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Duration--years 3 months 20 days



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

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

Grievance Petition No. 40/2019

Applicant : Dr. Sunil Sohanlal Pande,
R/o Plot No.58, RBI Colony,
Katol Road, Nagpur.

- VARSUS -

Non-applicants: 1. Rashtrasant Tukadoji Maharaj
Nagpur University, Nagpur through its
Vice-Chancellor.
2. Rashtrasant Tukadoji Maharaj
Nagpur University, Nagpur RTMNU
through its Registrar.

ORDER (ORAL)

(Delivered on 31-10-2019.)

1. The Applicant approached this Grievances Committee
under section 79(1) of the Maharashtra Public Universities Act,
2016 with a grievance for non payment of full subsistence
allowance and seeks the following reliefs.

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- i) *Direct the Rashtrasant Tukadoji Maharaj Nagpur University, Nagpur to pay the applicant his full salary towards subsistence allowance upon completion of 6 months of suspension period i.e. from 07-12-2016 onwards alongwith an interest @ 12% p.a.;*
- ii) *Direct the university to pay the applicant the arrears of subsistence allowance from 07-12-2016 and onwards, till he is being kept under suspension;*
- iii) *Direct the university to fix the salary of the applicant as per the recommendation of the Pay Commission and release the increments and further release the arrears accordingly;*
- iv) *Grant any other or further relief including costs as may be deemed fit in the facts and circumstances of the case and also in the interest of justice.*

2. The applicant is presently working as Associate Professor in Biotechnology subject with Rajiv Gandhi Biotechnology Centre, Nagpur run and managed by the Rashtrasant Tukadoji Maharaj Nagpur University Nagpur with effect from 01-05-1998. He has a clean and unblemished service record and no departmental action was initiated against him for any lapse/misconduct whatsoever. He also worked as Director of Biotechnology Centre for a period of 4 years. On account of his sincere and restless efforts the Department of Biotechnology was upgraded from C to B Grade.

3. In spite of the good service record the applicant was put under suspension vide office order dt. 07-06-2016, contemplating a disciplinary action against him. However, he was not paid 50% subsistence allowance until he submitted representation, which was released vide office order dt. 02-11-2016. Thereafter the applicant started receiving 75% subsistence allowance as salary from 07-12-2016 vide office order dt. 19-01-2017. According to Applicant this is illegal and contrary to the rules, since after six months he should have been paid full salary. The Applicant was served with a charge-sheet. After a period of about six months from the date of suspension i.e. on 01-12-2016 and the said enquiry is still pending, which stands vitiated on account of delay according to Applicant. The Applicant claims full salary by way of subsistence allowance since enquiry is not concluded within six months from the date of suspension or from filing of charge sheet/memorandum. It is stated that in spite of his request, necessary documents are not supplied to him by the Enquiry Officer to prepare his defense.

4. It is stated that Ordinance No.122 makes the provisions for suspension. However, Maharashtra Public Universities Act, 2016 is silent on the issue of payment of subsistence allowance during the period of suspension hence subsistence allowance should be paid equal to the salary even

during the period of suspension, As such payment of 50% for a period of six months and thereafter 75% by way of subsistence allowance is illegal and Applicant is entitled to get full salary.

5. On notice the Non-applicants by a common reply dt. 26-09-2019 resisted the grievance application by denying all the adverse averments, contentions and grounds raised therein. The provisions of Chapter VIII of Ordinance No.122 dealing with suspension, removal, dismissal and termination of the teachers is referred and particularly paragraph 43 & 44 thereof. It is, however, not disputed that since the enquiry for indulging in misconduct was contemplated against Applicant, he was put under suspension and thereafter departmental enquiry was undertaken against him, which is still pending. The payment of 50% for a period of six months and thereafter at the rate of 75% is not disputed. However, the liability to pay full salary as subsistence allowance is denied, which will be subject to final outcome of the pending inquiry.

6. It is stated that as per the provisions of para 44 of Ordinance No.122, the suspension can continue till termination of the departmental inquiry and issuance of final order and hence applicant is not entitled to any relief as claimed by him. It is stated that there is no provision in Ordinance No. 122 to indicate that the delinquent employee is entitled to claim 50% of subsistence

allowance for the first six months if put under suspension and thereafter 100% salary as claimed by the Applicant.

7. Reference to the provisions of the Maharashtra Civil Services (joining time, foreign service, payment during the suspension, dismissal and removal) Rules 1971 is also made and particularly rule 68 thereof.

8. According to the Non-applicants payment of 75% subsistence allowance is sufficient for bare sustenance of Applicant and he is not entitled to get 100% salary by way of subsistence allowance till conclusion of inquiry. The grievance petition is therefore, liable to be dismissed.

