

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 1007/2022(S.B.)

Dr. Bhalchandra S/o. BalkrushnaMurhar,
Aged 61 yrs.; Occ: Retired, R/o. 7,
Rajani Niwas, Vyankatesh Nagar, Khamla,
Nagpur-440 025.

Applicant.

Versus

1. State of Maharashtra,
Through its Secretary,
Medical Education and Drugs Department,
9th Floor GT Hospital Campus Building,
New Mantralaya, Fort, Mumbai-400 001.
2. Commissioner of Medical Education and Research,
4th Floor, Dental College Building,
St. Georges Hospital Compound,
CST, Mumbai-400 001.
3. Dean, Government Medical College, Nagpur.

Respondents.

ShriN.D.Thombre,Ld. Counsel for the applicant.
ShriS.A.Sainis, Ld. P.O. for the respondents.

Coram:-Hon'bleShriJustice M.G.Giratkar, Vice Chairman.
Dated: - 04thJuly, 2024.

JUDGMENT

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

2. Case of the applicant in short is as under-

The applicant was working on the post of Professor and Head of the Department of Biochemistry, Government Medical College, Nagpur. The applicant is retired from the said post on Voluntary Retirement w.e.f. 25.02.2022. The respondent no.3 by order dated 19.09.2022 directed the applicant to deposit an amount of Rs.23,65,865/- alleged to be paid in excess on the ground that he was granted higher advance increments as per 5th Pay Commission and again for holding higher educational qualification three advance increments were granted in 6th Pay Commission. Therefore, the respondents have issued the impugned recovery order.

3. The respondents have not filed reply. The O.A. is covered by the Judgment of this Tribunal in O.A.No.1023/2022 with connected O.As. and O.A.No.1213/2023.

4. During the course of submission, the learned counsel for the applicant has pointed out the order dated 13.10.2022. By this order, the respondents were directed to release the pension and pensionary benefits of the applicant by withholding the amount of

proposed recovery during the pendency of this O.A. and subject to outcome of the O.A..

5. The respondents have started recovery as per Clause - 8(xix) of the G.R. dated 10.11.2009. As per the said G.R., Professors who were having qualification of Ph.D. and M.Phil in those matters the recovery were permissible. The applicant was appointed as a Professor in the Medical College to teach the medical students of MBBS / M.D., M.S.etc..The Clause-8(i) and (iii) of the said G.R. is very clear. As per Clause-8 (i) and (iii),the Professors who were having MD/MS/DNB/DMwere given the higher pay scale by granting advance increment. The respondents are relying on the Clause-8(xix). This Clause is applicable to the Professors who areteaching in Arts, Science and Commerce Colleges and those who were having degree of Ph.D. and M.Phil. The applicant was having degree of MD. and therefore the said clause is not applicable to the applicant. This Tribunal in para nos. 15 to 21 of the Judgment in O.A.No.1023/2022 with connected O.As. has held as under-

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.*

6. The applicant is similarly situated employee Doctor/ Professor as like the applicants in O.A.No.1023/2022 and O.A.No.1213/2023. Therefore, he is entitled for the same relief.

7. The applicant was holding the degree of DNB and as per Clause -8 (i) and (iii) he was granted advance increment. He was not Professor in the Arts, Science and Commerce Colleges. Therefore, Clause-8(xix) relied by the respondents is not applicable to the applicant. Hence, the following order-

ORDER

1. The O.A. is allowed.

2. The respondent no.3 is directed to release withheld amount of Rs.23,65,865/- within a period of three months from the date of receipt of this order.

3. No order as to costs.

(Justice M.G.Giratkar)
Vice Chairman

Dated - 04/07/2024.
rsm.

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

Name of Steno : RakshaShashikantMankawde.
Court Name : Court of Hon'bleViceChairman.
Judgment signed on : 04/07/2024.
