

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 1023 of 2022 (S.B.)

- 1) Dr. Uday Narlawar,
Aged-Major, Occupation-Service
- 2) Dr. Meherbano Mustafa Kamal,
Aged-Major, Occupation-Service
- 3) Dr. Devendra Meghraj Mahore, **(Deleted)**
Aged-Major, Occupation-Service,
- 4) Dr. Archana H. Deshpande,
Aged-Major, Occupation-Service,
- 5) Dr. Shirish Madhav Kawthalkar,
Aged-Major, Occupation-Service,
- 6) Dr. Dharitri Mukund Bhat,
Aged-Major, Occupation-Service,
- 7) Dr. Sandhya Vivek Poflee,
Aged-Major, Occupation-Service,
- 8) Dr. Sunanda Zodpey (Shrikhande),
Aged-Major, Occupation-Service
- 9) Dr. Anupama Gupta,
Aged-Major, Occupation-Service
- 10) Dr. Jayashri Rajendra Tijare,
Aged-Major, Occupation-Service
- 11) Dr. Satish Bhaskarrao Helwatkar,
Aged-Major, Occupation-Service
- 12) Dr. M. R. Waikar,
Aged-Major, Occupation-Service
- 13) Dr. Brajesh Baijnath Gupta,
Aged-Major, Occupation-Service
- 14) Dr. Aarti Ashok Dani,
Aged-Major, Occupation-Service
- 15) Dr. Subhash Bapuraoji Thakre,
Aged-Major, Occupation-Service
- 16) Dr. Anand Gopalrao Gharpure,
Aged-Major, Occupation-Service
- 17) Dr. Prajwaleet Patapsingh Gour,
Aged-Major, Occupation-Service

- 18) Dr. Saira Merchant,
Aged-Major, Occupation-Service
- 19) Dr. Vinod Yashwant Khandait,
Aged-Major, Occupation-Service
- 20) Dr. Prashant Lalitrao Patil,
Aged-Major, Occupation-Service,
- 21) Dr. Leela Gul Abhichandani,
Aged-Major, Occupation-Service,

All C/o Government Medical College, Nagpur.

Applicants.

Versus

- 1) The State of Maharashtra
through its Secretary, Department of Medical Education,
Mantralaya, Mumbai-32.
- 2) The Director of Medical Education & Research,
Saint George Hospital, Mumbai.
- 3) The Dean, Government Medical College, Nagpur.

Respondents.

**S/Shri Rohit Joshi, A.A. Naik, M. Deo, Id. Advs. for the applicants.
Shri S.A. Deo, Id. CPO for the respondents.**

WITH

ORIGINAL APPLICATION No. 1024 of 2022 (S.B.)

- 1) Dr. Radha Pramod Munje,
Aged-Major, Occupation-Service,
- 2) Dr. Ashok R. Jadhao,
Aged-Major, Occupation-Service,
- 3) Dr. Jeevan Narayandas Vedi,
Aged-Major, Occupation-Service,
- 4) Dr. Chandrakant Mahadeorao Bokade,
Aged-Major, Occupation-Service,
- 5) Dr. Bhawana Dakshayan Sonawane,
Aged-Major, Occupation-Service,
- 6) Dr. Sharmila Sanjay Raut,
Aged-Major, Occupation-Service,

- 7) Dr. Sushama Subhash Thakre,
Aged-Major, Occupation-Service,
- 8) Dr. Dipti Anil Chand,
Aged-Major, Occupation-Service,
- 9) Dr. Maroti Raghoji Koichade,
Aged-Major, Occupation-Service,

All C/o Indira Gandhi Government Medical College, Nagpur.

Applicants.

Versus

- 1) The State of Maharashtra through its Secretary,
Department of Medical Education, Mantralaya, Mumbai-32.
- 2) The Director of Medical Education & Research,
Saint George Hospital, Mumbai.
- 3) The Dean,
Indira Gandhi Government Medical College, Nagpur.

Respondents.

**S/Shri Rohit Joshi, A.A. Naik, M. Deo, Id. Advs. for the applicants.
Shri H.K. Pande, Id. P.O. for the respondents.**

WITH

ORIGINAL APPLICATION No. 1049 of 2022 (S.B.)

Dr. Raj Gajbiye,
Aged – Major, Occupation – Government Service,
r/o Tatyatope Nagar, behind Tatyatope Hall,
Nagpur-440 015.

Applicant.

Versus

- 1) The State of Maharashtra
through its Secretary, Department of Medical Education,
Mantralaya, Mumbai-32.
- 2) The Director of Medical Education & Research,
Saint George Hospital, Mumbai.
- 3) The Dean, Government Medical College, Nagpur.

Respondents.

**S/Shri Rohit Joshi, A.A. Naik, M. Deo, Id. Advs. for the applicants.
Shri A.P. Potnis, Id. P.O. for the respondents.**

WITH

ORIGINAL APPLICATION No. 125 of 2023 (S.B.)

