

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 801/2012

- 1) Dr. Rishikesh S/o Mahendra Awode,
Aged about 33 years, Occ. Presently
Working as Assistant Professor in Anaesthesiology,
Shri Vasantnao Naik Government Medical College,
Yavatmal.
- 2) Dr. Roshan S/o Madan Shende,
Aged about 33 years, Occ. Presently
Working as Assistant Professor in Anaesthesiology,
Shri Vasantnao Naik Government Medical College,
Yavatmal.
- 3) Dr.Ku. Rajni D/o Vainkat Bansod @ Rajni Kamble,
Aged about 33 years, Occ. Presently
Working as Assistant Professor in Gynaecology,
Shri Vasantnao Naik Government Medical College,
Yavatmal.
- 4) Dr.Preeti Vijayrao Puppalwar @ Preeti w/o Sharad Kuchewar,
Aged about 33 years, Occ.
Working as Assistant Professor in Biochemistry,
Shri Vasantnao Naik Government Medical College,
Yavatmal.
- 5) Dr. Sharad Vasantnao Kuchewar,
Aged about 33 years, Occ. Presently
Working as Assistant Professor in Forensic Medicine,
Shri Vasantnao Naik Government Medical College,
Yavatmal.
- 6) Dr. Kishor Parsharamji Brahmapurkar,
Aged about 33 years, Occ. Presently
Working as Assistant Professor in Preventive and Social
Medicine Department,
Shri Vasantnao Naik Government Medical College,
Yavatmal.

- 7) Dr. Vaishali w/o Kishor Brahmapurkar,
Aged about 33 years, Occ. Presently
Working as Assistant Professor in Preventive & Social Medicine
Department Shri Vasantryao Naik Government Medical College,
Yavatmal.
- 8) Dr. Madhuri D/o Jaidev Patil,
Aged about 33 years, Occ. Presently
Working as Assistant Professor in Gynaecology,
Shri Vasantryao Naik Government Medical College,
Yavatmal.
- 9) Dr. Shilpa Sharadkumar Gupta,
Aged about 33 years, Occ. Presently
Working as Assistant Professor in Physiology
Shri Vasantryao Naik Government Medical College,
Yavatmal.
- 10) Dr. Asha Balaji Kalbande,
Aged about 47 years, Occ. Presently
Working as Assistant Professor in Dentistry,
Shri Vasantryao Naik Government Medical College,
Yavatmal.

Applicants.

Versus

- 1) State of Maharashtra,
through its Secretary for Medical
Education and Drugs Department,
Mantralaya, Mumbai-32.
- 2) Director,
Directorate of Medical Education and Research,
Government Dental College and Hospital Building,
Saint George Hospital Compound, Mumbai.
- 3) Dean,
Shri Vasantryao Naik Government Medical College,
Yavatmal.
- 4) Administrative Officer,
Shri Vasantryao Naik Government Medical College,
Yavatmal.

Respondents

Shri S.A. Marathe, Advocate for the applicant.

Shri A.M. Ghogre, Id. P.O. for the respondents.

WITH

ORIGINAL APPLICATION No. 848 of 2012

Dr. Shrikant Wasudeorao Masram,
Aged about 35 years, Occ. Service was
Working as Assistant Professor in Bio Chemistry
In Vasantrya Naik Government Medical College,
Yavamal R/o 28, Shriramwadi, Prem Nagar,
Nagpur.

Applicant

Versus

- 1) State of Maharashtra,
through its Secretary for Medical
Education and Drugs Department,
Mantralaya, Mumbai-32.
- 2) Director,
Directorate of Medical Education and Research,
Government Dental College and Hospital Building,
Saint George Hospital Compound, Mumbai.
- 3) Dean,
Shri Vasantrya Naik Government Medical College,
Yavatmal.
- 4) Administrative Officer,
Shri Vasantrya Naik Government Medical College,
Yavatmal.

Respondents

Shri S.A. Marathe, Advocate for the applicant.

Shri A.M. Ghogre, Id. P.O. for the respondents.

WITH**ORIGINAL APPLICATION No. 826 of 2012**

Dr. Upsen Dadaji Borkar,
Aged about 36 years, Occ. Service
Was working as Assistant Professor (Ophthalmology),
Vasantrao Government Medical College at Yavatmal
Presently working as Assistant Commissioner of
Income Tax at Wardha.

Applicant.**Versus**

- 1) State of Maharashtra,
through its Secretary for Medical
Education and Drugs Department,
Mantralaya, Mumbai-32.
- 2) Director,
Directorate of Medical Education and Research,
Government Dental College and Hospital Building,
Saint George Hospital Compound, Mumbai.
- 3) Dean,
Shri Vasantrao Naik Government Medical College,
Yavatmal.

