

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.997/2019, 998/2019,
999/2019, 1000/2019, 1001/2019, 1002/2019,
1003/2019, 1004/2019, 1006/2019, 1097/2019,
1098/2019 & 947/2019**

DISTRICT :- AURANGABAD

O.A.NO.997/2019

Dr. Ahmed Munibuddin,
Age : 45 years, Occ. Service as Associate
Professor in Department of Physiology at
Government Medical College, Aurangabad,
R/o. 34, Nagsen Colony, Roshan Gate,
Aurangabad.

O.A.NO.998/2019

Dr. Razvi Syed Ubaid Syed Vaseuddin,
Age : 44 years, Occu: Service as Associate
Professor in Department of Pharmacology
at Government Medical College Aurangabad.
R/o : Plot No. 4-10-74, Zameer Manzil,
Near Sir Sayyed College,
Roshan Gate, Aurangabad.

O.A.NO.999/2019

Dr. Pratibha D/o Kishanrao Kalwale,
Age : 46 years, Occu: Service as Associate
Professor in Department of Physiology at
Government Medical College, Aurangabad.
R/o: G-26, Sai Sadan, Tirupati Supreme Enclave,
Jalan Nagar, Near Railway Station, Aurangabad.

O.A.NO.1000/2019

Dr. Vinod S/o Dhanraj Mundada,
Age : 45 years, Occu: Service as Associate
Professor in Department of Community
Medicine (P.S.M.) at Government Medical College
Aurangabad. R/o : Flat No. 12, Plot No. 29,
Narayani Enclave, Parijat Nagar,
Cidco N-4 Aurangabad.

O.A.NO.1001/2019

Dr. Shaikh Shazia Masroor Abdul Lateef,
Age : 39 years, Occu: Service as Assistant
Professor in Department of Physiology at
Government Medical College Aurangabad.
R/o : Plot No. 39, Sadaf Colony,
Kat Kat Gate Aurangabad

O.A.NO.1002/2019

Dr. Aradhana Arvind Deshmukh,
Age : 40 years, Occu: Service as Assistant
Professor in Department of Physiology at
Government Medical College, Aurangabad.
R/o: Flat No.03, Balwant Sankul,
Khadkeshwar, Aurangabad

O.A.NO.1003/2019

Dr. Pratibha Ramchandra Deshmukh,
Age : 42 years, Occu: Service as Assistant
Professor in Department of Physiology at
Government Medical College, Aurangabad.
R/o : Flat A-6, Nirman Housing Society,
Sahakar Nagar, Aurangabad.

O.A.NO.1004/2019

Dr. Shilpa Nilesh Shewale,
Age : 40 years, Occu: Service as Assistant
Professor in Department of Anatomy at
Government Medical College, Aurangabad.
R/o : Flat No. "A-3" Shri Sai Vihar Residency,
Khadkeshwar Aurangabad.

O.A.NO.1006/2019

Dr. Khaled Mohsin Badaam,
Age : 39 years, Occu: Service as Assistant
Professor in Department of Physiology at
Government Medical College, Aurangabad.
R/o : House No. 4-11-43, Azam Colony,
Roshan Gate, Aurangabad.

O.A.NO.1097/2019

Dr. Junaid Minhaj Mobin Ahmed Shaikh,
 Age : 42 years, Occu: Service as Associate
 Professor (Ad hoc) in Department of General
 Surgery at Government Medical College,
 Aurangabad. R/o : Row House No.02,
 Asmeera Township, Mohanlal Nagar,
 Opposite Collector Office, Aurangabad-431001.

O.A.NO.1098/2019

Dr. Ansari Mohammed Abdul Muqtadir,
 Age : 47 years, Occu: Service as Associate
 Professor (Adhoc) in Department of General
 Surgery at Government Medical College,
 Aurangabad. R/o : N-13 A , 43,
 Cidco, Aurangabad.

