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 Order reserved on 02/07/2022.
 Order pronounced/ 23/09/2022.
 issued on -



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

(Presided over by Shri Ajay C. Chaphale, former District Judge.)

Grievance Petition No. 13/2020

Applicant : Dr. Smt. Sushma Rajiv Trivedi,
Grievance Shivranjani, Flat No. 4,
Petitioner 115, Pande Lay Out, Khamla,
 Nagpur-440025

- VERSUS -

Non-Applicants: 1. Wainganga Bahu-Uddeshiya Vikas
 Sansdtha, 10, Corporation Colony,
 North Ambazari Road,
 Nagpur-440010.
 Through its President
 2. Wainganga College of Engineering and
 Management, Dongargaon,
 Wardha Road, Nagpur.

ORDER

(Delivered on 23/09/2022)

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:

- (i) The Applicant is qualified as M.Sc. in Chemistry and B.Ed. and she is also holding Ph.D. from Rashtrasant Tukadoji Maharaj Nagpur University, Nagpur. The

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Applicant has submitted that she was appointed as a Lecturer in the Non-Applicant No.2 College in Chemistry Department. After period of 2 years, she appeared before the Selection Committee of the Rashtrasant Tukadoji Maharaj Nagpur University, Nagpur on 21.08.2012 and thereafter approval was given to her appointment as Assistant Professor by the Rashtrasant Tukadoji Maharaj Nagpur University, Nagpur by order dated 18.12.2012.

- (ii) It is submitted by the Applicant that she was continuously working in the Non-Applicant No. 2 College as a Lecturer from 11.08.2012 till February-2019, and she had worked honestly and sincerely. She had also conducted practical examinations and she was appointed as a Rashtrasant Tukadoji Maharaj Nagpur University, Nagpur, Co-Examination Supervisor for the theory examination etc. According to the Applicant, the Management asked her to teach B.E. students and also the Polytechnic students and her working hours were 27-28 hours per week which was more than double of the workload as prescribed by AICTE directive and she was not given any extra monetary benefits for her extra work and she was also teaching polytechnic students without any extra monetary benefits. Though she was asked to do extra work but she was not paid any extra monetary benefits. Even she was compelled to work as Visiting Faculty in spite of the fact that her appointment was approved by the Rashtrasant Tukadoji Maharaj Nagpur University, Nagpur. According to the Applicant, the Non-Applicant had not paid salary to her during leave period when she was doing Ph.D. and she was forced to work in the college without any payment during the leave period. It is submitted by the Applicant

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that Lab Assistant was not appointed by the Non-Applicant Management and preparation of all Chemical materials were done by the Applicant.

- (iii) It is submitted by the Applicant that on 02.02.2019, when the Applicant had requested the Non-Applicant No. 1 to increase the salary but Non-Applicant No. 1 asked her not to come in the college from the next day. And therefore, she left the college and when she tried to join her duty on the next working day, the Non-applicant did not allow to her to join her duties. It is further submitted by the Applicant that the Non-Applicant had paid Rs. 8,000/- (Rs. Eight Thousand only) by Cheque on 02.02.2019 for salary of December-2018 but it was also returned back by the Bank due to mentioning of wrong date.
- (iv) The Applicant has submitted that since joining of services of the Non-Applicant till February-2019, the Applicant was never paid the salary as per the rules, and she was paid fixed amount of Rs. 20,000/- to 25,000/- per month through the Bank and according to her the Non-Applicants had paid total amount of Rs. 17,27,974/- (Seventeen Lakhs Twenty Seven Thousand Nine Hundred Seventy Four only) for the period from September 2010 to February-2019 and Non-Applicant had not paid the salary as per the recommendation of 6th Pay Commission and 7th Pay Commission.
- (v) The Applicant has further submitted that the Non-Applicant had failed to pay the Applicant's salary of Rs. 29,32,785/- (Twenty Nine Lakhs Thirty Two Thousand Seven Hundred Eighty Five only) as per the 6th Pay Commission from 15th September, 2010 to December-

