

Filed on - 14/02/2024.
Order reserved on 01/06/2024.
Order pronounced/ 21/09/2024.
issued on -



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

Grievance Petition No. 03/2024

Applicant : Dr. Pawan S/o Uttam Gajbe,
Grievance Professor
Petitioner Plot No. 84, Gajanandham Colony,
Sahakar Nagar,
Nagpur - 440025.

- VERSUS -

- Non-Applicants:**
1. Nagpur Shikshan Mandal,
Smt. Binzani Mahila
Mahavidyalaya Building,
Pataleshwar Road, Mahal,
Nagpur - 440032.
(Through its Secretary)
 2. Shri Mathuradas Mohota
College of Science,
Sakkardara Square, Umred Road,
Nagpur-440024.
(Through its Principal)
 3. Dr. (Mrs.) Uma Ranjan Sonparote,
Shri Mathuradas Mohota
College of Science,
Sakkardara Square, Umred Road,
Nagpur-440024.

ORDER

(Delivered on 21/09/2024)

1. The Applicant approached this Grievances Committee under Section 79 of the Maharashtra Public Universities Act 2016 with a prayer to claim relief of the grievances. The facts giving rise to the grievances and to claim relief are as under:

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2. The Applicant was appointed as Lecturer in the Non-Applicant No. 2 college by appointment order dated 30.07.2005 and he has joined his duties on 01.08.2005. The Applicant has filed the copy of appointment order and joining letter as Annexure-A/I & A/II. The Applicant's appointment was approved by the Rashtrasant Tukadoji Maharaj Nagpur University by letter dated 12.09.2005, the Applicant has filed the copy of letter of approval as Annexure-A/III.

3. It is submitted by the Applicant that he was promoted to the post of Assistant Professor – Senior Scale w.e.f. 01.08.2009 and he was promoted to Assistant Professor – Selection Grade w.e.f. 01.08.2014 and he was promoted to the higher post of the Associate Professor under Career Advancement Scheme (CAS) w.e.f. 01.08.2017 and again he was promoted to the post of Professor w.e.f. 24.11.2021, the Applicant has filed the copy of service book as Annexure-A/IV. It is submitted by the Applicant that after his promotion to the post of Professor, he had submitted application to the Non-Applicant No. 2 on 29.03.2022 and on 29.04.2022 for appointing him as Head of the Zoology Department and the Non-Applicant No. 2 informed him by reply dated 02.06.2022 that in the similar matter Hon'ble High Court has given the verdict that the appointment of Head of Department should be according to the seniority of service and not as per the academic rank. The Applicant

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has filed the copies of letters and the reply of Non-Applicant No. 2 as Annexure-A/V, A/VI and A/VII. Thereafter, the Applicant had informed the Non-Applicant No. 2 by letter dated 27.08.2022 and thereby informed that Paragraph No. 5(V) c of Maharashtra Govt. Resolution No. NGC-2010/(415/10) UNI-1 dated 30.07.2010 states that since Professor so appointed will be on any post higher than of an Associate Professor, they will be treated as senior most in the concerned department and accordingly will be treated as Head of the Department(HOD). And Non-Applicant No. 2 informed the Applicant that he will not be appointed as the Head of the Department of Zoology. The Applicant has filed the copy of letter dated 17.08.2022 as Annexure-A/VIII and also filed the copy of Maharashtra Government Resolution dated 30.07.2010 as Annexure-A/IX.

4. It is further submitted by the Applicant that the Non-Applicant No. 2 had forwarded the name of Non-Applicant No. 3 as Head of the Zoology Department to Rashtrasant Tukadoji Maharaj Nagpur University for the purpose of preparing list of voters for the Election under Section 40(2)(c) of Maharashtra Public Universities Act,2016 and the Applicant has raised the objection to the Registrar-Returning Officer, Rashtrasant Tukadoji Maharaj Nagpur University by letter dated 22.09.2022 and the Registrar-Returning Officer in his reply dated 28.09.2022 had stated that due to her service seniority, as joining date of Non-Applicant No. 3 is 08.01.1994. Therefore, she is senior and according to Paragraph

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No. 7 of Direction No. 29-1/2022, the objection of Applicant was denied. The Applicant has filed the copy of his letter dated 22.09.2022 as Annexure-A/X and the copy of reply dated 28.09.2022 is filed as Annexure-A/XI.