Dr. Supriya Sanjay Tankhiwale,
Aged – Major, Occupation – Service,
C/o Government Medical College,
Gondia.

Applicant.

Versus

- 1) The State of Maharashtra
through its Secretary, Department of Medical Education,
Mantralaya, Mumbai-32.
- 2) The Director of Medical Education & Research,
Saint George Hospital, Mumbai.
- 3) The Dean, Government Medical College, Gondia.

Respondents.

**S/Shri Rohit Joshi, Madhur Joshi, Id. Advs. for the applicant.
Shri S.A. Deo, Id. C.P.O. for the respondents.**

WITH

ORIGINAL APPLICATION No. 837 of 2023 (S.B.)

Dr. Wasudeo S/o Sadashiv Barsagade,
Aged 63 years, Occupation : Government Service,
R/o 88, Banerjee Layout, Bhagwan Nagar, Road-27.

Applicant.

Versus

- 1) The State of Maharashtra
through its Secretary, Department of Medical Education,
Mantralaya, Mumbai-32.
- 2) The Director of Medical Education & Research,
Saint George Hospital, Mumbai.
- 3) The Dean, Government Medical College, Nagpur.

Respondents.

**S/Shri Rohit Joshi, Madhur Deo, Id. Advs. for the applicant.
Shri A.M. Khadatkar, Id. P.O. for the respondents.**

WITH

ORIGINAL APPLICATION No. 836 of 2022 (S.B.)

Dr. Manish Mahadeo Tiwari,
Aged about 42 years,
Occupation: Service as Professor (Pediatric),
Government Medical College, Gondia.

Applicant.

Versus

1. The State of Maharashtra Through its Secretary,
Medical Education and Drugs,
Office at Gokuldas Tejpal Rughnalaya Complex,
9th Floor, Lokmanya Tilak Marg, Mumbai.
2. The Director,
Department of Medical Education and Research,
Office at St. George Hospital Complex P.D. Mello Road,
Fort Mumbai.
3. The Dean Government Medical College,
Gondia.

Respondents.

**Shri S.S. Ghate, learned Advocate for the applicant.
Shri A.M. Khadatkar, Id. P.O. for the respondents.**

WITH

ORIGINAL APPLICATION No. 1025 of 2022 (S.B.)

Dr. Sunil S/o. Motiramji Lanjewar, Aged about 65 years,
Occupation : Retired as HoD in Surgery, Resident of 115-A,
Farmland, Behind Tarun Bharat, Ramdaspath, Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra, through its Director,
Department of Education and Research, office at Government
Dental College and Hospital Premises,
Demalo Road, Fort, Mumbai - 400 032.

2) The State of Maharashtra, through its Secretary,
Department of Medical Education, Drugs and Cosmetics,
Office at Gokuldas Tejpal Rugnalaya Complex,
9th Floor, Lokmanya Tilak Marg, Mumbai.

3) The Dean,
Indira Gandhi Medical College and Hospital, Nagpur.

Respondents.

**Shri S.S. Ghate, learned Advocate for the applicant.
Shri V.A. Kulkarni, Id. P.O. for the respondents.**

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Dated :- 12/12/2023.

COMMON JUDGMENT

Heard Shri Rohit Joshi, learned counsel for the applicants
in O.A.Nos.1023/2022,1024/2022,1049/2022,125/2023 and 837/2023.

2. Heard Shri S.S. Ghate, learned counsel for the applicants
in O.A.Nos. 836/2022 and 1025/2022.

3. Heard Shri S.A. Deo, learned CPO / Shri S.A. Sainis,
learned P.O. for the respondents in O.A.Nos. 1023/2022 and
125/2023, Shri H.K. Pande, learned P.O. for the respondents in
O.A.No.1024/2022, Shri A.P. Potnis, learned P.O. for the respondents
in O.A.No.1049/2022, Shri A.M. Khadatkar, learned P.O. for the
respondents in O.A.Nos.837/2023 and 836/2023 and Shri V.A.
Kulkarni, learned P.O. for the respondents in O.A.No.1025/2023.

4. All the applicants are working in the Government Medical Colleges on the posts of Professors. They are having qualification of MD/MS etc. When all the applicants joined on the said posts, they were granted four advance increments as per the G.R. dated 10/11/2009. Some of the applicants are retired and some of the applicants are on the verge of retirement within 1/2 years. Some of the applicants are in the regular employment. The respondent no.1 has issued the notice for recovery dated 19/01/2022 (P-84) by which the applicants were directed to refund the amount of advance increments granted as per G.R. dated 10/11/2009. So also upon recovery further pay fixation on reverted pay scale.