...APPLICANTS**V E R S U S**

1. The State of Maharashtra,
 Through the Secretary,
 Medical Education & Drugs Department,
 9th Floor, Administrative Building,
 Gokuldas Tejpal Hospital Campus,
 Lokmanya Tilak Marg, Mumbai – 400 001.
2. The Director,
 Medical Education & Research,
 St. George's Hospital Compound,
 4th Floor, Government Dental College
 Building, Near C.S.T., Mumbai – 400 001.
3. The Dean,
 Government Medical College & Hospital,
 Mill Corner, Aurangabad

...RESPONDENTS**O.A.NO.947/2019**

Dr. Anil s/o. Raosaheb Waghmare,
 Age : 40 years, Occu: Service (as Associate
 Professor, GMC, A'bad.), R/o : K-24,
 Tirupati Supreme Enclave, Jalan Nagar,
 Aurangabad, Dist. Aurangabad.

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Through the Secretary,
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2. The Director,
Medical Education & Research,
St. George's Hospital Compound,
4th Floor, Government Dental College
Building, Near C.S.T., Mumbai – 400 001.
3. The Dean,
B.J. Government Medical College & Sassoon
General Hospital, Pune, Railway Station,
Jai Prakash Narayan Road, Pune – 411 001.
4. The Dean,
Government Medical College & Hospital,
Mill Corner, Aurangabad

...RESPONDENTS

APPEARANCE : Shri M.R.Kulkarni, Counsel for
applicants in all cases except
O.A.No.947/2019.

: Ku. Preeti Wankhade, Counsel for
applicant in O.A.No.947/2019.

: Shri V.R.Bhumkar, Presenting
Officer for respondents.

**CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN
AND
SHRI VINAY KARGAONKAR, MEMBER (A)**

Date : 07-08-2024

O R D E R

[Per :- Justice P.R. Bora, V.C.]

1. Heard Shri M.R.Kulkarni, learned Counsel for
applicants in all cases (except O.A.No.947/2019), Ku. Preeti
Wankhade, learned Counsel for applicant in

O.A.No.947/2019 and Shri V.R.Bhumkar, learned Presenting Officer for respondent authorities in respective O.As.

2. In all these Original Applications since the grievance raised by the applicants and reliefs sought by them are identical, we have heard all these matters together and we deem it appropriate to decide these matters by this common order.

3. All these applicants were initially appointed on temporary basis or on ad-hoc basis on the post of Lecturer/ Assistant Professor. The applicants came to be absorbed as regular employees; some of them in the year 2008, some in the year 2009, whereas some in the year 2015 and 2016. Few of them are selected through the Maharashtra Public Service Commission (for short the MPSC). After their regularization or regular appointment through MPSC the respondents granted to all of them all the service benefits and accordingly their revised pay was fixed considering the annual increments earned by them while working on ad-hoc/temporary basis.

4. It is the case of the applicants that after their services were regularized on the respective dates as are

mentioned in the chart annexed to this order as Annexure 'A', their pay was revised by adding increments from the date of their initial appointment and till 02.02.2019 the applicants were receiving the wages as per the revised pay. It is the common grievance of these applicants that vide communication dated 02.02.2019 the applicants were informed that while revising their pay, their past services have been wrongly considered. It was further stated that their past services were liable to be considered only for the purposes of grant of increments and Earned Leaves of the services rendered by them in the said period, meaning thereby that their earlier pay was not liable to be protected while revising their pay. Consequent to the said communication dated 02.02.2019 further directions were issued to determine the amount paid to these applicants in excess of their entitlement and the said excess amount was directed to be recovered from the applicants by re-fixing their pay. Consequential orders were passed in respect of these applicants on different dates, which are also mentioned in the chart Annexure – A. Applicants have, therefore, preferred the present Original Applications praying for setting aside the communication dated 02.02.2019 and the consequential orders passed in that

regard on the respective dates as are mentioned in Annexure – A.

5. Respondent nos. 01, 02 and 03 have jointly filed their affidavit in reply and have opposed the contentions raised in the O.A. and prayers made therein. Respondents have contended in the said affidavit in reply that, temporary services of the teachers in Government Medical Colleges can be taken into consideration for the limited purpose of annual increments and leave. It is further contended that the benefit of annual increments and leave cannot be continued after regular appointment of a person. It is further contended that, this Tribunal has consistently held that, regular appointment of the applicants being a fresh appointment they are not entitled for the benefit of pay protection. It is further contended that, corrigendum dated 10-06-2015 was issued in the peculiar facts and circumstances of the said case and same cannot be made applicable as a general rule. It is further stated that, the annual increments and the earned leaves are granted only for the period of ad-hoc and cannot be considered for fixing the pay after regular appointment. It is further stated that the recovery directed vide letter dated 02-02-2019 is fully justifiable and it is being made in accordance with the rules