5. It is further submitted by the Applicant that he had requested the Hon'ble Vice-Chancellor, Rashtrasant Tukadoji Maharaj Nagpur University by letter dated 03.10.2022 but his request was rejected by the Hon'ble Vice-Chancellor referring the decision of Hon'ble High Court in Writ Petition No. 7062/2017 as per reply dated 13.10.2022. the Applicant has filed the copy of letter as Annexure-A/XII and copy of reply as Annexure-A/XIII.

6. It is further submitted by the Applicant that denial of his seniority is in violation of Paragraph No. 16.3 of University Grants Commission (UGC) Notification dated 18.07.2018. The Applicant has filed the copy of UGC Notification dated 18.07.2018 as Annexure-A/XIV.

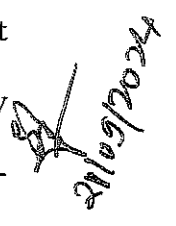
7. It is submitted by the Applicant that he had filed the Writ Petition No. 1084/2023 before the Hon'ble High Court, Bench at Nagpur and by order dated 18.01.2024, it is mentioned that the claim can be raised before the Grievances Committee constituted under Section 79 of Maharashtra Public Universities Act, 2016. The Applicant has filed the copy of order of Hon'ble High Court dated 18.01.2024 as Annexure-A/XV.

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8. It is further submitted by the Applicant that Government of Maharashtra Resolution No. NGC-2010(415/10) UNI-1 dated 30.07.2010 states that the provisions of this resolution shall be applicable to all institutes of higher education and Non-Govt. aided and professional colleges under the jurisdiction of State Non-Agricultural Universities and it is submitted that continuation of Non-Applciant No. 3 as Head of Zoology Department, who being an Assistant Professor is junior to the Applicant, who is a Professor, is un-sustainable and the violation of UGC Notification dated 18.07.2018 and Govt. of Maharashtra Resolution dated 30.07.2010 and prayed to direct the Non-Applciant No. 1 & 2 to issue the order appointing the Applicant as the Head of the Zoology Department and also prayed to direct the Non-Applciant No. 1 & 2 to include the name of the Applicant as Head of Zoology Department in the list of Head of Department submitted to Rashtasant Tukadoji Maharaj Nagpur University.

9. The Non-Applciant No. 1 & 2 have resisted the claim of the Applicant by filing reply. The appointment of the Applicant in the Non-Applciant No. 2 college as Lecturer and his promotion to the post of Assistant Professor, thereafter to the post of Associate Professor and also Applicant's promotion to the post of Professor is not disputed by the Non-Applciant No. 1 & 2 as per the statement made by the Applicant in his application. Therefore, it is an admitted fact that the Applicant is promoted to the post of Professor under Career Advancement Scheme (CAS) w.e.f. 24.11.2021.

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10. The Non-Applicant No. 1 & 2 have come forward with the contention that Non-Applicant No. 3 had applied for the full time post of Professor in the Department of Zoology in Non-Applicant No. 2 college in response to the advertisement published in newspaper dated 13.06.1992 but she was asked to join the duties of part time Lecturer from 07.09.1992 as per the copies filed as Annexure-I & Annexure-II.
11. It is submitted by the Non-Applicant No. 1 & 2 that appointment of Non-Applicant No. 3 was approved by Rashtrasant Tukadoji Maharaj Nagpur University (then known as Nagpur University) on 01.12.1992. The Non-Applicant No. 1 & 2 have filed the letter of approval as Annexure-III. It is further submitted that the Non-Applicant No. 3 was appointed as full time Lecturer in the same department on 01.08.1994 and the approval was granted by the University from the session 1992-93 and onwards. The Non-Applicant No. 3 was subsequently appointed as Head of Department of Zoology w.e.f. 01.12.2010 as per letter dated 30.11.2010, the copy of the letter is filed as Annexure-V and it is submitted that the Non-Applicant No. 3 is discharging the duties as Head of the Department. 
12. It is submitted by the Non-Applicant No. 1 & 2 that the claim of the Applicant about seniority based on designation is true, he should have applied for the post of Head of Department when he

was promoted as Associate Professor w.e.f. 01.08.2017 but it is not mentioned in his Grievance Petition.

