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 Order reserved on 31-07-2021.
 Order pronounced/ issued on - 12/08/2021.
 Duration-- 1 Year, 5 Months, 18 Days.



**Rashtrasant Tukadoji Maharaj Nagpur University, Nagpur
 BEFORE THE GRIEVANCES COMMITTEE.**

(Presided over by Shri. Arvind J. Rohee, former District Judge.)

Grievance Petition No. 10/2020

Applicant : Dr. Dr. Anil N. Sarda,
Grievance Associate Professor (Former),
Petitioner Resident of 3rd Floor
 Sarda Transport Building,
 Chhaprunagar Square,
 Bagadganj,
 NAGPUR-440008.

- VARSUS -

Non-Applicant:

1. The Principal,
 G.S. College of Commerce &
 Economics, Law College Square,
 Amravati Road, Nagpur.
2. Shikshan Mandal,
 Jamnalal Bajaj Marg,
 Civil Lines, Wardha
 through its Chairman

ORDER

(Delivered on 12/08/2021)

1. The Applicant approached this forum under section 79 (1) of the Maharashtra Public Universities Act 2016 seeking the following reliefs:

(a) This Hon'ble Committee is pleased to direct the Non-Applicants to forthwith release the subsistence allowance due to the Applicant in accordance with the 7th Pay Commission

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pay scale with effect from 01.12.2017 with all consequential benefits and interest thereon @ 10% p.a.

(b) Grant any other relief as may be deemed fit and proper in the interest of justice.

2. It is undisputed that the Applicant was appointed as a Lecturer in G.S. College of Commerce & Economics, Nagpur run by the Non-Applicant No. 2, since 01.09.1990. Since the Applicant faced charges of misconduct, the Management put him under suspensions w.e.f. 30.11.2017 and Departmental Inquiry was initiated against him. The Inquiry Officer was appointed who found that 5 out of 7 charges levelled against the Applicant are proved and accordingly submitted the report of Inquiry to the Principal, Non-Applicant No. 1 who put it before the Management of the Institute. Considering the reply of Applicant to the report, the Disciplinary Authority accepted the said report and the order of removal of the Applicant from services is passed on 15.07.2020 A.N. It is stated by the Non-Applicants that due procedure is followed while conducting the inquiry and passing the order of imposing major penalty of removal from services.
3. That prior to the commencement of the Departmental Inquiry, the Applicant approached this forum in Grievance Petition No. 5/2017 seeking certain reliefs and directions against the Non-Applicants Vide order dated 17.10.2019, this forum partly allowed the aforesaid Grievance Petition and issued certain directions after recording certain observations. Aggrieved by it, the Non-Applicants assailed the said order before the Hon'ble High Court of Bombay Bench at Nagpur in Writ Petition No. 7769/2019. By the order dated 11.02.2020 the Hon'ble High Court set aside the order dated 17.10.2019 passed by this forum in the aforesaid Grievance Petition, except direction regarding expeditious disposal of pending Departmental Inquiry against the Applicant within 4 months. In pursuance thereof, Inquiry was completed and report submitted, which was accepted by the Management resulting in the order of removal from service as stated

earlier. It is stated that this order is challenged by the Applicant before the University & College Tribunal in appeal, which is pending consideration.

4. In the background of the aforesaid admitted facts, the Applicant seeks subsistence allowance as per the revised pay scale of 7th Pay Commission for the period from 01.12.2017 to his removal from service w.e.f 15.07.2020 i.e. for a period of about 2 ½ years. It is stated that the Applicant was paid 50% of the salary as subsistence allowance for a period of 6 months from 01.12.2017 and since the Inquiry cannot be completed during that period from 01.06.2018, he was paid 100% salary as subsistence allowance by continuing his suspension, as per 6th Pay Commission. According to the Applicant in the meantime since 7th Pay Commission is implemented by which pay of college teachers is substantially revised vide Govt. Resolution dated 08.03.2019 and Direction No. 20/2019 dated 10.04.2019 issued by Rashtrasant Tukadoji Maharaj Nagpur University, Nagpur, he is entitled to difference in salary by way of subsistence allowance. It is stated that in pursuance thereof, the Applicant submitted his consent form and his pay was accordingly revised and fixed by the Competent Authority, however, it remains unpaid. It is stated that on 01.01.2016 when the 7th Pay Commission came into force his basic pay was Rs. 1,61,600/- in the pay matrix Rs. 1,31,400/- which was revised to 2,17,100/-. He, therefore, claims the subsistence allowance for the period from 01.12.2017 to 30.06.2017 and orally till 15.07.2020 since order of removal passed during pendency of this Grievance Petition, in the aforesaid revised pay scale, which remains unpaid inspite of notices issued by him to the Non-Applicants on 22.10.2019 and 14.11.2019. Hence this petition.