5. It is stated in the recovery notice that now they are getting pay scale as per the 6th Pay Commission and therefore as per Clause 8 (xix) of the G.R. dated 10/11/2009 they are not entitled to get 3/5 advance increments, therefore, the applicants were directed to refund the said amount.

6. The applicants in O.A. No. 1023/2022 have challenged the recovery notice issued by the respondents before this Tribunal for the following reliefs—

“(8) RELIEF/S SOUGHT -

In view of the above, the applicants pray for the following reliefs –

8.1 Hold and declare that the benefits of 3-non-compounded advanced increments have been rightly granted to the applicants under Government Resolution dated 10/11/2009 (Annex-A3);

8.2 Hold and declare that no amount is recoverable from the applicants on account of extending the benefits of 3-non-compounded advanced increments under Government Resolution dated 10/11/2009 (Annex- A3);

8.3 Quash and set aside the letter dated 19/01/2022 (Annex-A4) issued by the respondent No.1 through Additional Secretary, Department of Medical Education & Drugs, Government of Maharashtra and the Order dated 29/09/2022 (Annex-A12) issued by the respondent No. 3, Dean, Government Medical College, Nagpur;

(9) Interim Relief –

The applicants have made out an excellent prima facie case and are likely to succeed in the matter. However, by virtue of the impugned order, the respondent authorities are likely to effect recovery from the monthly salary of the applicants. It is submitted that assuming though not admitting that any amount is due and payable, before recovering any amount, the salary payable to the applicants should be re-calculated and the amount actually due should be computed. However, the respondents have not undertaken the said exercise. It is submitted that the impugned action is being taken relying upon Clause-8 (xix) of the Government Resolution dated 10/11/2009, which is not applicable to the present case. The respondent authorities have failed to appreciate that the benefits of 3-non-compounded advanced increments are granted to the applicants only once. In such circumstances, it will be expedient, in the interest of justice, to grant appropriate interim relief in the following terms, failing which, the cause in the original application is likely to be rendered infructuous.

9.1 *By way of interim orders, grant stay to the effect, operation and implementation of the letter dated 19/01/2022 (Annex-A4) issued by the respondent No.1 through Additional Secretary, Department of Medical Education & Drugs, Government of Maharashtra and the Order dated 29/09/2022 (Annex-A12) issued by the respondent No. 3, Dean, Government Medical College, Nagpur, till the final disposal of the present original application;*

9.2 *Restrain the respondent authorities from deducting or recovering any amount from the monthly salary of the applicants payable for the month of September, 2022 and thereafter, till the final disposal of the present original application;*

9.3 *Grant ex-parte ad-interim relief in terms of Prayer Clause-(9.1) & (9.2) above.”*

7. The applicants in O.A. No.1024/2022 have challenged the recovery notice issued by the respondents before this Tribunal for the following reliefs–

“(8) RELIEF/S SOUGHT -

8.1 Hold and declare that the benefits of 3-non-compounded advanced increments have been rightly granted to the applicants under Government Resolution dated 10/11/2009 (Annex-A3);

8.2 Hold and declare that no amount is recoverable from the applicants on account of extending the benefits of 3-non-compounded advanced increments under Government Resolution dated 10/11/2009 (Annex- A3);

8.3 Quash and set aside the letter dated 19/01/2022 (Annex-A4) issued by the respondent No.1 through Additional Secretary, Department of Medical Education & Drugs, Government of Maharashtra and the Order dated 26/09/2022 (Annex-A12) issued by the respondent No. 3, Dean, Government Medical College, Nagpur;

(9) Interim Relief –

The applicants have made out an excellent prima facie case and are likely to succeed in the matter. However, by virtue of the impugned order, the respondent authorities are likely to effect recovery from the monthly salary of the applicants. It is submitted that assuming though not admitting that any amount is due and payable, before recovering any amount, the salary payable to the applicants should be re-calculated and the amount actually due should be computed. However, the respondents have not undertaken the said exercise. It is submitted that the impugned action is being taken relying upon Clause-8 (xix) of the Government Resolution dated 10/11/2009, which is not applicable to the present case. The respondent authorities have failed to appreciate that the benefits of 3-non-compounded advanced increments are granted to the applicants only once. In such circumstances, it will be expedient, in the interest of justice, to grant appropriate interim relief in the following terms, failing which, the cause in the original application is likely to be rendered infructuous.