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2015 and failed to pay Rs. 28,36,264/- (Twenty Eight Lakhs Thirty Six Thousand Two Hundred Sixty Four only) as per 7th Pay Commission from January-2016 to February-2019. According to the Applicant, the total gross amount comes to Rs. 57,69,049/- (Fifty Seven Lakhs Sixty Nine Thousand Forty Nine only) and after subtracting the amount of Rs. 17, 27,974/- (Seventeen Lakhs Twenty Seven Thousand Nine Hundred Seventy Four only) received by the Applicant from 15th September-2010 to February-2019 the arrears of salary comes to Rs. 40,41,075/- (Forty Lakhs Forty One Thousand Seventy Five only) and therefore, the Applicant has claimed the amount of Rs. 40,41,075/- (Forty Lakhs forty One Thousand Seventy Five only) from the Non-Applicants. The Applicant has also submitted that there was no EPF Contribution by the Non-Applicants. The Applicant has prayed to direct the Non-Applicants to pay the salary with all consequential benefits amounting to Rs. 40,41,075/- (Forty Lakhs Forty One Thousand Seventy Five only) for the period from 15.09.2010 to 02.02.2019 and direct the Non-applicants to pay difference of arrears with 18% interest per annum for the period from 15.09.2010 to 02.02.2019.

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2. The Non-Applicants have resisted the claim of the Applicant by filing reply and by way of preliminary objection, it is submitted that though the Applicant herself claimed that she was asked not to attend the college from 03.02.2019 and such act of not permitting her to join the duty amounts to otherwise termination but she has not challenged the termination till the filing the

Grievance Petition, before the Hon'ble College Tribunal and therefore as admitted by herself she was not employee of the college from 03.02.2019 and therefore, the application filed by the teacher who is not in employment is not maintainable. It is submitted by the Non-Applicants that the claim for arrears beyond the period of 3 years before filing the application is time barred and in support of their submissions regarding limitation, the Non-Applicants have placed reliance on judgments of the Hon'ble Supreme Court in the cases (i) Union of India Vs. Tarsen Singh reported in 2008(8) SCC 648 (ii) Shiv Dass Vs. Union of India reported in 2007(9) SCC 274 (iii) Jaidev Gupta Vs. State of H.P. & Another reported in 1997(11) SCC 13 (iv) State of Punjab Vs. Kulbir Singh reported in 1997(11) SCC 394 (v) Jaswant Singh Vs. Punjab Poultry Field Staff Association reported in 2002 (1) SCC 261 (vi) M.R. Gupta Vs. Union of India & Anothers (1995)(5) SCC 628 (vii) Smt. S. J. Tiwari Vs. Smt. Jwala Devi Vidya Mandir AIR-1981 SC 122 (viii) Sakal Deep Sahai Vs. Union of India AIR-1974 SC 338 (ix) Anand Swarup Singh Vs. State of Punjab AIR-1972 SC 2638.

3. It is submitted by the Non-Applicants that they had never terminated the services of the Applicant and the Applicant herself abandoned her services from 03.02.2019 without submitting resignation and without following due process. And therefore, the Non-Applicants are entitled to recover the salary of 3 months from the dues payable to the Applicant in lieu of notice. According to the

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Non-Applicants the workload of the Applicant was strictly as per the rules and there was no extra workload assigned to Applicant. And they have denied all the allegations made by the Applicant regarding extra workload assigned to her.

4. It is submitted by the Non-Applicants that the teachers including the Applicant were paid salary as per the pay scale prescribed as per the recommendations of 6th Pay Commission and denied the Applicant's submission that she was paid salary of Rs. 20,000/- to 25,000/- per month only. According to the Non-Applicants, the Applicant was paid salary as per the pay scale of the 6th Pay Commission and it is submitted that as regard the payment of salary as per 7th Pay Commission, the permanent no grant-in-aid private colleges are not covered by the Govt. Resolution dated 08.03.2019 and the Non-Applicants have denied the claim of the Applicant as it is barred by limitation and according to the Non-Applicants, the Applicant is entitled to claim which is admissible only and thus denied Applicant's claim of Rs. 40,41,075/- (Forty Lakhs Forty One Thousand Seventy Five only) as it is barred by limitation.

