

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 950/2018(D.B.)**

1. Dr. Vaishali w/o Chandrashekhar Shelgaonkar,
Aged about 49 years,
Occu: Service as Associate Professor,
In Anaesthesia at Indira Gandhi,
Government Medical College and Hospital,
Nagpur, R/o: 166, Era Apartment,
Sahakar Nagar, Nagpur – 25.
2. Dr. Leena w/o Ajay Dhande,
Aged 47 years, Occu: Service,
as Associate Professor In Paediatrics,
at Indira Gandhi Government Medical College and
Hospital, Nagpur.
R/o: MA 15, Laxmi Nagar, Nagpur.
3. Dr.Sushama w/o Subhash Thakre,
Aged about 53 years,
Occupation: Service, as Associate Professor in
Community Medicine, at Indira Gandhi Government
Medical College and Hospital, Nagpur.
R/o: Plot no.9, Swami Swarupanand Society,
Narendra Nagar, Nagpur.
4. Dr. Jyotsana Rajay Bharshankar,
Aged about 46 years,
Occu: Service as Associate
Professor in Physiology

At Indira Gandhi Government Medical College and Hospital, Nagpur. R/o: Plot No. 21, Old Subhedar Ext.Manewada Road, Nagpur.

5. Dr. Jyotsna d/o Sukhdeo Deshmukh,
Now Jyotsna w/o Vijay Nitnaware,
Aged about 51 years, Occupation: Service as Associate Professor in Preventive & Social Medicine at Indira Gandhi Government Medical College and Hospital, Nagpur, R/o: 47, Income Tax Coloney, Pratap Nagar, Nagpur.

Applicants.

Versus

1. State of Maharashtra,
Through its Secretary,
Department of Medical Education & Research,
Mantralaya Mumbai 32.
2. The Director of Medical Education and Research,
Office at Directorate of Medical Education & Research,
Mumbai 1.
3. The Dean,
Indira Gandhi Government Medical College and Hospital,
Nagpur.

Respondents

Shri S.S.Ghate, Ld. Counsel for the applicants.
Shri S.A.Sainis, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.
Dated: - 03rd May, 2024.

JUDGMENT

Heard Shri S.S.Ghate, learned counsel for the applicants and Shri S.A.Sainis, learned P.O. for the Respondents.

2. The regular Division Bench is not available. The Hon'ble Chairperson, M.A.T., Principal Bench, Mumbai issued Circular No.MAT/MUM/JUD/469/2023, dated 24/04/2023. As per the direction of Hon'ble Chairperson, if both the parties have consented for final disposal and if the O.A. is covered by the Judgment of the Hon'ble High Court and another Court, then regular matter pending before the Division Bench can be disposed off finally.

3. As per the submission of learned counsel for the applicants, this O.A. is covered by the Judgment of this Tribunal in O.A.No.1023/2022 with the connected O.As. decided on 12.12.2023. Hence, the O.A. is decided with the consent of both parties.

4. The applicants were appointed on the post of Associate Professors. The applicants were granted three advance increments as per G.R. dated 10.11.2009. It is submitted that the respondents have wrongly interpreted Clause – 8(xix) of the G.R. and wrongly issued recovery notice dated 24.10.2018. Therefore, the applicants approached to this Tribunal for the following reliefs-

i) To hold and declare that the impugned show cause notice dated 24.10.2018 (Annexure A-21)), Communication/ letter dated 20.11.2018 (Annexure A-22) and the communication issued by the respondent no.1 dated 29.3.2010 (Annexure A-23) are bad in law and accordingly quashed and set aside.

ii) to allow the application by granting any other reliefs deemed fit and proper in the facts and circumstances of the case in favour of the applicants.

10. Interim reliefs sought for:

By way of ad interim ex parte relief to stay the recovery sought for in view of the communication / letter dated 20.11.2018 (Annexure A-22) pending hearing and pendency of the Original Application in the interest of justice.

5. The O.A. is strongly opposed by the respondents. Reply is not filed by the respondents.

6. During the course of submission, learned counsel for the applicants has pointed out G.R. dated 10.11.2009. As per Clause no.8, the incentives for MD/MS/DNB/DM/MCh/Ph.D. and other higher qualifications are given. Clause -8 is 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) Those 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 advance increments at the entry level.