13. It is submitted by the Non-Applicant No. 1 & 2 that as per order passed by the Hon'ble High Court, Bench at Nagpur in Writ Petition No. 7061 of 2017 and in Writ Petition No. 7062 of 2017, the petitions were decided in favour of the petitioners who were working as Head of the Department of respective department. And therefore, it is submitted by the Non-Applicant No. 2 that he intends to bring the decisions of these two Writ Petitions to the notice of the Grievances Committee.

14. The Non-Applicant No. 3 has filed the reply dated 30.03.2024. It is submitted by the Non-Applicant No. 3 that she was selected by duly constituted Selection Committee of the Nagpur University and she was appointed as Lecturer on 07.09.1992 in the Department of Zoology of Non-Applicant No. 2 college and her appointment was approved by the Nagpur University as a full time Lecturer by letter of approval dated 01.12.1992. She has filed the copy of letter of approval as Annexure-3 and it is further submitted by the Non-Applicant No. 3 that on superannuation of Dr. D. J. Shrikhande, she was appointed as Head of Department of Zoology in Non-Applicant No. 2 college w.e.f. 01.12.2010, the copy of it is filed as Annexure-4.

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15. It is further submitted by the Non-Applicant No. 3 that as per the UGC Notification No. F.1-1/2008(PS) dated 05.11.2008, she is exempted from NET-SET and it is not ^{implemented} ~~intimated~~ by the University/Govt. of Maharashtra and it is further submitted that had it been implemented, she could have become Associate Professor in the year 2008 and also Professor in due course and her case is pending before the Hon'ble Supreme Court.
16. It is further submitted by the Non-Applicant No. 3 that Applicant has claimed the post of Head of Department but the Registrar did not accept his claim and thereafter, he had submitted a representation to the Hon'ble Vice-Chancellor and his claim was also rejected by stating the judgment of the Hon'ble Bombay High Court in Writ Petition No. 7062/2017 in the case of Dr. Bhatkulkar V/S Dr. Deore.
17. It is submitted by the Non-Applicant No. 3 that as Applicant did not claim for his seniority after his first and second promotion and even after his promotion as Associate Professor, therefore, it cannot be implemented retrospectively and it is further submitted that the Maharashtra Government Resolution is regarding directly recruited personnel and not related to affiliated colleges.
18. It is further submitted by the Non-Applicant No. 3 that the Maharashtra Govt. Resolution dated 30.07.2010 is now superseded

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by the Maharashtra Government Resolution No. Misc-2018/C.R.56/18/UNI-1 and it has been clearly stated in the Govt. Resolution that the inter-se seniority of direct recruitment shall be determined with reference to the date of joining and for the teachers promoted under the CAS with reference to the date of eligibility as indicated in the recommendations of Selection Committee of the respective candidates. The Rules & Regulations of the State Government shall apply for all other matters of seniority and the seniority is counted from the date of appointment and joining and CAS promoted faculties are entitled for the designation (Associate Professor or Professor) from the date of eligibility. The direct recruitment procedure as Associate Professor/Professor level is not followed in the affiliated colleges but is followed in University Departments only. The Non-Applclicant No. 3 has filed the copy of Govt. Resolution dated 8th March, 2019 as Annexure-9. The Non-Applclicant has filed the copy of judgment passed by the Hon'ble High Court in Writ Petition No. 7061 of 2017 as Annexure-10.

19.

It is further submitted that Statutes have not been framed by the Rashtrasant Tukadoji Maharaj Nagpur University regarding the designation of Head of College Department for seniority and therefore, appointing Head by virtue of seniority on the date of appointment is the only criteria followed by Rashtrasant Tukadoji Maharaj Nagpur University and there is no Statute of Rashtrasant Tukadoji Maharaj Nagpur University of handing over charge of Head

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to the CAS promoted Associate Professor/Professor and it is further submitted by the Non-Applicant No. 3 that her appointment as Head of the Department of Zoology is valid as per the judgement of the Hon'ble Bombay High Court, Nagpur Bench in Writ Petition No. 7061 & Writ Petition No. 7062 of 2017 and Shri Mathuradas Mohta Science College is governed by Statutes framed by Rashtrasant Tukadoji Maharaj Nagpur University.