5. It is further submitted by the Non-Applicants that if the claim of the Applicant is calculated from July-2017 as per the Chart prepared by the Non-Applicants at Paragraph No. 13 of the reply and in the Col. No. 3, amount payable is shown and in Col. No. 4 amount is mentioned that Nil payable as the Applicant was absent

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and it was treated as Leave Without Pay and the Chart shown in Paragraph No. 13 of the reply of the Non-Applicants from Sr. No. 1 to Sr. No. 13 i.e. from July-2017 to July-2018, the amount payable to the Applicant shown as Nil as it was Leave Without Pay and she was shown as absent and difference of arrears are shown at Sr. No. 14 to Sr. No. 20 i.e. in the month of August-2018 to February-2019 and thereafter in the Chart prepared by the Non-Applicants in Paragraph No. 13 of the reply, the difference of arrears was shown as Rs. 2,50,742/- (Two Lakhs Fifty Thousand Seven Hundred Forty Two only) and Rs. 8,000/- (Eight Thousand only) was deducted from it towards the amount paid to the Applicant and difference of amount payable to the Applicant was shown as Rs. 2,42,742/- (Two Lakhs Forty Two Thousand Seven Hundred forty Two only) but again the Non-Applicants have shown deduction of Rs. 2,43,060/- (Two Lakhs Forty Three Thousand Sixty only) towards the salary of 3 months in lieu of notice and in the Chart itself an amount of Rs. 318/- is shown as an excess payment made to the Applicant and according to the Non-Applicants, the Applicant has to pay Rs. 318/- to the Non-Applicants and the Non-Applicants have submitted that the Applicant is not entitled for relief claimed and the Grievance Petition is liable to be dismissed.

6. The Applicant has filed the rejoinder and it is submitted that though she had not challenged the otherwise termination w.e.f. 03.02.2019 but for that reason the Applicant is not precluded from claiming the arrears of salary from 15.09.2010 to 02.02.2019 and

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in her rejoinder, the Applicant has also referred the order passed by the Grievance Committee in Grievance Petition No. 03/2016, Grievance Petition No. 01/2019 and Grievance Petition No. 08/2016 in support of her claim to receive the differences of salary as per the recommendation of Pay Commission on the point of limitation and jurisdiction of this Grievance Committee and according to her Grievance Petition is filed within the limitation. It is further submitted by the Applicant that the Non-Applicant No. 1 had given oral instructions to the office staff that no letter from the Applicant be accepted and therefore, she was forced to send the grievance letter through Speed Post and her grievance letter dated 11.02.2019 was not replied by the Non-Applicant. Therefore, the Non-Applicants cannot claim that the Applicant had abandoned the service without information. It is submitted by the Applicant that Directives by the Rashtrasant Tukadoji Maharaj Nagpur University, Nagpur and Govt. of Maharashtra have been issued to all private un-aided college that salary should be as per 6th & 7th Pay Commission and it is also statutory requirement under Maharashtra Public Universities Act 2016. It is further submitted that no service book was maintained by the Non-Applicant No. 1 and there was no any agreement for fixing of seniority. The Applicant has further submitted that the Study Leave cannot be termed as Leave Without Pay and it is clarified by the Govt. of Maharashtra by Govt. Resolution No. Misc-2018/C.R.56/18/UNI-I dated 8th March, 2019 and besides paid Study Leave, the teacher is

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entitled for Casual Leave, Maternity Leave, Medical Leave and also Earned Leave at par with the State Govt. employees.

7. The Non-Applicants have filed additional submissions and it is submitted that in the e-mail 13.03.2019, the Applicant has stated that she was not working in the Institution from 03.02.2019 and she ceased to be a teacher in the college and it is admitted by the Applicant and according to the Non-applicants, the Applicant's claim is from 15.09.2010 but approval was granted as an Assistant Professor from 18.12.2012 and therefore, till 18.12.2012 she was not approved teacher and her claim till date of approval is not maintainable and even after approval, she did not approach Grievance Committee within a period of 3 years and therefore, her petition is not maintainable. And it is further submitted that the Non-Applicant Institution has to recover Rs. 318/- as per 7th Pay Commission and Rs. 65,487/- as per 6th Pay Commission and it is submitted that claim is not within 3 years, therefore, it is barred by limitation.