Respondents.

Shri S.A. Marathe, Advocate for the applicant.

Shri A.M. Ghogre, Id. P.O. for the respondents.

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

COMMON JUDGEMENT

(Delivered on this 28th day of June,2017)

These three O.As., are being disposed of by this common order since the point involved in all the matters is one and the same. The applicants in all the O.As., have been appointed as Assistant Professors in Vasantrya Naik Government Medical College, Yavatmal. It is stated that they were initially appointed for 120 days and subsequently on year to year basis. They are continuously working uninterruptedly. It is further stated the applicants were appointed by duly constituted Divisional Selection Board and have been paid regular pay scale and were also given benefits of recommendation of 6th Pay Commission.

2. The Government of Maharashtra has accepted recommendation of 6th Pay Commission on 10/11/2009 and decided to implement the same for the full time Teachers in Government Medical, Dental and Ayurvedic Colleges in the State and accordingly the applicants were also given higher pay scales.

3. On 29/3/2010 the respondent no.2, i.e., the Directorate of Medical Education and Research, Mumbai made a query as to whether the selected temporary employees are entitled to receive higher pay scales, increments and arrears etc. as per the 6th Pay

Commission and the said query was answered in affirmative and the applicants were paid arrears.

4. The services of the applicant have been regularised as per the G.R. dated 22/1/2009. On 18/2/2012 the respondent no.1 issued a letter directing all the Medical Colleges in the Maharashtra State to withdraw the benefits of arrears of pay to the temporarily working Assistant Professors and accordingly the respondent no.4 issued the impugned order whereby the recovery of orders of pay given to the applicants have been directed in equal instalments. The said impugned orders are dated 30/08/2012 (in O.A. 801/2012) and dated 11/8/2012 (in O.A.848/2012). The applicant in O.A.826/2012 has not been given the benefits of 6th Pay Commission and therefore he is claiming such relief from 1/1/2006. He has also claimed that the G.R. dated 10/11/2009 is ultra virus and as such said be quashed and set aside. The learned counsel for the applicants however submits that the applicant in O.A.826/2012 has left the service on 29/8/2009 and therefore he is entitled to claim arrears as per the 6th Pay Commission w.e.f. 22/1/2009 to 29/8/2009 only.

5. In all the O.As. the reply-affidavit has been filed by respondent no.3, i.e., Dean, Vasantrao Naik Medical College, Yavatmal. According to respondents, the applicants were appointed

temporarily on Ad-hoc basis. Their services were regularised as a special drive in terms of G.R. dated 22/1/2009. It was specifically mentioned that they will not be entitled to previous benefits for the period in which they worked as Ad-hoc Professor / Medical Teacher and that the regularisation will be with effect from 22/1/2009. It is further stated that the 6th Pay Commissioner is not applicable to the Ad-hoc or temporary employees.

6. It is further stated that the applicants were paid inadvertently the higher pay scales as per the 6th Pay Commissioner w.e.f. 1/1/2006 by the Dean, Medical College and therefore it was necessary to recover that amount. It is stated that the applicants have given undertakings while getting arrears of revised pay as per the 6th Pay Commissioner that if they received the excess amount, they will refund the same. The recovery is therefore justified.

7. From the arguments put forth by the respective counsels, it seems that admittedly the applicants were initially appointed on Ad-hoc basis. Their initial appointment was for 120 days and thereafter from year to year but temporary. It is admitted fact that the applicants' services have been regularised as per the G.R. dated 22/1/2009. The said G.R. is placed on record at P.B. page nos. 48 to 49 (both inclusive) in O.A.801/2012 (Anex-A-7). As per decision taken by this

G.R., the Govt. of Maharashtra has regularised the services of the Medical Officers including the applicants w.e.f. the date of G.R. dated i.e. 22/1/2009 as a special case on certain terms and conditions. The terms and conditions are also given in the said G.R. which are at P.B. page no.52 and the relevant terms and condition nos. 6 & 7 which reads as under :-

6- रक्रिर्ह लोफु; फेर द्य; क व/को; क[; क्रक @ नर'क्य; फपदरि द ; क; क
लोफु; कल कथप्स वक्रक फुखर >क्य; क फुक्रकि कल उ Eg.कत्स फुक्र
22@1@2009 इ कल उ फु; फेर द्य; क तक्रह-

7- रक्रिर्ह लोफु; फेर द्य; क व/को; क[; क्रक @ नर'क्य; फपदरि द ; क
र; क; क इ कथप्स; क रक्रिर्ह; क ल डप्सदक्रग्घ क; नसेग.कज उग्र-**

8. The aforesaid conditions therefore make it crystal clear that the applicants' services were regularised w.e.f. 22/1/2009 and it was specifically stated that the applicants' will not be entitled to monetary benefits for their earlier services for which period they worked on Ad-hoc or temporary basis. In short, the applicants' can be said to be regular employees with effect from the date of this G.R., i.e., from 22/1/2009 and therefore they are not entitled to any benefits for their earlier services prior to their regularisation.

