. No undertaking whatsoever at that relevant time while giving pay fixation w.e.f. 23.04.2009 is taken from applicant in respect of recovery. Moreover he is granted the pay scale which is admissible & given to other similarly employees. Therefore, there is no question of recovery from applicant on account of wrong pay fixation.

O.A. No. 69 of 2022:-

Applicant says that, he is placed in pay scale of Rs.8000-13,500/- w.e.f. 01.01.1996 (Vth Pay Commission) and

granted scale of Rs.8000-13,500/- & Rs.15,600-39,100/- G.P.Rs.5400/- in VIth Pay and granted G.P.Rs.6600/- in same pay scale towards benefits of Assured Careers Progressive Scheme. However, pursuant to some irrelevant communications not applicable to applicant the pay fixation of applicant was revised by office of Res.nos.4 and 5 in lower pay scale in Vth & VIth Pay and recovery for the period 01.01.2006 to 28.02.2015, Rs.9,27,443/- (Rupees nine lakh twenty seven thousand four hundred forty three only) was directed towards excess amount paid to applicant. Moreover he is granted the pay scale which is admissible & given to other similarly employees. Therefore, there is no question of recovery from applicant on account of wrong pay fixation.

O.A. No. 266 of 2022:-

Applicant says that, he is placed in pay scale of Rs.8000-13,500/- w.e.f.01.01.1996 (Vth Pay Commission) and granted scale of Rs.8000-13,500/- & Rs. 15,600-39,100/- G.P.Rs.5400/- in VIth Pay and granted Pay scale of Rs.10,000-325-15,200/- in Vth Pay & Rs. 15,600-39,100/- +

G.P.Rs.6600/- in same VIth pay scale towards benefits of Assured Careers Progressive Scheme. Copies of fixation in relevant pay scales of the applicant by Z.P. Thane are annexed herewith and marked as ANNEXURE-A-8.

O.A. No. 1021 of 2022:-

Applicant says that, he is placed in pay scale of Rs.8000-15,500/- w.e.f.01.01.1996 (Vth Pay Commission) and granted scale of Rs.8000-13,500/- & Rs. 15,600-39,100/- G.P.Rs.5400/- in VIth Pay granted. However, pursuant to some irrelevant communications not applicable to applicant the pay fixation of applicant was revised by office of Res.nos.4 and 5 in lower pay scale in VIth Pay and recovery of Rs.3,66,891/- (Rupees three lakh sixty six thousand eight hundred ninety one only) was directed and recovered towards excess amount paid to applicant at the time of payment of retiral benefits. Moreover he is granted the pay scale which is admissible & given to other similarly employees. Therefore, there is no question of recovery from applicant on account of wrong pay fixation.

Applicant says that, Office of Res.nos.4 & 5 had taken entry in service book of applicant and recovery of Rs.3,66,891/- (Rupees three lakh sixty six thousand eight hundred ninety one). The said amount is adjusted against the amount of gratuity at the time of payment of retiral benefits.

O.A. No. 1022 of 2022:-

Applicant says that, she is placed in pay scale of Rs.8000-13,500/- w.e.f. 01.01.1996 (Vth Pay Commission) and granted scale of Rs.8000-13,500/- & Rs.15,600-39,100/- G.P.Rs.5400/- in VIth Pay and granted. However, pursuant to some irrelevant communications not applicable to applicant the pay fixation of applicant was revised by office of Res.nos.4 and 5 in lower pay scale in VIth Pay and recovery of Rs.3,36,733/- (Rupees three lakh thirty six thousand seven hundred thirty three only) was directed and recovered towards excess amount paid to applicant at the time of payment of retiral benefits. Moreover she is granted the pay scale which is admissible & given to other similarly

employees. Therefore, there is no question of recovery from applicant on account of wrong pay fixation.

6. It is the contention of the applicants that their pay was rightly fixed and hence, there was no question of revision and recovery. Contention of the respondents, on the other hand, is that by directing recovery of excess payment made on account of wrong pay fixation they acted as per rules 132 and 134-A of the Maharashtra Civil Services (Pension) Rules, 1982.