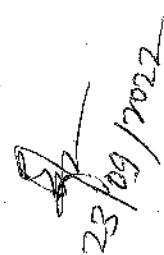
8. As regard, the dispute as to paid Study Leave, it is submitted by the Non-applicants that the Applicant had not taken permission from employer for pursuing studies of Ph.D. qualification and there is no such provision of paid salary leave for pursuing the Ph.D. qualification and according to the Non-Applicants as per UGC notification, the scheme of study leave provides an opportunity to avail scholarship/fellowship provided to

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the faculty who wish to acquire new knowledge and improve analytical skill and the Applicant was not awarded scholarship for Ph.D. studies and the Study Leave can be granted after minimum 3 years of continuous service and in this case Study Leave was not sanctioned by the employer and therefore, it was leave without pay. It is further submitted that as per the UGC notification a teacher availing Study Leave shall undertake that he/she shall serve in the institution for a continuous period at least 3 years from the date of resuming duties on expiry of Study Leave and in this case the Applicant joined the duty on the expiry of Study Leave from August-2018 and had herself stopped coming to the college from 02.02.2019. It is further submitted by the Non-applicant that as per UGC notification, if a teacher who rejoined the service but leave the service without completing prescribed period, shall be liable to refund the amount of leave salary paid to her in connection with the course of study. And according to the Non-Applicants a teacher on the study leave should submit the monthly reports of progress in her/his studies from her/his supervision and if report does not reach to the Principal within the period of specific time, the payment of leave salary may be deferred till the receipt of study report but in this case the Applicant did not submit any 6 monthly report of progress in her studies. It is further submitted by the Non-Applicants that the Applicant during her service from 12.07.2012 to 18/03/2014, had not taken permission for study leave from the employer. She had not applied for paid leave and she had not also

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informed about her activity regarding Ph.D. till 18.03.2014 and for the first time she had applied Study Leave on 23.12.2014 and she remained absent from 01.01.2015 to 14.06.2015 and she was not paid the salary during this period and there was no objection from her till leaving the college. And she had not informed about re-registration for Ph.D. and she did not get permission from the employer and for the first time on 16.03.2022 she has submitted the photocopy of application for Study Leave dated 28.06.2017, which was not submitted to the office of the Non-applicant. And she remained absent without permission from April-2017 to July-2018. It is further submitted that according to the Uniform Statute of affiliated colleges under 237(1), a teacher shall not leave or discontinue his/her service in the college or recognized institution without giving prior notice in writing to leave or discontinue service and the period of such notice shall be 3 calendar months in the case of permanent teacher and under Section 239 any teacher working in the University shall resign his/her post by tendering a resignation letter in his own handwriting to the Competent Authority which shall be signed as witness by two teachers working in college/institution ~~without~~ giving prior notice in writing to the Competent Authority. And the period of such notice shall be 3 calendar months in case of permanent teacher and one calendar month in case of temporary/Ad-hoc teacher, in case of breach of such provisions, the teacher shall pay the equal of amount of basic pay for the notice period required to be given. And if he/she fails to


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pay the amount which shall be recovered from dues payable to him/her and it has been submitted by the Non-Applicant that calculation of last three months salary cannot be considered, and on the contrary the college has to recover three months basic pay from the Applicant. And it is submitted that the Applicant is not entitled for relief as claimed.

9. The Applicant has also filed the rejoinder to the submissions of the Non-Applicants and on the point of maintainability of the petition the Applicant has referred Section 79(7) of the Maharashtra Public Universities Act 2016. So far as the cause of action is concerned. It is submitted by the Applicant that cause of action arose from 02.02.2019 when she was removed from the service by the Non-applicant. And according to her she had sent a letter dated 11.2.2019 mentioning that the Non-Applicant had oral instructions that her services were terminated with immediate effect and she was told that not to come in the college from tomorrow. And there was no reply to her letter, therefore, according to the Applicant, the Non-Applicants have accepted it. It is submitted that the act of the Non-Applicant is violative of principles of natural justice. It is further submitted that the Applicant's Study Leave was duly sanctioned on 23.12.2014 by Shri Somdatta Karanjekar who was also part of the management.