9.1 *By way of interim orders, grant stay to the effect, operation and implementation of the letter dated 19/01/2022 (Annex-A4) issued by the respondent No.1 through Additional Secretary, Department of Medical Education & Drugs, Government of Maharashtra and the Order dated 26/09/2022 (Annex-A12) issued by the respondent No. 3, Dean, Government Medical College, Nagpur, till the final disposal of the present original application;*

9.2 *Restrain the respondent authorities from deducting or recovering any amount from the monthly salary of the applicants payable for the*

month of September, 2022 and thereafter, till the final disposal of the present original application;

9.3 Grant ex-parte ad-interim relief in terms of Prayer Clause-(9.1) & (9.2) above.”

8. The applicant in O.A. No. 1049/2022 has challenged the recovery notice issued by the respondents before this Tribunal for the following reliefs—

“(8) RELIEF/S SOUGHT - 8.1 Hold and declare that the benefits of 3-non-compounded advanced increments have been rightly granted to the applicant under Government Resolution dated 10/11/2009 (Annex-A3);

8.2 Hold and declare that no amount is recoverable from the applicant on account of extending the benefits of 3-non-compounded advanced increments under Government Resolution dated 10/11/2009 (Annex- A3);

8.3 Quash and set aside the letter dated 19/01/2022 (Annex-A4) issued by the respondent No.1 through Additional Secretary, Department of Medical Education & Drugs, Government of Maharashtra and the Order dated 29/09/2022 (Annex-A12) issued by the respondent No. 3, Dean, Government Medical College, Nagpur;

(9) Interim Relief –

The applicant has made out an excellent prima facie case and is likely to succeed in the matter. However, by virtue of the impugned order, the respondent authorities are likely to effect recovery from the monthly salary of the applicant. It is submitted that assuming though not admitting that any amount is due and payable, before recovering any amount, the salary payable to the applicant should be re-calculated and the amount actually due should be computed. However, the respondents have not undertaken the said exercise. It is submitted that the impugned action is being taken relying upon Clause-8 (xix) of the Government Resolution dated 10/11/2009, which is not applicable to the present case. The respondent authorities have failed to appreciate that the benefits of 3-non-compounded advanced increments are granted to the applicant only once. In such circumstances, it will be expedient, in the interest of justice, to grant appropriate interim relief in the following terms, failing which, the cause in the original application is likely to be rendered infructuous.

9.1 By way of interim orders, grant stay to the effect, operation and implementation of the letter dated 19/01/2022 (Annex-A4) issued by the respondent No.1 through Additional Secretary, Department of Medical Education & Drugs, Government of Maharashtra and the Order dated 29/09/2022 (Annex-A12) issued by the respondent No.

3, Dean, Government Medical College, Nagpur, till the final disposal of the present original application;

9.2 Restrain the respondent authorities from deducting or recovering any amount from the monthly salary of the applicants payable for the month of September, 2022 and thereafter, till the final disposal of the present original application;

9.3 Grant ex-parte ad-interim relief in terms of Prayer Clause-(9.1) & (9.2) above.”

9. The applicant in O.A. No. 125/2023 has challenged the recovery notice issued by the respondents before this Tribunal for the following reliefs—

“(8) RELIEF/S SOUGHT -

8.1 Hold and declare that the benefits of 3-non-compounded advanced increments have been rightly granted to the applicant under Government Resolution dated 10/11/2009 (Annex-A3);

8.2 Hold and declare that no amount is recoverable from the applicant on account of extending the benefits of 3-non-compounded advanced increments under Government Resolution dated 10/11/2009 (Annex- A3);

8.3 Quash and set aside the letter dated 19/01/2022 (Annex-A4) issued by the respondent No.1 through Additional Secretary, Department of Medical Education & Drugs, Government of Maharashtra and the Order dated 21/12/2022 (Annex-A12) issued by the respondent No. 3, Dean, Government Medical College, Nagpur;

(9) Interim Relief –

The applicant has made out an excellent prima facie case and is likely to succeed in the matter. However, by virtue of the impugned order, the respondent authorities are likely to effect recovery the applicant. It is submitted that assuming though not admitting that any amount is due and payable, before recovering any amount, the salary payable to the applicant should be re-calculated and the amount actually due should be computed. However, the respondents have not undertaken the said exercise. It is submitted that the impugned action is being taken relying upon Clause-8 (xix) of the Government Resolution dated 10/11/2009, which is not applicable to the present case. The respondent authorities have failed to appreciate that the benefits of 3-non-compounded advanced increments are granted to the applicant only once. In such circumstances, it will be expedient, in the interest of justice, to grant appropriate interim relief in the following terms, failing which, the cause in the original application is likely to be rendered infructuous.