(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.

(iv) However, teachers in service who have been awarded Ph.D. at the time of coming into force of this Scheme or having been enrolled for Ph.D. have already undergone course-work, if any, as well as evaluation, and only notification in regard to the award of Ph.D. is awaited, shall also be entitled to the award of three non-compounded increments even if the university awarding such Ph.D. has not yet been notified by the UGC as having complied with the process prescribed by the Commission

(v) In respect of every other case, a teacher who is already enrolled for Ph.D. shall avail the benefit of three non-compounded increments only if the university awarding the Ph.D. has been notified by the UGC to have complied with the process prescribed by the Commission for the award of Ph.D. in respect of either course-work or evaluation or both, as the case may be.

(vi) Teachers in service who have not yet enrolled for Ph.D. shall therefore derive the benefit of three non-compounded increments on award of Ph.D., while in service only if such enrolment is with a university which compiles with the entire process, including that of enrolment as prescribed by the UGC in its Regulation.

(vii) Five non-compounded advance increments shall be admissible to Assistant Librarian/College Librarian who are recruited at entry level with Ph.D. degree in the discipline of library science from a university complying with the process prescribed by the UGC in its Regulation, in respect of enrolment, course-work and evaluation process for the award of Ph.D. in Library Science.

(viii) Assistant Librarian / College Librarian acquiring the degree of Ph.D. at any time while in service, in the discipline of library science from a university complying with the process prescribed by the UGC in its Regulation, in respect of enrolment, course-work and evaluation shall be entitled to three non-compounded advance increments.

(ix) However, persons in posts of Assistant Librarian / College Librarian or higher positions who have been awarded Ph.D. in library science at the time of coming into force of this Scheme or having already undergone course-work, if any, as well as evaluation, and only notification in regard to the award of Ph.D. is awaited, shall also be entitled to the award of three non-compounded increments even if the university awarding such Ph.D. has not yet been notified by the UGC as having complied with the process prescribed by the Commission.

(x) In respect of every other case of persons in the posts of Assistant Librarian/College Librarian or higher positions who are already enrolled for Ph.D. shall avail the benefit of three non-compounded increments only if the university awarding the Ph.D. has been notified by the UGC to have

compiled with the process prescribed by the Commission for the award of Ph.D. in respect of either course-work or evaluation or both, as the case may be.

(xi) Assistant Librarian / College Librarian and others in higher Library positions in service who have not yet enrolled for Ph. D. shall therefore derive the benefit of three non-compounded increments on award of Ph.D. while in service only if such enrolment is with university which compiles with the entire process, including that of enrolment as prescribed by the UGC in its Regulation.

(xii) Two non-compounded advance increments shall be admissible for Assistant Librarian/College Librarian with M.Phil. degree in Library Science at the entry level, Assistant Librarian / College Librarian and those in higher positions acquiring M.Phil. degree in Library Science at any time during the course of their service shall be entitled to one advance increment.

(xiii) Five non-compounded advance increments shall be admissible to Assistant Director of Physical Education/ College Director of Physical Education who are recruited at entry level with Ph.D. degree in the discipline of Physical Education from a university complying with the process prescribed by the UGC in its Regulation, in respect of enrolment, course work and evaluation process for the award of Ph.D. in Physical Education.

(xiv) Persons in posts of Assistant Director of Physical Education / College DPE or higher positions acquiring the degree of Ph.D. in the discipline of physical Education, at any time while in service from a university complying with the process prescribed by the UGC in its Regulation, in respect of enrolment, course-work and evaluation shall be entitled to three non-compounded advance increments.

(xv) However, persons in posts of Assistant Director of Physical Education/ College DPE or higher positions who have

been awarded Ph.D. in Physical Education at the time of coming into force of this Scheme or having been enrolled for Ph.D. in Physical Education have already undergone course-work, if any, as well as evaluation, and only notification in regard to the award of Ph.D. is awaited, shall also be entitled to the award of three non-compounded increments even if the university awarding such Ph.D. has not yet been notified by the UGC as having complied with the process prescribed by the Commission.