5. On notice, the Non-Applicants appeared and filed common reply dated 20.02.2021, which the claim made by Applicant is denied and stated that he is not entitled to the relief sought. The preliminary

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objection is raised that the grievance of the Applicant does not come within the jurisdiction of this forum and hence the Application is not maintainable. Allegations are levelled against the Applicant that he was in the habit of filling frivolous complaints on trivial issues before this forum and he is misusing this forum for his benefit.

6. It is stated that the present Grievance Petition is filed just to harass the Management when the Inquiry was still pending against him. It is obvious that the same stands concluded by imposition of major penalty vide order dated 15.07.2020 during pendency of this Grievance Petition against which appeal preferred by him is pending consideration. As such the Inquiry still having not been concluded, finally the present grievance does not lie.

7. It is stated that the Non-Applicants made a reference to the Joint Director of Higher Education, Nagpur by a letter dated 16.11.2019 in pursuance of the Application dated 22-10-2019 and 14-11-2019 submitted by the Applicant during pendency of the Inquiry for payment of subsistence allowance as per revised pay scale, seeking clarification regarding the aforesaid payment, relying on Govt. of Maharashtra, Finance Department Notification dated 30.01.2019 Rule 7 Note 2, which clearly states that the Government Servants under suspension shall continue to draw subsistence allowance passed on existing pay structure and his pay in the revised pay structure shall be subject to the final order of the pending disciplinary proceeding. According to Non-Applicants the present Grievance Petition is untenable awaiting response from the Joint Director and further that the disciplinary proceeding is not finally concluded since appeal is pending against order of removal. Hence, the Applicant is not entitled to the relief sought.

8. It is also stated that in a disciplinary proceeding since the Applicant was found guilty and removed from services, he is not

justified in claiming subsistence allowance as per the revised pay scale. It is stated that the Applicant's removal is also pending before the Hon'ble High Court in Writ Petition Stamp No. 9709/2020.

9. It is stated that since the Applicant was found guilty of misconduct, he committed breach of terms and conditions of service as stipulated in Govt. of Maharashtra Resolution dated 08.03.2019 by which revision of pay as per Central Pay Commission is accepted and since the Applicant indulged in violation of UGC code of professional ethics he is not entitled to any relief.
10. Both the parties filed the written submission. The Grievances Committee heard the Applicant Dr. Anil N. Sarda and Dr. N.Y. Khandait, Principal of the College on behalf of the Non-Applicants and have carefully gone through the entire case record.
11. The members of the Grievances Committee present held discussions and deliberations on the issue involved in the case and the submissions made on its basis came to the unanimous conclusion. This order is authored by the Chairman for and on behalf of the Grievances Committee which is duly approved by the members of the Grievances Committee present before it was pronounced to the parties.
12. On the basis of the submissions made and the material produced on record, the following points arise for consideration of the forum, with findings thereon as under :-

Points

Findings

- (1) Whether it is proved by the Non-Applicants that this forum has no jurisdiction to entertain the present Grievance Petition since at the relevant time the inquiry proceeding was pending and subsequently appeal against the order of removal?

Not proved.

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- (2) Whether it is proved that the disciplinary inquiry has still not attained finality on account of pending appeal against the order of removal before the University & College Tribunal and Writ Petition in the High Court filed by the Non-Applicants? Not proved.
- (3) Whether University & College Tribunal alone has jurisdiction to entertain the claim as per the provisions of Section 83 (2) of the Maharashtra Public Universities Act-2016? No
- (4) Whether the Applicant is entitled to reliefs sought? Yes
- (5) What Order? As per operative para.