9.1 *By way of interim orders, grant stay to the effect, operation and implementation of the letter dated 19/01/2022 (Annex-A4) issued by the respondent No.1 through Additional Secretary, Department of Medical Education & Drugs, Government of Maharashtra and the Order dated 21/12/2022 (Annex-A12) issued by the respondent No. 3, Dean, Government Medical College, Nagpur, till the final disposal of the present original application;*

9.2 *Restrain the respondent authorities from deducting or recovering any amount from the monthly salary of the applicants payable for the month of January,2023 and thereafter, till the final disposal of the present original application;*

9.3 *Grant ex-parte ad-interim relief in terms of Prayer Clause-(9.1) & (9.2) above.”*

10. The applicant in O.A. No. 837/2023 has challenged the recovery notice issued by the respondents before this Tribunal for the following reliefs—

“(8) RELIEF/S SOUGHT - 8.1 Hold and declare that the benefits of 3-non-compounded advanced increments have been rightly granted to the applicant under Government Resolution dated 10/11/2009 (Annex-A3);

8.2 Hold and declare that no amount is recoverable from the applicant on account of extending the benefits of 3-non-compounded advanced increments under Government Resolution dated 10/11/2009 (Annex- A3);

8.3 Quash and set aside the letter dated 19/01/2022 (Annex-A4) issued by the respondent No.1 through Additional Secretary, Department of Medical Education & Drugs, Government of Maharashtra and the Order dated 25/04/2023 and 26/06/2023 (Annex-A12) issued by the respondent No. 3, Dean, Government Medical College, Nagpur;

(9) Interim Relief –

The applicant has made out an excellent prima facie case and is likely to succeed in the matter. However, by virtue of the impugned order, the respondent authorities are likely to effect recovery from the monthly salary of the applicant. It is submitted that assuming though not admitting that any amount is due and payable, before recovering any amount, the salary payable to the applicant should be re-calculated and the amount actually due should be computed. However, the respondents have not undertaken the said exercise. It is submitted that the impugned action is being taken relying upon Clause-8 (xix) of the Government Resolution dated 10/11/2009, which is not applicable to the present case. The respondent authorities have failed to appreciate that the benefits of 3-non-compounded advanced increments are granted to the

applicant only once. In such circumstances, it will be expedient, in the interest of justice, to grant appropriate interim relief in the following terms, failing which, the cause in the original application is likely to be rendered infructuous.

9.1 By way of interim orders, grant stay to the effect, operation and implementation of the letter dated 19/01/2022 (Annex-A4) issued by the respondent No.1 through Additional Secretary, Department of Medical Education & Drugs, Government of Maharashtra and the Order dated 25/04/2023 and 26/06/2023 (Annex-A12) issued by the respondent No. 3, Dean, Government Medical College, Nagpur, till the final disposal of the present original application;

9.2 Restrain the respondent authorities from deducting or recovering any amount from the monthly salary of the applicants payable for the month of August,2023 and thereafter, till the final disposal of the present original application;

9.3 Grant ex-parte ad-interim relief in terms of Prayer Clause-(9.1) & (9.2) above.”

11. The applicant in O.A. No. 836/2022 has challenged the recovery notice issued by the respondents before this Tribunal for the following reliefs—

“(8) (i) To call for record and proceedings in the matter of order impugned;

ii) To quash and set aside the order dated 12.07.2022 (Annexure A-6) passed by the respondent no.3 -Dean, Government Medical College, Gondia and hold and declare that the applicant is holding status of permanent professor with all allied benefits in regular pay fixation and pay-scale;

(iii) To allow the application by any other suitable directions deemed fit and proper in favour of the applicant.

(10) By way of ad interim ex parte reliefs, to stay the recovery of the benefits/ amount from the applicant by the impugned order dated 12.07.2022 pending hearing and disposal of this original application in the interest of justice.”

12. The applicant in O.A. No. 1025/2022 has challenged the recovery notice issued by the respondents before this Tribunal for the following reliefs—

“(i) By suitable order or direction be pleased to call for R & P in the matter of orders dated 02/05/2022 and 10/05/2022, (Annexure A-2

and A-3) received on 24/05/2022, and upon perusal thereof, be pleased to hold and declare that the impugned orders are contrary to the law laid down by the Hon'ble High Court and this Hon'ble Tribunal and accordingly the same be quashed and set aside.

ii) Also be pleased to declare that the respondents have no authority to pass the impugned orders dated orders dated 02/05/2022 and 10/05/2022 (Annexure A-2 and A-3) after retirement of the applicant;

(10) During pendency and final disposal of the original During application, stay the effect, operation and implementation of the impugned orders dated orders dated 02/05/2022 and 10/05/2022 (Annexure A-2 and A-3) pending disposal of the Original Application, subject to terms and conditions which may deem fit and proper by this Hon'ble Tribunal, in the interest of justice.”

13. In all the O.As., the respondents have submitted that the advance increments were wrongly granted to the applicants and therefore they are not entitled to get the same. Therefore, the respondents have issued recovery notice to the applicants as per Clause-8 (xix) of the G.R. dated 10/11/2009.