(xvi) In respect of every other case of persons in the posts of Assistant Director of Physical Education / College DPE or higher positions who are already enrolled for Ph.D. in Physical Education shall avail the benefit of three non-compounded increments only if the university awarding the Ph.D. has been notified by the UGC to have complied with the process prescribed by the Commission for the award of Ph.D. in respect of either course-work or evaluation or both, as the case may be.

(xvii) Assistant Director of Physical Education / College DPE and others in higher Physical Education positions in service who have not yet enrolled for Ph.D. shall therefore derive the benefit of three non-compounded increments on award of Ph.D. while in service only. if such enrolment is with a university which compiles with the entire process, including that of enrolment as prescribed by the UGC

(xviii) Two non-compounded advance increments shall be admissible for Assistant Director of Physical Education/College DPE with M.Phil degree in Physical Education at the entry level. Assistant Director of Physical Education / College DPE and those in higher positions acquiring M.Phil degree in Physical Education at any time during the course of their service, shall be entitled to one advance increment.

(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.

(xx) In addition to this the teachers in Government Medical / Dental/Ayurvedic Colleges are also eligible to get the Medical Study Allowance, Extra Teaching Allowance and Post Graduate Allowance admissible to them under the provisions of the Government Resolution, Medical Education & Drugs Department No.MMN-2008/C.R.44/08/Vaiseva-2, Dated 27th March, 2008. The Director & Joint Director are also eligible to get the Medical Study Allowance and Post Graduate Allowance as earlier under the provisions of the aforesaid Government Resolution.

(xxi) The sanction of higher pay scale of Professor after fulfilling the conditions mentioned in the Government Resolution, Medical Education & Drugs Department No.MMN-2008/C.R.44/08/Vaiseva-2, Dated 27th March, 2008 are admissible to Associate Professors in the Government Medical/Dental/Ayurvedic Colleges.

7. Clause-8(xix) is wrongly interpreted by the respondents.

It 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.”

8. As per Clause no.8 (xix), the Professors those who are having the qualification of Ph.D./ M.Phil. shall not be entitled to the benefit of advance increment under the Scheme (G.R.). Applicants are teaching in the Medical Colleges, having qualification of MD/MS/DNB/DM etc.. They are not Lecturers, Professors teaching in the Arts, Commerce and Science Colleges etc. Therefore, the advance increments were granted to Doctors/Professors who are having qualification of MD/MS/DNB/DM etc.. Clause no.8(xix) is not applicable to Associate Professors/Doctors who are teaching in the Medical College. It is applicable to the Professors who are teaching in the Arts, Commerce and Science Colleges having qualification Ph.D./M.Phil. This Tribunal has recorded its findings in O.A.No.1023/2022 with other connected O.As., para nos.17, 18, 19, 20 and 21 are reproduced below-

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.

8. This Tribunal has relied on the Clause-8 of the G.R. dated 10.11.2009 and quashed and set aside the recovery notice issued against the Associate Professors who are / were teaching in the Government Medical Colleges.

9. All five applicants are working in the Government Medical College who are having qualification of MD/MS/DNB/DM etc.. They are granted advance increments as per Clause no.8 of the G.R. dated 10.11.2009. Clause - 8(xix) is in respect of the Professors having qualification of Ph.D. and M.Phil. As per this Clause, the amount of advance increment is to be recovered from those

Professors who are having qualification of Ph.D. and M.Phil. This Clause is not applicable to the Associate Professors who are working in the Government Medical College having qualification of MD/MS/DNB/DM etc.. Therefore, notices issued by the respondents dated 24.10.2018 and 20.11.2018 are liable to be quashed and set aside. Hence, the following order-

ORDER

1. The O.A. is allowed.
2. Impugned show cause notices dated 24.10.2018 and letter dated 20.11.2018 and communication issued by the respondents dated 29.03.2010 are hereby quashed and set aside.
3. No order as to costs.

(Justice M.G.Giratkar)
Vice Chairman

Dated – 03/05/2024
rsm.

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

Name of Steno : Raksha Shashikant Mankawde.
Court Name : Court of Hon'ble Vice Chairman.
Judgment signed on : 03/05/2024.
Uploaded on : 09/05/2024.