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10. The Applicant has further submitted that she had enough leave as earned leave and compensatory / half pay leave and she had taken 165 days of study leave from January-2015 to 14th June, 2015 and she had also taken 396 days of study leave from July-2017 to July-2018. She had rejoined the duties in August-2018, after availing un-paid study leave and according to her the Non-Applicant had not followed the guidelines issued by the Rashtrasant Tukadoji Maharaj Nagpur University, Nagpur to remove a permanent teacher and the paid study leave should be granted. It is further submitted by the Applicant that the Applicant had never left the job. The Applicant has further submitted that the Provident Fund for benefit of teacher should be maintained and as per Ordinance No. 24, the monthly contribution of 10% of teachers pay has to be deducted from the monthly salary which has to be credited to his account in the fund, and every permanent teacher has to be given retirement benefits including Gratuity and Employees Provident Fund and as the Non-Applicant has not followed the guidelines, therefore, the Applicant has suffered loss of Rs. 11,20,587/- (Rs. Eleven Lakhs Twenty Thousand Five Hundred Eighty Seven only). It is further submitted by the Applicant that there was no any appointment letter given to teach polytechnic students and there was loss of Rs. 33,93,543/- (Thirty Three Lakhs Ninety Three Thousand Five Hundred Forty Three only) to the Applicant and further no yearly increment of 3% was given and it is submitted that according to AICTE guidelines dated 1st March, 2019,

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the faculty members should be given increment of 3%. And it is further submitted by the Applicant that no any service book was maintained by the Non-Applicant which resulted severe loss to the Applicant. The Applicant has also filed the copy of Notification dated 16th May, 2014, dated 15th April, 2017 and dated 26th April, 2018 issued by the Rashtrasant Tukadoji Maharaj Nagpur University, Nagpur regarding the Winter Vacation and Summer Vacation for the session 2014-15, session 2017-18 and for the session 2018-19 respectively. In order to show that during study leave period, there were Winter and Summer Vacation and it is submitted by the Applicant that as per AICTE guidelines it is only one month's salary either/or to give notice for leaving employment. And the Applicant has also filed the copy of guidelines issued by AICTE dated 29th March, 2019 and in the rejoinder, the Applicant has claimed Rs. 40,41,075/- (Forty Lakhs Forty One Thousand Seventy Five only) towards salary difference of Rs. 7,72,800/- (Seven Lakhs Seventy Two Thousand Eight Hundred only), towards leave encashment Rs. 5,21,647/- (Five Lakhs Twenty One Thousand Six Hundred Forty Seven only), towards gratuity and Rs. 11,28,587/- (Eleven Lakhs Twenty Eight Thousand Five Hundred Eighty Seven only) towards EPF and thus the Applicant has claimed total amount of Rs. 64,64,109/- (Sixty Four Lakhs Sixty Four Thousand One Hundred Nine only).

11. The Non-Applicant had also filed written submission on 02.07.2022 and it is submitted that the Applicant had not

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approached to the Hon'ble Tribunal challenging the alleged action of otherwise termination and the Applicant has made false claim for arrears of salary and she being no employee of the college on the date of the petition, therefore, this committee has no jurisdiction to entertain the grievance of the ex-employees and it is further submitted that the claim of arrears for salary beyond the period of 3 years, cannot be granted as it is barred by limitation. And in support of its submission Non-Applicants have relied on the decisions of Hon'ble Supreme Court as already mentioned in the paragraph No. 2 of this order. And it is submitted that the un-aided institute/colleges had not included in the G.R. dated 11.09.2019 and the term un-aided does not find place for any of the provision of G.R. dated 11.09.2019 and it is submitted that the recommendations of 7th Pay Commission are not applicable to Non-Govt. Un-aided University affiliated colleges/institutes and therefore, the claim of arrears of salary as per 7th Pay Commission is not maintainable. As regards the study leave, it is submitted by the Non-Applicants that the Applicant was full time Ph.D. student, hence, the period of absence was treated as extra ordinary leave without salary and no teacher can claim study leave as of right, and the rule of paid study leave are applicable for aided institute. So far as the contention of the Applicant as regards no encashment of cheque of Rs. 8,000/- is concerned, the Non-Applicant has submitted that the Applicant did not approach the college for corrections in the date, therefore, said amount was lawfully

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deducted and further regarding Summer and Winter Vacations, no grievance was ever made by the Applicant at any point of time and salary for Summer and Winter Vacation was deducted by the Non-Applicant No. 1. And, therefore, the allegation is false and it is submitted that the Applicant's contention that when she was on extra ordinary leave from 01.07.2017 to 31.07.2018, the benefits of Summer and Winter vacation should have been granted, is incorrect. And the college vacations cannot be claimed as per the University Calendar and salary for such un-authorised absence without any leave, cannot be claimed. And Non-Applicants have denied the Applicant's claim for arrears as per the recommendation of 7th Pay Commission. The Non-Applicants have also denied the claim of the Applicant for salary during her un-authorised absence and also denied the claim of amount towards leave encashment, gratuity and it is further submitted that EPF is not applicable to the teachers. And it is submitted that there is a provision under Gratuity Act which provides forum to agitate claim of gratuity and the Non-Applicants have also denied the claim of arrears of salary as per the 6th Pay Commission and denied the entire claim of the Applicant.