14. Heard Shri Rohit Joshi, Id. counsel for applicants. During the course of submission, he has pointed out the G.R. dated 10/11/2009. As per this G.R., advance increments were granted to the applicants who were having qualification of MD/ MS/ DNB etc. He has pointed out Clause-8 (xix) of the G.R. and submitted that this clause is not applicable to the applicants, because, in this clause Ph.D. and M.Phil are mentioned. Those qualifications are related to the Lecturers / Professors who are teaching in the Arts, Science and Commerce Colleges. The applicants are qualified Doctors having post graduate degree of MD/MS/DNB etc. they are teaching to the medical students of MBBS and post graduate medical students also. Therefore, this

Clause-8 (xix) of the said G.R. is not applicable to the applicants. Learned counsel for applicants has pointed out the Judgement of M.A.T., Principal Bench, Mumbai in O.A.Nos.829 and 830 of 2015, decided on 16/09/2016. Hence, the recovery orders made by the respondents by the all impugned notices are illegal and liable to be quashed and set aside.

15. Heard learned C.P.O. / P.O. for the respondents. He has pointed out Clause no. 2 (ii) of the said G.R. The applicants were granted advance increments as per the Clause 8 (i) and (iii) of the said G.R. which are reproduced below –

“(8) Incentives for MD/MS/DNB/DM/MCh/Ph.D And Other Higher Qualifications:

(i) Three non-compounded advance increments shall be admissible at the entry level of recruitment as Assistant Professor to persons possessing the degree of MD/MS/DNB/Ph.D. awarded in the relevant discipline by the University following the process of admission, registration, course work and external evaluation as prescribed by the UGC in its Regulation.

(ii) -----

(iii) Teachers who are in service possessing MD/MS/DNB/Ph.D degree recognized by the Medical Council of India/Dental Council of India / Central Council of India Medicine System shall be entitled to 3 non compounded increments. Teachers who are in service possessing DM/MCh degree recognized by the Medical Council of India/Dental Council of India / Central Council of India Medicine System shall be entitled to 5 non compounded increments. Provided such degree is in the relevant discipline and has been awarded by a University complying with the process prescribed by the UGC for enrolment, course work and evaluation, etc in its Regulation.”

16. As per the submission of learned CPO / PO, the applicants are not entitled to get higher pay scale as per clause 2 (ii) of the said G.R. It is reproduced below –

“(2) (ii) No one shall be eligible to be appointed, promoted or designated as Professor, unless he or she possesses MD/MS/DNB/DM/MCh/Ph.D educational qualification and satisfies other academic conditions prescribed in the recruitment rules and as per the guidelines given by the Medical Council of India/ Dental Council of India from time to time. In case of Ayurvedic Colleges no one shall be eligible to be appointed, promoted or designated as Professor unless he / she possesses essential educational qualification and satisfies other academic conditions prescribed as per the recruitment rules framed by the State Government under the guidelines of Central Council of India Medicine Systems. This shall, however, not affect those who are already designated as 'Professor'.”

17. Clause 2 (ii) of the G.R. dated 10/11/2009 is applicable for appointment and promotion on the post of Professor those who were having the qualification of MD/MS/DNB etc. they are qualified for the post of Professor.

18. As per the submission of learned counsel for applicants Shri R. Joshi, the respondents wanted to recover the advance increments as per clause-8 (xix) of the said G.R. Clause-8 (xix) of the said G.R. is reproduced below –

“(8) (xix) Notwithstanding anything in the foregoing clauses, those who have already availed the benefits of advance increments for possessing Ph.D. / M.Phil at the entry level under the earlier scheme shall not be entitled to the benefit of advance increments under this Scheme.”

19. As per this Clause-8 (xix), the Professors those who were having qualification of Ph.D. / M.Phil shall not be entitled to the benefit of advance increment under this scheme.

20. The applicants are teaching to the Medial Students. They are having qualification of MD/MS/DNB etc. They are not Lecturers/

Professors in Arts, Science and Commerce Colleges. Qualification of Ph.D. / M.Phil are required for the Professors / Lecturers who are teaching in the Arts, Science and Commerce Colleges. The applicants are the Professors in the Government Medical Colleges, they are having degrees of MD/MS/DNB etc. Therefore, it cannot be said that they are also covered under Clause-8 (xix) of the said G.R. Clause-8 (xix) of the G.R. is very clear. It is applicable only to the Professors who are having Ph.D. / M.Phil degree. The Professors teaching in the Medical Colleges are not required to get degrees of Ph.D. / M.Phil, therefore, Clause-8 (xix) is not applicable to the applicants. The respondents wanted to recover the amount of advance increments as per the Clause-8 (xix) of this G.R. It is stated in the recovery notice that they were granted 3/5 advance increments and they are not entitled for the same. Clause 8 (i) and (iii) of the said G.R. are very clear. As per these Clauses those who are possessing MD/MS/DNB/Ph.D./DM/MCh degree recognized by the Medical Council of India / Dental Council of India/ Central Council of India Medicine System shall be entitled to 3/5 non-compounded advance increments at the entry level. As per Clause 8 (iii) *“Teachers who are in service possessing MD/MS/DNB/Ph.D. degree recognized by the Medical Council of India/Dental Council of India / Central Council of India Medicine System shall be entitled to 3 non compounded*

increments. Teachers who are in service possessing DM/MCh degree recognized by the Medical Council of India/Dental Council of India / Central Council of India Medicine System shall be entitled to 5 non compounded increments. Provided such degree is in the relevant discipline and has been awarded by a University complying with the process prescribed by the UGC for enrolment, course work and evaluation, etc in its Regulation.”