20. The Applicant has filed counter reply to the reply filed by the Non-Applicant No. 3 and it is submitted that though the Non-Applicant No.3 has stated that she could have become Associate Professor in the year 2008 and also Professor in due course. But the Non-Applicant No. 3 is not NET/SET qualified and she has received the Ph.D. Degree in the year 2011 and it is further submitted by the Applicant that as per the decision in Writ Petition No. 7061 of 2017 and Writ Petition No. 7062 of 2017 it is the college management to decide the seniority of teachers and the college management is duty bound to follow the established Govt. of Maharashtra & UGC Regulations to decide the seniority of teachers and appoint the senior most designated teacher as Head of the Department. It is further submitted by the Applicant that his Writ Petition No. 1084 of 2023 was not dismissed by Hon'ble High Court on merit of the case. But only for the reason that he had failed to approach the Nagpur University Grievances Committee. It is further submitted by the Applicant that the provision of Govt. Resolution

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dated 08.03.2019 supports his claim as Govt. Resolution provides the rules for appointment, qualifications, pay-scales, promotions and seniority of the University teachers and also affiliated college teachers of Maharashtra. The Applicant has filed the copy of Govt. Resolution as Annexure-1 and copy of judgment of Hon'ble Supreme Court dated 11.01.1999 in the case of Professor S.A. Siddique V/S Prof. M. Wazid Khan and others.

21. It is further submitted by the Applicant in his counter reply that the Rashtrasant Tukadoji Maharaj Nagpur University and Shri Mathuradas Mohta Science College are governed by the Rules and Regulations of Govt. of Maharashtra and UGC and legally bound to follow them. The Applicant has also filed the copy of judgment dated 20.10.2023 passed by the ^{Hon'ble} Bombay High Court, Nagpur Bench in Writ Petition No. 6692 of 2023 in support of his contentions.

22. In the facts and circumstances of the case and in view of the submissions of the Applicant and Non-Aplicants, following points arises for consideration and the Committee has recorded its findings thereon with the reasons given below.

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	<u>Points</u>	<u>Findings</u>
(i)	Whether the Applicant is entitled to claim seniority and for direction to Non-Aplicant No. 1 & 2 to take appropriate steps as per his seniority and considering his claim?	Yes
(ii)	Whether the claim of the Applicant for his seniority for the post of Head of the Department	Yes

of Zoology in the Non-Appllcant
No. 2 college, is legally
sustainable?

(iii) What Order?

As per order given
below

REASONS

As to Point No. (i) & (ii):

23. It is an admitted fact that Applicant is working on the post of Professor in the Non-Appllcant college and he has been promoted under Career Advancement Scheme (CAS) and Non-Appllcant No. 3 is working on the post of Assistant Professor in the Non-Appllcant college.

24. Dispute arises when the Non-Appllcant No. 3 was appointed as Head of the Department of the Department of Zoology, on retirement on superannuation of Dr. D.J. Shrikhande as per the letter of appointment dated 30.11.2010 issued by the Principal of the Non-Appllcant No. 2 College. Because according to the Applicant, he being on the post of Professor, he is entitled to be appointed as Head of the Department of Zoology. Therefore, the important aspect which needs to be considered by the Committee that as per the position existing on 30.11.2010, who was entitled and eligible for the post of Head of the Department of Zoology and in the present case admittedly, the Applicant has been promoted to the post of Professor under Career Advancement Scheme (CAS) and the Non-Appllcant was working as an Assistant Professor at the

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relevant date i.e. 30.11.2010, when Dr. D. J. Shrikhande was retired from service.