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

<u>Points</u>	<u>Findings</u>
(i) Whether the Grievance Petition filed by the Applicant is maintainable and the Grievance Committee is having jurisdiction to entertain it?	Yes
(ii) Whether the Applicant is entitled for the pay, as per revised pay scale as recommended by 6 th Pay Commission and 7 th Pay Commission with arrears of difference of salary and other benefits as applicable?	Yes
(iii) Whether the Applicant is entitled for paid study leave from July-2017 to July-2018 for pursuing qualification of Ph.D. ?	No but subject to adjustment of earned leave etc. and period of vacation, if any.
(iv) Whether the claim of the Applicant for arrears as per revised pay scale on the basis of the recommendations of 6 th Pay Commission and 7 th Pay Commission is barred by limitation?	No
(v) What Order?	As per order given below

REASONS

As to Point No. (i):

13. The Non-Applicants have raised the objection as to maintainability of this Grievance Petition before this Committee because as per the submissions of the Non-Applicants, the Applicant was not the employee of the Non-Applicant Institution on the date of filing this Grievance Petition. Therefore, for this reason

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Grievance Petition is not maintainable and this Committee has no jurisdiction to entertain it but it is pertinent to note that the claim made by the Applicant for revised pay scale as per the recommendations of Pay Commission and the claim of amount for the period of study leave is pertaining to period when she was in employment of the Non-Applicants and, therefore, the Grievance Petition is maintainable and this Grievance Committee has jurisdiction to entertain it, therefore, finding to Point No. 1 is recorded accordingly.

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

14. On perusal of the record and on perusal of submissions/ reply of the Non-Applicants, it is not disputed that the Applicant was appointed in the Non-Applicant No. 2 College and it appears from record that by appointment order dated 11.08.2010, the Applicant was appointed as Lecturer. Though the Applicant has come forward with the case that she was working as a Lecturer in the Non-Applicant No. 2 College from 11.08.2010 till February-2019 but there is no document to show that as to on which date the Applicant had joined the post of Lecturer in the College of Non-Applicants. But copy of letter dated 13.08.2012 shows that the Applicant was called for interview for the post of Assistant Professor in Applied Chemistry and the copy of letter dated 06.01.2014 issued by the Rashtrasant Tukadoji Maharaj Nagpur University, Nagpur in reply to the Application dated 28.11.2013 submitted by the Applicant makes it clear that the approval was granted to the

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appointment of the Applicant for the post of Assistant Professor in Applied Chemistry from 08.12.2012. Therefore, it is clear that the Applicant was working as an Assistant Professor in the Non-Aplicants' College as an approved teacher by Rashtrasant Tukadoji Maharaj Nagpur University, Nagpur. Therefore, as per Govt. Resolution dated 20/08/2010 and Govt. Resolution dated 11.09.2019, the Applicant is entitled to claim revised pay scale as per the recommendation of 6th Pay Commission and 7th Pay Commission from the date of approval on joining as a Assistant Professor in the college of Non-Aplicants till 02.02.2019 as she had worked as Assistant Professor in the Non-Aplicants College till 02.02.2019.

15. The Non-Aplicants have come forward with the submission that the Applicant has not raised any claim within the period of limitation in respect of revised pay scale as per the 6th Pay Commission which is effective from 01.01.2006. Therefore, the claim of the Applicant is barred by limitation. In support of their contentions pertaining to the limitation, the Non-Aplicants have placed their reliance on the decisions of the Hon'ble Supreme Court in the cases mentioned as above (i) to (ix) in paragraph No. 2 of this order.