21. The applicants are qualified Doctors. They are having degrees as mentioned in Clause 8 (i) and (iii) of G.R., therefore, they were granted advance increments. The respondents are taking the benefits that in Clause 8 (ix) where the Ph.D. and M. Phil are mentioned and therefore they are getting the benefit of Clause-8 (xix) of the G.R. The applicants are not required to get the degree of Ph.D. or M.Phil as mentioned in Clause-8 (xix) of the G.R. The applicants are the Doctors. They are teaching in the Government Medical Colleges.

22. The respondents wanted to recover the amounts as follows –

(i) In O.A. No.1023/2022 –

Sr.No.	Name	Recovery Amount
1	Dr. Uday Narlawar	13,63,013/-
2	Dr. Meherbano Mustafa Kamal	12,18,856/-

3	Dr. Devendra Meghraj Mahore	Deleted as per order dt. 08.09.2023
4	Dr. Archana H. Deshpande	17,13,033/-
5	Dr. Shirish Madhav Kawthalkar	1,46,517/-
6	Dr. Dharitri Mukund Bhat	4,81,223/-
7	Dr. Sandhya Vivek Poflee	4,12,907/-
8	Dr. Sunanda Zodpey (Shrikhande)	4,099/-
9	Dr. Anupama Gupta	5,50,258/-
10	Dr. Jayashri Rajendra Tijare	65,954/-
11	Dr. Satish Bhaskarrao Helwatkar	2,30,366/-
12	Dr. M. R. Waikar	19,49,206/-
13	Dr. Brajesh Baijnath Gupta	16,47,134/-
14	Dr. Aarti Ashok Dani	12,735/-
15	Dr. Subhash Bapuraoji Thakre	23,96,968/-
16	Dr. Anand Gopalrao Gharpure	25,18,660/-
17	Dr. Prajwaleet Patapsingh Gour	27,56,319/-
18	Dr. Saira Merchant	24,53,776/-
19	Dr. Vinod Yashwant Khandait	24,696/-
20	Dr. Prashant Lalitrao Patil	25,95,466/-
21	Dr. Leela Gul Abhichandani	15,48,839/-

(ii) In O.A. No.1024/2022 –

Sr.No.	Name	Recovery Amount
1	Dr. Radha Pramod Munje	22,16,562/-
2	Dr. Ashok R. Jadhao	20,64,520/-
3	Dr. Jeevan Narayandas VEDI	22,70,210/-
4	Dr. Chandrakant Mahadeorao Bokade	22,18,242/-
5	Dr. Bhawana Dakshayan Sonawane	22,34,408/-
6	Dr. Sharmila Sanjay Raut	22,21,993/-
7	Dr. Sushama Subhash Thakre	18,79,463/-
8	Dr. Dipti Anil Chand	14,00,000/-
9	Dr. Maroti Raghoji Koichade	18,13,236/-

- (iii) in O.A. No.1049/2022 (Dr.Raj Gajbhiye) – Rs.17,38,298/-
(iv) in O.A.No.125/2023 (Dr.Supriya S. Tankhiwale) – Rs. 24,17,215/-
(v) in O.A.No.837/2023 (Dr.Wasudeo S. Barsagade) – Rs. 24,62,938/-
(vi) in O.A.No.836/2022 (Dr.Manish M. Tiwari) – Rs. 7,85,355/-
(vii) in O.A.No.1025/2022 (Dr.Sunil M. Lanjewar) – Rs. 18,09,983/-

23. The respondents wanted to recover lacs of rupees as shown in the Chart given above from the applicants.

24. Some of the applicants are retired during the pendency of these O.As. This Tribunal passed the order directing the respondents to forward the pension case subject to withholding the amount of recovery mentioned in the notice. Some of the applicants are about to retire within 1/2 years. As per the Judgment of Hon'ble Supreme Court in the case of the **State Of Punjab & Ors vs. Rafiq Masih (White Washer) decided on 18 December, 2014** in Civil Appeal No. 11527 OF 2014 (Arising out of SLP(C) No. 11684 of 2012), the recovery cannot be done in case of the retired employees or employees those who are about to retire within 1/2 years. Some of the applicants are retired during the pendency of these O.As. Some of the applicants are due to retire. Moreover, the respondents wanted to recover the amount as per Clause-8 (xix) of the G.R. dated 10/11/2009. The applicants are not covered in Clause-8 (xix) of the said G.R. The applicants are not the Lecturers working in the Arts, Science and

Commerce Colleges. The degrees of Ph.D. / M. Phil are required to the Professors / Lecturers working in the Arts, Science and Commerce Colleges. The applicants are the Professors teaching in the Government Medical Colleges. They are having post graduate degrees and therefore as per Clause 8 (i) and (iii) of the G.R. dated 10/11/2009, they were granted 3 advance increments. Now respondents cannot recover the said amount.