7. The applicants have relied on **Judgment dated 11.07.2016 of this Tribunal (Mumbai Bench) in Review Application No. 25/2015 in O.A.No.469/2012 with O.A.Nos.682/2013 and 879/2015** wherein it is held:-

The Applicants have been absorbed in Government service in Group 'B' posts by G.R dated 17.10.2014. This has been done under the Recruitment Rules dated 30.11.2012.

However, they were given pay scale of Rs. 8000-13500 by G.R dated 27.2.2006.

They are eligible to get pay in the Pay Band of Rs. 9300-34800 plus grade pay of Rs. 5400/- corresponding to pay scale of Rs. 8000-13500/- as per G.R. dated 11.02.2013.

8. The applicants have further relied on **Judgment dated 18.10.2016 of this Tribunal (Aurangabad Bench) in O.A.Nos.159/2010, 341/2010 with 424/2015** wherein it is held:-

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 G.R 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 G.R 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.

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 figures 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 figures 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.

9. The applicants have further relied on **Judgment dated 12.04.2018 of this Tribunal (Nagpur Bench) in O.A.Nos.771, 772 & 773/2016, 981, 23, 24, 476, 477, 479, 633, 763, 764, 765 & 862/2017** wherein it is observed:-

9. *The learned counsel for the applicants further placed reliance on the observation and order passed by this Tribunal in O.A. Nos. 159/2010, 341/2010 with O.A. 424/2015 in case of **Dr. Prakash S/o Anandrao Sawant & Ors. Vs. State of Maharashtra & Ors.** In these group matters, the Hon'ble Tribunal of this Bench at Aurangabad vide order dated 18/10/2016 has observed in para-6 as under :-*

"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 figures 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 figures 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."

10. *The copy of the said order is placed on record at P.B. page nos. 87 to 98 (both inclusive).*

11. *The learned counsel for the applicants also invited my attention to one G.R. dated 15/11/2014 issued by the Government of Maharashtra (The copy of which is at P.B. page nos. 79 to 82 (both inclusive). In Para-c of the said G.R., the issue of pay scale of Medical Officers like applicants has been taken into consideration and it has been expected that the cases like the applicants have been accepted. The observations are as under :-*

मुद्दा	तपशिल	अभिप्राय
ब	जिल्हा तांत्रिक सेवा गट-क मधुन महाराष्ट्र वैद्यकीय व आरोग्य सेवेत थेट समावेशन झालेल्या कोणत्या वैद्यकीय अधिका-यांना वेतनबॅन्ड रु.१५६००-३९१०० ग्रेड वेतन रु.५४०० देय करावे व कोणत्या वैद्यकीय अधिका-यांना वेतनबॅन्ड रु. ९३००-३४८०० ग्रेड वेतन रु.४६०० मंजूर करावे.	शासन निर्णय सार्वजनिक आरोग्य विभाग क. संघट-१०९३/प्र.क.९६/सेवा-६, दिनांक २८/०५/२००९ अन्वये जिल्हा परिषदेकडील जिल्हा तांत्रिक सेवा गट-क मधील आरोग्य संवर्गातील (सुधारित वेतनश्रेणीतील २०००-३५००) (सुधारित वेतनश्रेणी ६५००-१०५००) या वेतनश्रेणीतील वेतन घेणा-या वैद्यकीय अधिका-यांना राजपत्रित दर्जा देण्याबाबत शासनाने मान्यता दिलेली आहे. या शासन निर्णयानुसार सदर राजपत्रित पदाचे सुधारीत सेवाप्रवेश नियम महाराष्ट्र लोकसेवा आयोगाच्या मान्यतेने