REASONS

13. As to issue No. 1 & 2 together:

The record shows that the present Grievance Petition is filed when the disciplinary inquiry was still pending against the Applicant and has not concluded. The subsistence allowance as per 7th Pay Commission is claimed for a period from 30-11-2017 to 24-02-2020 i.e. till date of filing of this Grievance Petition. However, since the inquiry took more than 2 ½ years to its conclusion and although the Applicant was receiving the subsistence allowance as per 6th Pay Commission and since in the meantime 7th Pay Commission was made applicable, forum is of the considered view that there was no bar for applying for payment of subsistence allowance as per the revised pay scale during pendency of inquiry. This is because the subsistence allowance has to be paid from the date of suspension till imposition of penalty or till suspension is revoked from any previous date by the Management. In the present case since the Applicant was under suspension and during the statutory period of six months, the inquiry is not completed, the Management was right in making payment of 100% salary by way of subsistence allowance as per

the then existing 6th Pay Commission, however, without calling upon or permitting him to rejoin or resuming his duty even after getting 100% salary. It is stated that during pendency of inquiry and till its conclusion, amount of Rs. 51 lacs is paid to the Applicant towards salary without rendering any work. It is obvious that the Management is solely responsible for this and it was in the interest of the Management and students to revoke the order of suspension on completion of mandatory period of six months and should have allowed the Applicant to rejoin his duty. This aspect is considered by this Grievance Committee in previous proceeding, but direction issued to allow the Applicant to resume duty is set aside by the Hon'ble High Court vide order dated 11.02.2020 in Writ Petition No. 7769/2019 during pendency of inquiry proceeding. The Non-Applicants failed to point out any provision in the Statute, Ordinance or Directions issued by the University which prohibits the delinquent employee to apply for getting subsistence allowance as per the revised pay scale during pendency of the inquiry. The Grievance Petition was rightly entertained and in the meantime as stated earlier inquiry also stands concluded. We, therefore rejects the contentions of the Non-Applicants that Applicant has no right to approach this forum.

14.

The Non-Applicant further stated that although the inquiry is completed and punishment imposed, still on account of pendency of Appeal against the order of removal and Writ Petition in the Hon'ble High Court, it cannot be said that the inquiry has attained finality and hence till it is finally concluded, the Applicant is not entitled to claim the subsistence allowance as per the revised pay scale. For this submission they rely on Govt. of Maharashtra Resolution dated 30.01.2019 issued by Finance Department and particularly Clause 7, Note 2 thereof. However, it is obviously applicable to the Government Servants and not to the University Teachers. There is nothing on record to show that it is adopted by



the University or is made applicable to it. Even if it is held for a moment that the University Teachers are also governed by the said provision, still it cannot be inferred that till the order of removal attained finality in Appeal before University & College Tribunal and further in Writ Petition before the Hon'ble High Court or finally in Special Leave Petition before the Hon'ble Supreme Court by the aggrieved party, disciplinary inquiry is not concluded. This is so because, the words used in Clause 7 Note 2 are, "Subject to Final Order of the Pending Disciplinary Proceeding" and not "till the order of punishment imposed by the Disciplinary Authority attained finality." It is needless to say that the disciplinary proceeding stands concluded once the Inquiry Officer submits the report on which the Management takes a decision regarding imposition of any penalty or exonerating the delinquent employee. Further, so far as suspension is concerned the same stands revoked once the disciplinary inquiry is concluded by imposition of penalty by the Disciplinary Authority or exonerating the delinquent employee. It cannot be said that the suspension was continued even after imposition of penalty and during pendency of appeal against it, for the simple reason that once the delinquent employee is removed from service, he ceased to be the employee. We, therefore, reject the contention of the Non-Applicants that the Applicant is not entitled to subsistence allowance as per revised pay scale, which is admittedly adopted by the State Govt. and then by Rashtrasant Tukadoji Maharaj Nagpur University, Nagpur, till order of punishment attained finality.

15. During the course of arguments, the Non-Applicant No. 1 was called upon to state details regarding the pending Writ Petition in the Hon'ble High Court, since the same is not made clear by them in the reply or written notes of arguments. It is stated that after order of removal is served on the Applicant, he submitted a representation to Rashtrasant Tukadoji Maharaj Nagpur

University, Nagpur against it, on the ground that the Non-Applicants did not seek previous approval of University to the said order. On its basis, it is stated that University granted the relief to the Applicant by allowing his representation which order is challenged by the Non-Applicants in the Hon'ble High Court vide Stamp No. 9709/2020, Writ Petition No. 3865/2020. On interrogation with the Principal, he stated that the matter is yet to be circulated and listed before the Hon'ble High Court for seeking stay to the order passed by the University. This being so it is clear that the order of removal of the Applicant is also pending before the Hon'ble High Court but in different context. However, as stated earlier, it is not necessary to wait for further decision in the matter by any forum/court, since the final order is already passed by the Management in the disciplinary proceeding thereby ending the period of suspension. The Grievances Committee, therefore, rejects the contentions of the Non-Applicants in this behalf.