9. The learned P.O. has also invited my attention to the decision taken by the Govt. of Maharashtra to implement the G.R. dated 10/11/2009 which is as regards revision of pay scales of

Medical Education and Drugs Department Teachers in Govt. Medical, Dental and Ayurvedic Colleges. Vide this G.R. the Govt. has decided to apply 6th Pay Commission to each employee and to implement revised pay scales of all Teachers and equivalent cadre w.e.f. 1/1/2006 as per the Central Government (UGC Scheme). The Condition no.2 (vi) of the said G.R. is material and it reads as under (The G.R. is placed on record at Annex-A-3 from the page nos. 34 to 37) (both inclusive in O.A. 801/2012) :-

“2. (vi) The revised pay scales shall be applicable only to those teachers who have been lawfully appointed i.e. as per Recruitment Rules. In case of Lecturers whose services are regularised vide G.R. No.LEC 1408/C.R.196/Vaiseva-3, dated 22nd January,2009, the revised pay will be admissible to them with effect from 22nd January,2009.”

10. The said G.R. further shows that the undertakings were given from the employees and the said undertaking clause is in para 11 (vii) of the G.R. which reads as under :-

“11. (vii) An undertaking shall be taken from every beneficiary under this Scheme to the effect that any excess payment made on account of incorrect fixation of pay in the revised Pay Bands or grant of inappropriate Pay Band/ Academic Grade Pay or any other excess payment made shall be adjusted against the future payments due or otherwise to the beneficiary

in the same manner as provided in HRD Ministry's O.M. No.F.23-7/2008-IFD, dated 23/10/2008, read with Ministry of Finance (Department of Expenditure) O.M. NO.F.1-1/2008-IC, dated 30.8.2008 (Appendix-III)."

11. It is admitted fact that the applicants have given undertaking while obtaining arrears of 6th Pay Commission as per Clause (vii) above. The applicants were therefore very much within the knowledge that they will have to refund the arrears, in case it was found that they were not entitled to claim arrears.

12. The impugned letter vide which the Joint Director of Medical Education and Research, Mumbai decided to recover the amount is also placed on record and its copy is at P.B. page nos. 46 & 47 (In O.A.no.801/2012) (both inclusive) and vide this communication it has been made clear that the applicants' being temporary employees were not entitled to benefit of 6th Pay Commission and revised pay scale as per that Pay Commission. Since the applicants have given undertaking that they will refund the amount if wrongly paid to them, they cannot now say that the amount cannot be recovered from them.

13. It is material to note that the applicants in O.A.801 & 848 did not challenge their regularisation order. In other words, they have accepted their regularisation on certain conditions which clearly shows

that they will not be entitled to claim arrears of any revised pay prior to their regularisation. The applicant in 826/2012 has claimed that the G.R. dated 10/11/2009 be quashed and set aside. However no valid grounds have been made out to show that the said G.R. is ultra virus. On the contrary this applicant has accepted regularisation as per the G.R. dated 10/11/2009. In any case none of the applicants were regular employees in the year 2006, i.e., on the date of which revision of pay scale as per the 6th Pay Commission has been made applicable. None of the applicants have challenged the regularisation order dated 22/1/2009 vide which their services were regularised w.e.f. 22/1/2009 and from which specific conditions that they will not be entitled to any benefits of temporary service prior to their regularisation. In such circumstances, the applicants cannot now say that their regularisation should have been w.e.f. 2006 so as to get the benefit of 6th Pay Commission w.e.f. 1/1/2006. The revision of pay as per 6th Pay Commission has been made applicable to them rightly from the date of regularisation, i.e., 22/1/2009 and whatever arrears paid to them prior to the period of their regularisation have been wrongly paid and therefore the respondents have every authority to recover the same. As already stated the applicants have given undertaking that they will be liable to pay excess amount if wrongly paid.