		<p>अंतीम करण्यात यावेत व सदर पदावरील नियुक्त्या महाराष्ट्र लोकसेवा आयोगाच्यामार्फत करण्यात याव्यात आणि सदरची पदे लोकसेवा आयोगाच्या कक्षेतील असल्याने या पदधारकाचे समावेशन खालील अटीच्या अधीन राहून आयोगाच्या सल्ल्याने करण्याबाबत आदेशित करण्यात आले होते.</p> <p>अ) संबंधीत व्यक्ती गट-ब च्या सुधारीत सेवा प्रवेश नियमानुसार नियुक्तीसाठी पात्र असावी.</p> <p>ब) गट-क (वर्ग-३) पदावरील नियुक्ती सेवाप्रवेश नियमानुसार नियमित स्वरूपात झालेली असावी.</p> <p>क) संबंधीत अधिका-याची गट-क पदावर किमान तीन वर्ष नियमित सेवा झालेली असावी.</p> <p>ड) गट-क पदावरील गोपनीय अभिलेख समाधानकारक असावेत.</p> <p>यानुसार महाराष्ट्र वैद्यकीय व आरोग्य सेवेतील गट-ब या पदाचे सेवाप्रवेश नियम ३०/११/२०१२ अन्वये विहित करण्यात आले. संचालक, आरोग्य सेवा यांच्या अध्यक्षतेखाली गठीत करण्यात आलेल्या समितीने शिफारस केलेल्या अटी पूर्ण करणा-या ८७४ वैद्यकीय अधिका-यांचे समावेशन महाराष्ट्र लोकसेवा आयोगाने दिलेल्या संमतीनुसार सार्वजनिक आरोग्य विभागामध्ये दिनांक ७/१०/२०१३ च्या शासन निर्णयाअन्वये करण्यात आले. तथापी महालेखापालांनी घेतलेल्या आक्षेपानुसार सदरचा शासन निर्णय दिनांक २४/०६/२०१४ रोजी रद्द करण्यात आलेला होता. परंतु वित्त विभागाच्या सहमतीनंतर जिल्हा तांत्रिक सेवेतील व्दिरुक्तीमूळे ५ वैद्यकीय अधिकारी वगळून ८६९ वैद्यकीय अधिका-यांचे समावेशन सार्वजनिक आरोग्य विभागात दिनांक १७/१०/२०१४ रोजीच्या शासन निर्णयाअन्वये करण्यात आलेले आहे.</p> <p>जिल्हा तांत्रिक सेवेतील वैद्यकीय अधिकारी पुर्वीचे वर्ग-३ हया पदाचा ५ व्या वेतन आयोगात शासन निर्णय वित्त विभाग क. वेपूर-१२०१/प्र.क.४/सेवा-९, दिनांक २७/०२/२००६ अन्वये दिनांक १/१/१९९६ पासून लागू करण्यात आली आहे. ६ व्या वेतन आयोगामध्ये १५६००-३९१०० ग्रेड पे ५४०० ही वेतनश्रेणी शासन निर्णय</p>
--	--	---

		<p>वित्त विभाग क. वेपूर-१२१२/प्र.क. ३१ सेवा-९, दिनांक ११ फेब्रुवारी, २०१३ अन्वये जिल्हा परिषद आस्थापनेवरील जिल्हा तांत्रिक सेवेतील महाराष्ट्र वैद्यकीय व आरोग्य सेवेतील वैद्यकीय अधिका-यांना लागू झालेली आहे त्यामुळे जिल्हा तांत्रिक सेवेतील वैद्यकीय अधिकारी गट-ब संवर्गात कार्यरत असले तरी त्यांना गट-अ ची वेतनश्रेणी अनुज्ञेय करण्यात आलेली आहे. महाराष्ट्र लोकसेवा आयोगाकडून मान्यता न मिळालेल्या १४ अधिका-यांना सध्या ९३००-३४८०० ग्रेडवेतन रु.४६०० वेतनश्रेणी लागू आहे. (सोबत यादी जोडली आहे) सहसंचालक (आरोग्य) कार्यालयाकडून भरण्यात आलेले वैद्यकीय अधिकारी गट-ब (मंजूर पदे १८३) सुध्दा सध्या ९३००-३४८०० ग्रेडवेतन रु.४६०० वेतनश्रेणीमध्ये वेतन घेत आहेत.</p>
--	--	--