25. The Non-Applclicant No. 1 & 2 have come forward with the contention that appointment of Non-Applclicant No. 3 was approved by the Nagpur University on 01.12.1992 and Non-Applclicant No. 3 was appointed as Head of the Department of Zoology w.e.f. 01.12.2010 and the Non-Applclicant No. 3 has also come forward with the contention that the Rules and Regulations of State Govt. shall apply for all other matters of seniority and seniority is counted from the date of appointment and joining and Career Advancement Scheme (CAS) promoted faculties are entitled for the designation (Associate Professor or Professor) from the date of eligibility and direct recruitment procedure as Associate Professor or Professor level is not followed in the affiliated colleges but it is followed in the University Department only and Non-Applclicant No. 3 has placed reliance on the observations made by the Hon'ble High Court, Nagpur Bench in Writ Petition No. 7061 of 2017 (Dr. Nitin Chintamanrao Kongre V/S. State of Maharashtra and Others.) As per the facts of the case, petitioner and Respondent No. 5 both were in the cadre of Lecturer, the dispute was pertaining to their seniority and both have joined as Lecturer in the month of December, 1999 and the reason for dispute was that in the process of Election of Board of Studies, the Returning Officer upheld objection of Respondent No. 5 by decision dated 5th October, 2017 and deleted

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the name of the Petitioner from the list of Heads of Department and included the name of Respondent No. 5 in the list as Head of Department of Chemistry but in the present case as per the facts, admittedly the Applicant is Professor and he got promoted under the Career Advancement Scheme (CAS) and the Non-Applicant No. 3 is Assistant Professor. Even as per the admitted facts, the Applicant was working as Professor on 30.11.2010 i.e. the date on which the Assistant Professor Non-Applicant No. 3 was appointed as Head of the Department of Zoology in the Non-Applicant college.

26. In the present case, admittedly on 30.11.2010 the Applicant was working as Professor and the Non-Applicant No. 3 was working as Assistant Professor in the Non-Applicant College, therefore, the position existing as on 30.11.2010 and also the position existing at present is required to be considered as to eligibility to the post of Head of the Department of Zoology and it has to be considered who is entitled to the post of Head of the Department of Zoology and in this regard the applicability of Direction No. 15 of 2021 issued by the Rashtrasant Tukadoji Maharaj Nagpur University and Maharashtra Government Resolution dated 8th March, 2019 are to be considered.

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27. On perusal of the Direction No. 15 of 2021 as per the paragraph No. 4, "All the provisions of Maharashtra Govt. Resolution No. Misc-2018/C.R. 56/18/UNI-I dated 8th March, 2019 including all

the appendices thereto shall have the effect and shall be applicable for all the teachers and staff of equivalent cadre of the University Departments, Conducted Colleges, University Institutions, Affiliated Colleges and Recognized Institutions of Higher Learning of the University, which is annexed with this direction as ANNEXURE- having page nos. 1 to 85."

28. As per University Grants Commission Notification dated 18th July, 2018 and as per the Govt. of Maharashtra (Higher & Technical Education Department) dated 8th March, 2019 (c) Inter-se seniority between the direct recruited and teachers promoted under CAS. The inter-se seniority of a direct recruit shall be determined with reference to the date of joining and for the teachers promoted under CAS with reference to the date of eligibility as indicated in the recommendations of Selection Committee of the respective candidate. The Rules & Regulations of the State Government shall apply, for all other matters of seniority.

29. In the present case on the relevant date of appointment of Head of the Department of Zoology i.e. 30.11.2010, the Applicant was working as Professor as he was promoted under Career Advancement Scheme (CAS) and the Non-Applicant No. 3 was working as Assistant Professor and at present also, the Applicant is working as Professor and Non-Applicant No. 3 is working as Assistant Professor, therefore, as per the Govt. of Maharashtra Resolution (Higher & Technical Education Department) dated 8th

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March, 2019 and as per University Grants Commission Notification dated 18th July, 2018 and as per Direction No. 15 of 2021 issued by the Rashtrasant Tukadoji Maharaj Nagpur University, the Applicant is senior to Non-Applicant No. 3 and therefore, the Applicant is entitled for the post of Head of the Department of Zoology being a Professor.