16. During the course of arguments, the Non-Applicant No. 1 further submitted that since the matter of payment of subsistence allowance as per revised pay scale under 7th Pay Commission is pending before the Hon'ble High Court on the ground that in the reply to the Writ Petition No. 3865/2020 filed by the Non-Applicant, the Applicant raised this issue, and hence, this forum has no jurisdiction to decide the same. This is totally incorrect since there is no order so far passed by any forum regarding payment of subsistence allowance to the Applicant as per revised pay scale, and Applicant did not approach High Court seeking said relief. In the reply he has incidently referred it and as stated earlier, this grievance is fully tenable before this forum. As stated earlier what is pending in the Hon'ble High Court is the Writ Petition filed by the Non-Applicants challenged the order passed by the University allowing representation submitted by Applicant and probably the order of his reinstatement in which there is no issue

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of payment of subsistence allowance as per 7th Pay Commission. Since Appeal against order of removal filed by the Applicant is also pending before the Competent Authority, it will be for the lower forum to consider what steps should be taken during pendency of the Writ Petition before the Hon'ble High Court and it will not be appropriate to make further comments by this forum in this behalf. In any case, it cannot be said that the Applicant is not entitled to subsistence allowance as per the revised scale under 7th Pay Commission only on account of pendency of Appeal before the University and College Tribunal and Writ Petition filed by the Non-Applicants in the Hon'ble High Court challenging the order passed by the University probably setting aside the order of removal for want of previous approval to it. Further, it is not necessary for this forum to wait till Non-Applicants receive any response from the Joint Director seeking clarification in respect of applicability of Rule 7, Note 2 of the G.R. dated 30.01.2019 which is held to be not applicable to University Teachers, as stated earlier.

17. Further it cannot be said that grievance submitted by the Applicant does not come within a mining of the term grievance as stated in Section 79 of the Maharashtra Public Universities Act-2016. We, therefore, reject the contentions of the Non-Applicants in toto and it is obvious from record that having paid about Rs. 51 lacs to the Applicant during pendency of the Inquiry as subsistence allowance as per 6th Pay Commission, they are now trying to prolong grant of the benefit of difference in subsistence allowance as per 7th Pay Commission for the period from 30.11.2017 to 15.07.2020, since by subsequent event, the inquiry was concluded and order of removal passed during pendency of this Grievance Petition. The Applicant is, therefore, entitled to get the relief till the date of his removal from service, although in this petition he claimed it from 01.12.2017 till 24.02.2020 till filling of this petition as stated earlier.

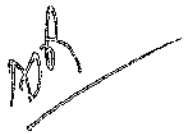
18. We do not find any force in the contention of the Non-Applicant that since the Applicant is removed from service, he committed any breach of terms & conditions of his service as prescribed in G.R. dated 08.03.2019 or has violated UGC code of professional ethics. This is so because violation of professional ethics would lead to misconduct for which departmental action can be initiated and appropriate punishment imposed on proof of charges. It may be mentioned here that the provisions regarding professional ethics are mentioned in clause 22 of G.R. dated 08.03.2019 which reads as under:

22.0. Code of Professional Ethics

I. Teachers and their Responsibilities:

"Whoever adopts teaching as Profession assumes the obligation to conduct himself / herself in accordance with the ideal of the profession. A teacher is constantly under the scrutiny of his students and the society at large. Therefore, every teacher should see that there is no incompatibility between his precepts and practice. The national ideals of education which have already been set forth and which he/she should seek to inculcate among students must be his/her own ideals. The profession further requires that the teacher should be calm, patient and communicative by temperament and amiable in disposition."

19. Provisions are also stated regarding responsibility and liability of teachers and his behaviour with the students, colleagues, teachers and authorities, non-teaching staff, guardians, society, etc. This forms part of service conditions and also service agreement executed by Applicant while joining service. It is needless to say that in the event any of the professional ethics is violated, it may amount to misconduct on the part of the teacher and appropriate departmental action can be initiated against him as per rule. It can be said that simply because any professional



ethics is stated to be violated, the teaching staff can be punished without holding any inquiry for the alleged misconduct. In the event the violation of any professional ethics does not amount to misconduct, there will be no question of initiating any departmental action against the teaching staff. This being so, it cannot be said that on account of violation of professional ethics alone the relief sought by the Applicant cannot be granted to him especially when violation of the professional ethics is treated as misconduct and regular inquiry was held in which the Applicant was found guilty and major punishment of removal from service is imposed upon the Applicant as stated earlier. The Grievances Committee, therefore, rejects the contentions of the Non-Applicants in this behalf, and answer point No. 1 and 2 is negative.