16. The facts of the present case are totally different from the facts of the rulings cited above by the Non-Aplicant No. 1 & 2 in support of their submissions that the claim of the arrears of revised pay scale is barred by limitation because in the present case the

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Applicant has right to claim the arrears on the basis of implementation of the recommendation of 6th Pay Commission and 7th Pay Commission which has been accepted by the Govt. of Maharashtra. And the Govt. of Maharashtra has made it applicable to the institution affiliated to the University. Though there was dispute as to applicability of Govt. Resolution to the un-aided institution. But as per Circular dated 12th August, 2009 issued by the Govt. of Maharashtra by its Higher & technical Education Department on the subject of revision of pay scale of the teachers in equivalent cadre in higher education as per UGC scheme, said circular provided the subject of revision of pay scale of different categories of teachers in Universities and colleges governed by the enactment of the State Legislature and the Non-applicant No. 2 college is affiliated to Rashtrasant Tukadoji Maharaj Nagpur University, Nagpur. It is also held by the Hon'ble Supreme Court in the case of Secretary Mahatma Gandhi Mission & Another V/S Bhartiya Kamgar Sena & Others reported in (2017) 4 (Supreme Court cases 449) that, *"In our opinion, the G.R. dated 12.08.2009 can be safely construed to be one made in exercise of the power under Section 8(3) of the Universities Act conferring a legal right on the teaching staff of the affiliated colleges irrespective of the fact whether they are aided or not."*

It is further held by the Hon'ble Apex Court in the judgment that, *"The colleges run by appellants are admittedly colleges affiliated to the Universities functioning under the Act. Therefore,*

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their teaching staff would be entitled to the revised pay-scales in terms of the G.R. dated 12.08.2009."

It is held by the Hon'ble Bombay High Court Bench at Nagpur in Writ Petition No. 481 of 2019 (MS. Veena D/o Kewalram Katankar & Others V/S State of Maharashtra and others) that it is not in dispute that college is affiliated to the University and despite being un-aided institution, was bound by terms of said circular. It is Further, held by the Hon'ble Bombay High Court that, *"considering the terms of the said circular and having regard to the fact that the college was affiliated to the University we hold that on and from the respective dates of according of the approval of the recommendations by the Vice-Chancellor, the petitioners 1 to 8 are entitled in Law to claim that they be paid salary in accordance with the revision of pay-scales, as ordained by the said circular."*

17.

So far as the question as to grant of retrospective effect to claim the relief of arrears of salary and other benefits from the date of recommendations of the 6th Pay Commission and 7th Pay Commission is concerned; this aspect has been considered by the Hon'ble Bombay High Court, while deciding the Writ Petition No. 1262 of 2018 (D.Y. Patil College of Engineering Vs. All India Council for Technical Education and others) and in the judgement dated 7th September, 2018, it has been held and observed by the Hon'ble Bombay High Court that, *"the petitioners who are bound by norms and regulations framed by AICTE to ensure the proper norms and standards to be maintained in the technical institutions are bound by the mandate issued by the State Govt. directing even the un-aided institutions to make the revision of pay scale applicable from respective date. The petitioners cannot run away from the said responsibility only on the count of a financial crunch being posed as an excuse and this is only defence which Shri Anturkar seeks to invoke in order to discharge the petitioners of their burden to pay the*

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arrears according on accept of pay revision. We do not find that financial crunch can be used as a shield to refrain the petitioners from discharging its obligations in terms of the Govt. Resolution and the Rules of 2009. And it is further held by the Hon'ble High Court that it is not open to the petitioners to canvass a specious argument that the petitioners are ready to implement the recommendations of the Pay commission but it would be restricted only to its current application and that the petitioners should not be directed to bear the burden of arrears".

18. Therefore, as the Applicant's appointment was approved by Rashtrasant Tukadoji Maharaj Nagpur University, Nagpur on 18.12.2012 and Govt. of Maharashtra has accepted the recommendations of 6th Pay Commission and 7th Pay Commission and Applicant's services was continued in the same institution/college and therefore in view of the reasons as above and in view of legal position as mentioned above, the Applicant is entitled for revised pay scale as per the recommendations of 6th Pay Commission from 18.12.2012 to 31.12.2015 and she is also entitled for revised pay scale from 01.01.2016 as per recommendations of 7th Pay Commission till 02.02.2019 as she had worked in the Non-Applicants' college till 02.02.2019 and the claim of the Applicant as to grant of arrears of 6th Pay Commission is within the limitation because in view of the legal position as per the decision of Hon'ble Supreme Court in the case of Secretary Mahatma Gandhi Mission & Another V/S Bhartiya Kamgar Sena & Others reported in (2017) 4 (Supreme Court cases 449) and also as per the decision of Hon'ble Bombay High Court in the case of D.Y. Patil College of Engineering V/s All India Council for Technical Education and Others in Writ Petition No. 1262 of 2018, the claim of Applicant is within the

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limitation because it is given retrospective effect, therefore, finding the Point No. (ii) & (iv) are recorded accordingly.