and the ratio laid down by the Hon'ble Apex Court in the case of **State of Punjab V/s. Rafiq Masih (White Washer) etc. [AIR 2015 SC 696]**. That, in none of the judgments of the Hon'ble High Court or the Hon'ble Apex Court, there is any specific direction for considering the temporary services for the purpose of pay protection or increase in annual increments etc. By giving reference of the order passed by Maharashtra Administrative Tribunal Mumbai in O.A.No.568 and 569 of 2013, it is averred that, temporary services cannot be considered even for pensionary benefits. On all above grounds the respondents have prayed for dismissal of the O.As.

6. When the present matters are taken up for consideration the learned counsel appearing for the applicants brought to our notice that the communication dated 02.02.2019 has been quashed and set aside by Nagpur Bench of this tribunal in the order passed in **O.A. No. 818/2019** with connected matter **(Dr. Shri Pravin Uttamrao Shingade & Ors. Vs. The State of Maharashtra & Ors.)** on 23.02.2024. Learned counsel tendered the copy of the said judgment on record. The learned counsel further pointed out that till today the respondents have not challenged the said order before the Hon'ble High Court.

Learned counsel submitted that in view of quashment of the impugned communication dated 02.02.2019 by Nagpur Bench of this Tribunal all these Original Applications deserve to be allowed. Learned counsel further added that even otherwise the communication dated 02.02.2019 was apparently unsustainable in view of the decisions taken by the Government from time to time and more particularly in view of G.R. dated 10.06.2015, wherein the pay protection has already been granted to the candidates similarly situated like the present applicants. Learned Counsel pointed out that in the matters of some similarly situated candidates while granting them the benefits of permanent employees their pay was not protected from the date of their initial appointment. One such G.R. dated 29-11-2014 is placed on record in O.A.No.997/2019 and in almost all the O.As. filed by the learned Counsel Shri M.R.Kulkarni.

7. In O.A.No.947/2019, learned Counsel has filed on record G.R. dated 14-08-2013 which is *pari materia* same as the G.R. dated 29-11-2014. Both the learned Counsel have pointed out that, since in the G.R. dated 29-11-2014 and the G.R. dated 14-08-2013 while directing revision of the pay in respect of the applicants therein by condoning the delay after their regularization, the benefits

were not granted from the date of their appointment and in the concerned G.R. since it was mentioned that the pay protection has not been granted of the period of ad-hoc services rendered by the said applicants, grievance was raised by all of them with the Government and thereafter the corrigendum came to be issued on 10-06-2015 to the earlier G.Rs. dated 29-11-2014 and 14-08-2013. Vide the said corrigendum issued on 10-06-2015 it is clarified that the pay protection will be applicable to all such candidates from the date of their initial appointment on ad-hoc basis. Learned counsel, in the circumstances, prayed for allowing these applications.

8. Shri V.R. Bhumkar, learned Presenting Officer appearing for the respondents submitted that he does not have the instructions whether the order passed by Nagpur Bench of this Tribunal in O.A. No. 818/2019 has been challenged before the Hon'ble High Court by the respondents. The learned P.O. sought to contend that as contended in the affidavit in reply filed on behalf the respondents the G.R. dated 10.06.2015 was inadvertently issued and was applicable only in respect of the matter concerned and not for any other matter. He, therefore, prayed for dismissal of the applications.

9. We have carefully considered the submissions made on behalf of the applicants and the learned P.O. It is not in dispute that all these applicants, though were initially appointed on temporary/ad-hoc basis, subsequently all these applicants have been absorbed as regular employees or have been appointed after their selection by the MPSC. It is also not in dispute that after the applicants were regularized or were regularly appointed through the MPSC, the respondents have granted all service benefits to the applicants and accordingly their pay was revised adding the increments earned by them of the period during which they rendered the services as ad-hoc or temporary Government employees.