30. It is held by Hon'ble Bombay High Court, Bench at Nagpur in Writ Petition No. 6692 of 2023 in the case of Dr. Pravina W/o Nilay Khobragade V/S Vice-Chancellor and Others in the judgement dated 20.10.2023 in Paragraph No. 12, *"Thus, if we consider the facts of the instant case, which are not in dispute, in terms of the provisions of Clause 16.3 as fore quoted, seniority of a teacher promoted to the post of Professor under CAS is to be reckoned with reference to the date of eligibility. The date of eligibility/date of promotion has been indicated in the promotion order dated 17th May, 2023 and 22nd May, 2023 issued in respect of respondent No. 4 and the petitioner respectively. As observed above, the date of promotion to the post of Professor as per promotion order of the petitioner is 11th January, 2023 whereas the date of promotion mentioned in the promotion order of respondent No. 4 to the post of Professor, dated 17th May, 2023 is 19th August, 2022. Thus, clearly, in terms of the date of promotion to the post of Professor, so far as inter-se seniority in the cadre of Professor is concerned, respondent No. 4 is senior to the petitioner."*

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31. It is further held by the Hon'ble High Court in Paragraph No. 13, *"We have already observed above that in terms of provisions contained in Clause 17 and Clause 17-A of the Ordinance No. 122 of UGC Regulations 2018, seniority of the teachers is to be reckoned and maintained cadre wise. Insofar as the argument that the petitioner was senior in the cadre of Associate Professor, in our considered opinion this fact will have no bearing insofar as inter-se seniority of these two teachers in the cadre of Professor is concerned. We, thus, have no hesitation to hold that respondent No. 4 is senior to the petitioner in the cadre of Professor."*

32. Therefore, in view of the legal position as mentioned above, the committee has come to the conclusion that on the relevant date i.e. 30.11.2010 and even at present, the Applicant being in the cadre of Professor is senior to the Non-Applciant No. 3 who is in the cadre of Assistant Professor and therefore, the Applicant has established his claim as to his appointment as Head of the Department of Zoology and he is entitled for the post of Head of the Department of Zoology in the Non-Applciant college and his claim is legally sustainable, therefore, the Committee has recorded its findings to the Point No. (i) and (ii) accordingly.

33. In view of the above findings recorded by the Committee, the Committee has passed the following order.

- (i) The Non-Applciant No. 1 & 2 are directed to take appropriate steps for appointment of Applicant as Head of the Department of Zoology in the Non-Applciant College

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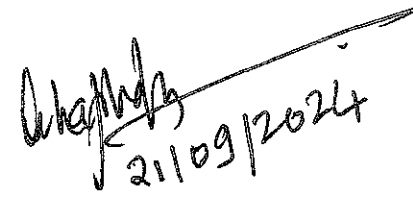
and also further directed to take appropriate steps for inclusion of Applicant's name in the list of Heads of the Departments submitted to Rashtrasant Tukadoji Maharaj Nagpur University.

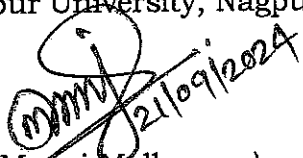
- (ii) The Non-Applicant No. 1 & 2 are directed to comply the directions as above within Two Months from the date of this order.

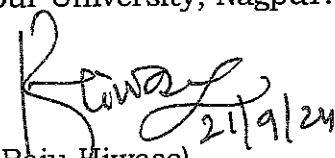
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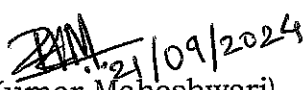
Dated: 21/09/2024.


(Dr. Sanjay Kavishwar)
Member, Grievances Committee,
RTM Nagpur University, Nagpur


(Ajay C. Chaphale)
Chairman, Grievances Committee,
RTM Nagpur University, Nagpur.


(Shri Manoj Malkapure)
Member, Grievances Committee,
RTM Nagpur University, Nagpur


(Dr. Raju Hiwase)
Member, Grievances Committee,
RTM Nagpur University, Nagpur


(Adv. Rajat Kumar Maheshwari)
(Member-Secretary)
Grievances Committee
RTM Nagpur University, Nagpur,