14. The learned counsel for the applicants has submitted that the applicants were appointed by duly constituted Committee and therefore they were not back door entrants. In my opinion all these points could have been considered, had the applicants challenged their regularisation order. They did not challenge regularisation orders and on the contrary accepted it along with its terms and conditions. The learned counsel for the applicants has placed reliance on the Judgments.

i) Md. Abdul Kadir & Ano. Vs. Director of Police, Assam & Ors., AIR 2009 SC (Supp) 1054.

ii) Union Public Service Commission Vs. Dr. Jamuna Kurup & Ors.,AIR 2008 SC, 2463.

iii) Maharashtra State Road Transport Corpn. Vs. Premlal, AIR 2007 SC (Supp) 490.

iv) State of Madhya Pradesh & Ors, Vs. Ramesh Chandra Bajpai, (2009), SCC,635.

v) Karnataka State Private College Stop-Gap Lecturers Association, Petitioners Vs. State of Karnataka & Ors. & B.R. Parineeth & Ors. Vs. State of Karnataka & Ors., AIR 1992 SC 677 (1).

vi) Jaipal and Ors. Vs. State of Haryana & Ors. AND Niaz Mohammad & Ors Vs. State of Haryana AND Prem Lata & Ors. Vs. State of Haryana AND Hazari Lal & Ors. Vs. State of Haryana AND Prem Chand & Ors. Vs. State of Haryana AND Mohd. Qasim

& Ors. Vs. State of Haryana AND Balwinder Kaur & Ors. State of Haryana AND Dharam Pal & Ors. Vs. State of Haryana AND Maha Singh Saini & Ors. Vs. State of Haryana AND Nafe Singh & Ors. Vs. State of Haryana, AIR 1988 SC, 1504.

vii) State of Karnataka & Ors. Vs. M.L. Kesari & Ors. (2010) 9 SCC,247.

viii) Yogeshwar Prasad & Ors. Vs. National Institute of Education Planning & Administration & Ors. (2010) 14 SCC 323

ix) Secretary, State of Karnataka & Ors. Vs. Umadevi & Ors., AIR 2006, SC 1806 (1).

15. I have carefully gone through all these citations. For the reasons already discussed, I am satisfied that none of the Judgments are applicable in the present facts.

16. The 6th Pay Commission was made applicable w.e.f. 1/1/2006 to those employees who were permanent in the service. In 2006 none of the applicants were appointed on permanent posts and admittedly their postings were on ad-hoc basis for a temporary period. Their services are regularised in 2009 subject to certain conditions and the main condition was that they will not be entitled to any benefits which they might have got during their temporary / ad-hoc service. In such circumstances and considering the fact that the applicants have given undertaking that they will refund the amount if

paid excess to them, the respondents are very much entitled to recover the arrears.

17. The Id. P.O. rightly relied on the judgment delivered by the Hon'ble Supreme Court in this regard in Civil Appeal no.3500/2006 in the case of **High Court of Punjab and Haryana & Ors. Vs. Jagdev Singh** on 29/7/2016.

18. The learned counsel for the applicants submits that in O.A.826/2012 the applicant left the service on 29/8/2009. Admittedly his services were regularised as per the G.R. dated 22/1/2009. He submits that at least from 22/1/2009 to 29/8/2009 this applicant will be entitled to claim arrears of 6th Pay Commission as nothing is paid to him as per G.R. dated 10/11/2009. The respondents in this O.A. in para-4 of the reply-affidavit stated as under :-

“(4) It is submitted that the issue of the arrears of Higher Pay Scale pertaining to the applicant for the period 22/01/2009 to 29/08/2009 (7 months, 7 days) will be materialized soon after 29/8/2010 due enquiry at the office respondent nos. 2&3. Vide 29/8/2011 G.R. dated 10/11/2009 and 17/1/2012, the applicant cannot claim for arrears of higher pay scale from 1/1/2006 to 21/1/2009 as he was temporary employees, was working on ad-hoc basis for the period from 16/3/2005 to 21/1/2009.”

19. From the aforesaid reply-affidavit it will be clear that the respondents have admitted that the applicant in O.A.No.826 of 2012 is entitled to claim arrears as per 6th Pay Commission for the period from 22/1/2009 to 29/8/2009 i.e. for 7 months and 7 days. In view of the discussions in forgoing paras, I, therefore, pass the following order :-

ORDER

The O.As. 801 & 848 of 2012 stand dismissed. The O.A. 826/2012 is partly allowed. The respondents are directed to pay arrears of higher pay scale as per 6th Pay Commission and as per various G.Rs. to the applicant in O.A.826/2012 for the period from 22/1/2009 and 29/8/2009 i.e. for 7 months and 7 days. Such arrears shall be paid within three months from the date of this order. In peculiar circumstances of the case no order as to costs.

(J.D. Kulkarni)
Vice-Chairman (J).

dnk.