25. Before the 4th pay commission, the pay scales were very less and therefore to attract the meritorious candidates in the service, they were granted advance increments/ higher start. Even in the Judiciary the Government has granted four advance increments to those newly joined Civil Judge Junior Division and Judicial Magistrate in the year 1990. In the same way, the respondents have granted 3/5 advance increments to the applicants / Doctors to teach in the Medical Colleges as Professors / Lecturers so as to attract them to work in the Government Medical Colleges. Now the respondents cannot say that those advance increments were wrongly granted to the applicants. Hence the recovery notices issued by the respondents is not as per the G.R. dated 10/11/2009. On the other hand, it is contrary to the G.R. dated 10/11/2009. As per the said G.R., the advance increments were granted to the applicants. Advance increments which were granted to the Ph.D. and M.Phil holders were not entitled to the benefit

of advance increments under this scheme. The applicants are not Ph.D. / M.Phil holders. The applicants are the Doctors having the degrees of MD/MS/DNB etc. They are the Professors in the Government Medical Colleges. Therefore, recovery notices issued by the respondents relying on Clause-8 (xix) of the G.R. is not legal and correct. It appears that the respondents have wrongly considered the applicants in the line of the Professors who are having degree of Ph.D./ M.Phil etc. because in Clause 8 (iii), the degree of Ph.D. and M.Phil are also mentioned. It is applicable only to the Lecturers / Professors working in the Arts, Science and Commerce Colleges and it is not applicable to the Government Medical Colleges. Hence, the recovery notices issued by the respondents to the applicants are liable to be quashed and set aside. Hence, the following order –

ORDER

(1) The O.A.Nos. 1023/2022, 1024/2022, 1049/2022, 125/2023, 837/2023, 836/2022 and 1025/2022 are hereby allowed.

(2) It is hereby declared that the benefits of 3/5 non-compounded advance increments granted as per G.R. dated 10/11/2009 to the applicants are perfectly legal and correct.

(3) The respondents are directed not to recover the amount from the applicants as mentioned above in para-22 and as prayed in O.A. Nos. 1023/2022, 1024/2022, 1049/2022, 125/2023, 837/2023, 836/2022 and 1025/2022.

(i) The recovery notice / letter dated 19/01/2022 and order dated 29/09/2022 in O.A.No.1023/2022 are hereby quashed and set aside.

(ii) The recovery notice / letter dated 19/01/2022 and order dated 26/09/2022 in O.A.No.1024/2022 are hereby quashed and set aside.

(iii) The recovery notice / letter dated 19/01/2022 and order dated 29/09/2022 in O.A.No.1049/2022 are hereby quashed and set aside.

(iv) The recovery notice / letter dated 19/01/2022 and order dated 21/12/2022 in O.A.No.125/2023 are hereby quashed and set aside.

(v) The recovery notice / letter dated 19/01/2022 and orders dated 25/04/2023 and 26/06/2023 in O.A.No.837/2023 are hereby quashed and set aside.

(vi) The recovery order dated 12/07/2022 in O.A.No.836/2022 are hereby quashed and set aside.

(vii) The recovery orders / letters dated 02/05/2022 and 10/05/2022 in O.A.No.1025/2022 are hereby quashed and set aside.

(viii) The respondents are directed to pay all the retiral benefits to the applicants those who are retired during the pendency of these O.As.

(4) The respondents are directed to pay the withheld amount of retired employee of Dr. Leela Gul Abhichandani applicant no.21 in O.A.1023/2022 and Dr. Sunil M. Lanjewar, applicant in O.A.No.1025/2022.

(5) The respondents are directed to pay the withheld amount to Dr. Manish M. Tiwari who is in employment in O.A.No. 836/2022.

(6) The respondents are directed to refund the amounts recovered from the following applicants –

(i) Dr. M.M. Kamal (applicant no.2), Dr. Sandhya V. Poflee (applicant no.7), Dr. Jayashree R. Tijare (applicant no.10) and Dr. Arti A. Dani (applicant no.14) in O.A.No.1023/2022.

(ii) Dr. Chandrakant M. Bokade (applicant no.4) and Dr.Dipti Anil Chand (applicant no.8) in O.A.No.1024/2022.

(7) No order as to costs.

Dated :- 12/12/2023.

**(Justice M.G. Giratkar)
Vice Chairman.**

dnk.

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

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 12/12/2023.

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