20. As to Point No. 3:

After the matter is closed for orders on hearing both the parties, the Non-Applicant No. 1 submitted another application dated 03.08.2021 by way of additional submission, stating that in view of the provisions of Section 83(2) of the Maharashtra Public Universities Act-2016 which defines powers and functions of Tribunal to give appropriate relief and directions which amongst other things include the powers to set aside the order of dismissal, removal, otherwise termination of service, compulsory retirement or reduction in rank partially or wholly and direct the University and Management as per sub-clause 'c', "to give arrears of emoluments dues and other benefits to the employee for such period as it may specify.

21. On its basis, it is stated that since the Appeal against the order of removal is pending before the Tribunal at the time of its final disposal, the Tribunal is empowered to pass the order or issue directions regarding arrears of emoluments, dues and other

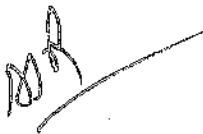
benefits to the Applicant, which according to Non-Applicants the arrears of difference in subsistence allowance as per 7th Pay Commission is also included and hence this forum has no jurisdiction to grant any relief to the Applicant and cannot take over the powers vested in the Tribunal in this behalf.

22.

So far as this aspect of the case is concerned, it is obvious that emoluments, dues and other benefits will not include the payment of difference in subsistence allowance on revision of pay scale, since it is for limited period from the date of suspension till its revocation on earlier date or conclusion of inquiry proceeding. Further emoluments, dues and other benefits will include payment of advance increment, placement, grant of benefit of Assured Career Progression (ACP) Scheme or to consider the delinquent employee for promotion, when it is due during the pendency of the inquiry or appeal and it was suspended on account of the pending inquiry and punishment imposed. Certainly payment of subsistence allowance that too on account of implementation of 7th Pay Commission, especially when it is already paid as per 6th Pay Commission, will not be covered under Section 83(2)(c) of the Maharashtra Public Universities Act-2016.

23.

For the above reasons, this forum does not find any force in the contentions of the Non-Applicants that the Applicant is not entitled to get the difference in arrears of subsistence allowance as per the 7th Pay Commission so long as the pending appeal is not decided by the Tribunal. With the risk of repetition, it may be stated that once the inquiry proceeding is concluded, the suspension also automatically stands revoked and it will not be revived during pendency of Appeal before the Tribunal, Writ Petition before the Hon'ble High Court or Special Leave Petition



before the Hon'ble Supreme Court filed by the aggrieved party. Point No. 3 is, therefore, answered in the negative.

24. In any case the Applicant is entitled to the relief sought and we reject all the contentions of the Non-Applicants in this behalf, reasserting the fact that subsistence allowance is required to be paid as per the existing pay scale whether the departmental action ended in imposition of any penalty or exoneration of the delinquent employee. On imposition of major penalty, subsequent benefits will not be admissible to the delinquent employee including salary and even pension if his services are pensionable, depending on the nature of the major penalty imposed such as removal, termination or dismissal from service.

As to Point No. 4:

25. From the above discussion, it is crystal clear that the Non-Applicants are not justified in deferring the payment of difference in the subsistence allowance to the Applicant as per revised pay which is already fixed as per 7th Pay Commission by the office of the Joint Director, Higher Education, Nagpur Region, Nagpur and verification of pay fixation is also done by the Accounts Officer, Higher Education(Grant) Nagpur Region, Nagpur as submitted by the Applicant. Hence the following operative order is passed.

26. (1) The Grievance Petition is, therefore, allowed.
- (2) The Non-Applicants are directed to make the payment of difference in subsistence allowance to the Applicant for the period from 30.11.2017 to 15.07.2020 as per the revised pay scale under 7th Pay Commission.
- (3) The arrears be drawn up and it be paid to the Applicant within a period of 3 months from today. Claim for interest on arrears

is however declined, on account of delay on the part of the Applicant in approaching this forum.

- (4) In the event reference made by the Non-Applicants to the State Govt. in Finance Department is decided in their favour then they will be at liberty to recover the arrears paid to the Applicant forthwith.
- (5) The office is directed to forward authentic copy for this order to both the parties at the earliest for taking appropriate steps in the matter.
- (6) In the facts and circumstances of the case, the parties are directed to bear their respective costs of this petition.
- (7) Order pronounced in presence of the parties and Hon'ble Members of the Grievances Committee present.

Nagpur.

Dated: 12-08-2021.


(Arvind J. Rohee)
Chairman, Grievances Committee,
RTM Nagpur University, Nagpur.