The question of dispute pertaining to alleged otherwise termination by not allowing the Applicant to join the duty and alleged leaving of employment by Applicant without giving notice as per the procedure cannot be considered before this forum as it is pertaining to the alleged termination and also alleged leaving of employment by the Applicant and only aspect which is to be considered as to until which date, the Applicant had worked as an employee of the Non-applicants and in this case the Applicant had worked till 02.02.2019 as employee of the Non-Applicants.

As to Point No. (iii):

19. On perusal of the submissions of the Applicant and the Non-Applicants, there is dispute as regard the Study Leave availed by the Applicant from July-2017 to July-2018 for pursuing the qualification of Ph.D. by the Applicant. In this regard, the Non-applicants have come forward with the submissions by giving reference of Ordinance No. 122 regarding the rules for Study Leave to the University Teachers, according to the rules the Study Leave may be granted to a member of the teaching staff of the University to enable him to prosecute higher studies or research or specialized training in his subject in India or Abroad and as per the clause of eligibility as mentioned in the Ordinance No. 122, the copy of which produced on record which shows that the Study Leave on half pay shall be admissible to all full time teachers on the permanent establishment of the University who are to be in not less than 3

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years continuous service on the date on which Study Leave is granted. In the present case, the Applicant was willing to pursue the further studies for higher qualification of Ph.D. and therefore, it was imperative on the part of the Applicant to obtain the necessary permission from the Head of the Institution for that purpose. But in this case the Applicant has not produced any document on record showing that she had obtained a specific permission from the Head of the Institution to pursue the higher qualification of Ph.D. and as the grant of Study Leave is subject to the grant of permission by the Head of the Institution but in this case as the Applicant has not produced any document showing that she had obtained permission from the institution to pursue the higher qualification of Ph.D., therefore, she cannot claim paid Study Leave as of right for the period from July-2017 to July-2018 but if there is balance of earned leave, etc. on leave account of the Applicant, it can be adjusted during the period of leave from July-2017 to July-2018, therefore, the Applicant is not entitled for paid Study Leave from July-2017 to July-2018, and her absence during this period is to be treated as the Leave Without Pay by adjustment of earned leave etc. in balance and period of vacation if any and therefore finding to point No. 3 is recorded accordingly.

20.

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

- (i) The Applicant is entitled to the revised pay-scales with other benefits as admissible as per the recommendations of 6th Pay Commission from 18.12.2012 to 31.12.2015 and to the revised pay scale with other benefits as admissible as per the recommendation of 7th Pay Commission from 01.01.2016 to 02.02.2019 as per the applicable rules.

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- (ii) The Non-Applicants shall calculate the differences of salary and other benefits for which, the Applicant is entitled as per the recommendations of 6th Pay Commission and 7th Pay Commission in accordance with the relevant Govt. Resolution/Circular issued by the Govt. of Maharashtra, (after subtracting the salary for the period from July-2017 to July-2018, which is considered as Leave Without Pay and after adjusting the Earned Leave etc. and period of vacation, if any as per rule), The payment of entire amount be released to the Applicant within six months from the date of this order.
- (iii) If the Non-Applicants fails to release the payment to the Applicant within the period of six months, the Non-Applicants shall be liable to pay interest at the rate of 8% per annum on unpaid amount from the date of this order.
- (iv) If the Non-Applicants fails to comply the aforesaid direction, the Applicant shall be entitled to take action against the Non-Applicants by taking recourse of relevant provisions, according to law.

Nagpur.

Dated: 23/09/2022

[Signature]
23/09/2022

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

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

[Signature]
(Dr. Raju Hiwase)

Member, Grievances Committee,
RTM Nagpur University, Nagpur

TRUE COPY

[Signature]

Superintendent,
Grievances, Ordinances, Statute & Legal Section,
Rashtrasant Tukadoji Maharaj
Nagpur University, Nagpur.