12. In view of the aforesaid circumstances and the observations made by this Tribunal in various O.As., it will be clear that this Tribunal has already held that the Medical Officers who were recruited in the District Technical service, Class-III and whose names figures in the list of 869 Medical Officers absorbed in Group-B vide G.R. dated 17/10/2014, are eligible to get pay scale of Rs.8000-13500 in the 5th Pay Commission and they are entitled to get pay in the pay band of Rs.9300-34800+ grade pay of Rs. 5400/- as per 6th Pay Commission. The respondents therefore cannot come with a case that the pay scale was wrongly given to the applicants. Even otherwise, there is nothing on the record to show that the applicants were in any manner responsible for getting such wrong pay scale. All the applicants have already been retired on superannuation and therefore recovery of such huge amount from their pensionary benefits will definitely cause great injustice to the applicants. The cases of the applicants therefore fall within the ambit of the Judgment delivered by the Hon'ble Apex Court in the case of **State of Punjab & Ors. Vs. Rafiq Masih & Ors., (reported in 2015) 4 SCC, 334** and also the judgment in W.P. No.11228/2015 delivered by the Hon'ble High Court, Bench at Nagpur in case of **Dr. Nivruti Baliram Kalyan Vs. State of Maharashtra & Ors., on 21/12/2015.** In view of the aforesaid discussion, all the O.As. are allowed.

10. The applicants have further relied on **Judgment dated 23.02.2018 of this Tribunal (Aurangabad Bench) in**

O.A.Nos.155, 544, 545, 817, 820, 821, 822/2016 wherein it is observed:-

I have carefully gone through the various judgments on which learned Advocate for the applicants has placed reliance. In O.A. No. 633/2014 [Dr. Balasaheb Desairao Deshmukh & Ors. Vs. the State of Maharashtra & Ors.] delivered on 27.1.2017 by this Tribunal at Aurangabad. The Tribunal has observed in paragraph No. 8 as under: -

“8. Admittedly, names of the present applicants figured in the list of 869 Medical Officers absorbed as Group B Medical Officers, in terms of G.R. dated 17.10.2014 and therefore, these Medical Officers were entitled to get pay scale of Rs. 8000-13500 in 5th Pay Commission and Rs. 9300-34800 plus Grade Pay of Rs. 5400/- in the 6th Pay Commission, and therefore, the applicants cases is/are very much covered by the judgment delivered in O.A. Nos. 159, 341 of 2010 and 425 of 2015. Similar view has been taken by this Tribunal in O.A. No. 160/2016 in the case of Dr. Ashok Nanasaheb and Others Vs. State of Maharashtra and others vide judgment dated 8.8.2016 by M.A.T. Mumbai Bench and also Review Application No. 25 of 2015 in O.A. No. 469/12 with O.A. No. 879/15 & 662/13 by Mumbai Bench of this Tribunal. I am therefore, satisfied that the applicants are entitled to claim pay scale as per judgment delivered by this Tribunal as already stated.”

11. The applicants have also relied on **Judgment dated 04.01.2022 of this Tribunal (Mumbai Bench) in O.A. Nos. 469/2012, 682/2013 & 879/2015 and Judgment dated 07.06.2023 of this Tribunal (Aurangabad Bench) in O.A.Nos.159&341/2010 & 424/2015.** In these cases it is held that those district technical service Medical Officers placed in Group-B by virtue of G.R. dated 17.10.2014 with retrospective effect from 28.05.2001 were eligible and entitled to recruitment to Group-A from the date of the G.R. dated 18.07.2013 when the rules were amended, they were entitled to pay scale of Rs. 15600 –

39100, G.P. 5400/- w.e.f. 18.07.2013 but the payments made, if any in the pay band of Rs. 15600 – 39100, G.P. 5400/- earlier, from 2006 were not to be recovered. The applicants have relied on the latter part of aforesaid ratio which renders recovery impermissible.

12. In **State of Punjab & Ors. Vs. Rafiq Masih & Ors., (reported in 2015) 4 SCC, 334** it is held:-

It is not possible to 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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(1) 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 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 employee, 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.

13. The respondents have not disputed that the applicants were among the beneficiaries of G.R. dated 17.10.2014. From the pleading of the applicants it becomes apparent that Clauses (ii) and (iii) of Rafiq

Masih (Supra) would be applicable. Therefore, the impugned recoveries are held to be bad and the orders issued to this effect are quashed and set aside. **The amounts recovered thereunder shall be refunded within three months from today.** For the reasons discussed hereinabove **the O.As. are allowed in the aforesaid terms with no order as to costs.**

(Shri M.A.Lovekar)
Member (J)

Dated :-10/10/2023.
aps

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

Name of Steno : Akhilesh Parasnath Srivastava.

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

Judgment signed on : 10/10/2023.
and pronounced on

Uploaded on : 11/10/2023.