10. As is revealing from the documents filed on record and also from the pleadings of the parties the G.Rs. dated 14.08.2013 and 29.11.2014 were issued whereby the annual increments were awarded and accordingly monetary benefits flowing therefrom were remitted. Similarly, leaves earned by the applicants in the said period were credited as Earned Leaves of the applicants. In the said G.Rs. the pay of the applicants, however, was not protected. In the circumstances, the applicants again moved the respondents

seeking correction in the said G.R. and granting them the pay protection from the date of their initial appointment. The prayer made by the employees concern was accepted by the State Government i.e. respondent no. 01 and the pay protection was given from the date of initial appointment by issuing corrigendum dated 10.06.2015.

11. From the contents of the corrigendum dated 10-06-2015, it is evident that the applicants and similarly situated others working on the post of Assistant Professor have been held entitled for pay protection from the date of their initial appointment may be on ad-hoc or temporary basis. It has been argued on behalf of the applicants that the aforesaid G.Rs. dated 14.08.2013 and 29.11.2014 read with the corrigendum dated 10-06-2015 have never been cancelled, withdrawn or made inoperative. Thus, the directions in the communication dated 02.02.2019 are contrary to the aforesaid G.Rs. read with the corrigendum.

12. Now it has been brought to our notice by the learned counsel for the applicants that Nagpur Bench of this Tribunal in O.A. No.818/2019 with connected matter has quashed and set aside the communication dated 02.02.2019.

13. As we have noted hereinabove nothing has been brought to our notice by the learned P.O. that the order passed by Nagpur Bench of this Tribunal in O.A. No. 818/2019 with connected matter on 23.02.2024 has been challenged before the Hon'ble High Court. We have gone through the contents of the said order passed in O.A. No.818/2019. In the said matter identical grievance as is raised by the applicants in the present matters was raised by the applicants therein. As such, the judgment delivered in the said O.A. would squarely apply to the facts in the present case. It is brought to our notice that in the matter before Nagpur Bench (O.A. no. 818/2019) the applicants therein had sought the monetary benefits and the arrears thereof by fixing their revised pay from the date of their initial appointment.

14. In view of the fact that now Nagpur Bench of this Tribunal has quashed and set aside communication dated 02.02.2019 the consequent action initiated based on the said communication, which has resulted in directing re-fixation of pay of the applicant and recovery against the present applicants also deserve to be quashed and set aside.

15. For the reasons discussed above, following order is passed:

ORDER

[i] Having regard to the fact that order/communication dated 02-02-2019 issued by respondent no.1 has been quashed and set aside by the Nagpur Bench of the Maharashtra Administrative Tribunal, the following impugned orders (in the below chart) passed by the concerned respondent against the applicants based on the said communication dated 02-02-2019, are quashed and set aside.

[ii] O.As. are allowed accordingly without any order as to costs.

ANNEXURE-A

Sr. No.	Original Application No.	Date of impugned order
1	O.A.No.997/2019 Dr. Ahmed Munibuddinn	24-09-2019
2	O.A.No.998/2019 Dr. Razvi Syed	10-10-2019
3	O.A.No.999/2019 Dr. Pratibha K Kalwale	10-10-2019
4	O.A.No.1000/2019 Dr. Vinod D Mundada	11-10-2019
5	O.A.No.1001/2019 Dr. Shaikh Shazai	24-10-2019
6	O.A.No.1002/2019 Dr. Aradhana A Deshmukh	07-11-2019
7	O.A.No.1003/2019 Dr. Pratibha A Deshmukh	18-10-2019
8	O.A.No.1004/2019 Dr. Shilpa N Shewale	31-10-2019
9	O.A.No.1006/2019 Dr. Khaled Mohsin Badam	11-11-2019
10	O.A.No.1097/2019 Dr. Junaid Mobin Ahmed Shaikh	18-10-2019

11	O.A.No.1098/2019 Dr. Ansari Mohammed Abdul Muqtadir	18-10-2019
12	O.A.No.947/2019 Dr. Anil Raosaheb Waghmare	07-10-2019

(VINAY KARGAONKAR)
MEMBER (A)

(P.R.BORA)
VICE CHAIRMAN

Place : Aurangabad
Date : 07-08-2024.

2024\db\YUK ARJ O.A.NO.997.2019 & bunch of O.As. PRB