9. Today when the matter is called out for final hearing, heard the submissions advanced by the Applicants. Nobody appeared for the Non-applicants. The members of the Grievances Committee present have carefully perused the entire case record and held deliberations and discussed the issues involved in the matter including law point. This order is issued for and on behalf of Grievances Committee by the undersigned as its Chairman.

10. On the basis of the submissions made, the following point arises for consideration of the Grievances Committee. Whether the applicant is entitled to get 100% salary by way of subsistence allowance during the period of his suspension and there after till conclusion of the departmental proceeding / enquiry pending against him?

The Grievances Committee record its finding in the affirmative for the following reasons-

REASONS

11. It is not disputed that after rendering service for a period over 18 years a disciplinary proceeding on the charge of misconduct is initiated against the Applicant and he was put under suspension w.e.f. 07-06-2016 awaiting institution of a memorandum/ charge-sheet which was filed on 01-12-2016. He was thus under suspension for a period of 5 months 23 days before actual initiation of a disciplinary proceeding against him. It is, however, not disputed that after period of six months of suspension, the Applicant was paid 50% of the subsistence allowance by way of salary and thereafter 75%. It is stated that the enquiry is yet to be concluded. Since none of the parties have produced on record copy of the charge sheet/memorandum the exact nature of allegations made against the Applicant is not known. However, as stated earlier, it is obvious that the Applicant is facing a charge/of misconduct while in service.

12. It is obvious that chapter VII of Ordinance No. 122 makes elaborate provisions under the caption "Conduct, Discipline and Appeals In Relation To Disciplinary Proceeding Against The Teaching And Non-teaching Staff Of The Affiliated Colleges". Further chapter VIII deals with suspension, removal, dismissal, termination of the employees. For the purposes of resolution of controversy between the parties in this proceeding, we are concerned mainly with the provisions of para 44, 46 and 47 of Ordinance No.122 which are reproduced here for ready reference-

Para 44 - "If the competent authority finds that the nature of the act under 1,2,3 or 4 of paragraph 43 alleged is so serious as not to allow the employee to continue his work, an order suspending him may be passed and the person shall continue to remain under suspension till a decision of the departmental enquiry or till such period as the competent authority deems fit. During the period of suspension, the employee will be entitled to a subsistence allowance at an amount equal to half the basic pay on the day of suspension and allowances as admissible on that."

Para 46 : If as a result of enquiry the employee is not found guilty of misconduct, then the employee shall be reinstated and he shall be entitled to his normal full salary and allowances for the period of suspension, subject to adjustment of the subsistence allowance paid to him during

the period of suspension, If, however, the employee is found guilty partially, but is retained in service, the period of suspension and his pay and allowances may be decided by the competent authority in each and every case. In case a teacher is found not guilty and the authorities decide not to reinstate him he will be entitled to one month's salary for every completed year of service, subject to a maximum amount of Rs. 10,000/-

Para 47 – "The Enquiring Authority shall be appointed by the Competent Authority. The enquiry shall be completed within a period of six months from the date of suspension. It shall not be open to the teacher to claim to examine any one as a witness except those who are in the employment of the university. He may however, produce other witnesses at his own cost, at the time and place specified by the Enquiring Authority.

The Enquiring Authority shall have the power to disallow any witness, if the evidence is not material to the enquiry".

13. It is obvious from record that on contemplation of a disciplinary action against the Applicant, he was first put under suspension on 07-06-2016 awaiting filing of a memorandum/charge sheet against him, which was filed on 01-12-2016. It is also obvious that immediately on suspension, 50% subsistence allowance is not paid to the Applicant till 02-11-2016 and thereafter only the applicant received arrears of 50% subsistence allowance for the period of suspension from 07-06-2016 to 06-12-2016. It is also obvious that enquiry is not completed within six months as per rules and hence vide another officer order dt. 19-01-2017 the Applicant was paid 75% subsistence allowance from 07-12-2016 and he continued to get the same even today, pending enquiry against him. On interrogation he stated that so far only one witness is examined by the department in the pending enquiry and further steps and formalities are yet to be completed. It is very surprising that the enquiry is pending since last about three years, which is clearly contrary to and is in violation of the provisions of Rule 47, although the enquiry is not vitiated on this ground alone.

14. It is obvious from perusal of the provisions of Ordinance No.122 that although the suspension can continue till a decision of departmental enquiry or till such period as the competent authority deems fit, it is expected that the enquiry should be completed within a period of six months from the period

of suspension or atleast from the date of filing memorandum/charge-sheet. This time limit is stipulated solely with a view to ensure that the teaching staff does not suffer any humiliation on account of continuance of suspension indefinitely and the main task of teaching is not thereby affected. However, as per para 44 of Ordinance No.122, it appears that discretion lies with the competent authority to extend the period of suspension which may last till termination of the enquiry. In the present case there is nothing on record from the side of the Non-applicants to show that after completion of six months period of suspension or on filing of the memorandum/charge-sheet against the Applicant, the competent authority reviewed the suspension and continued it for a specific period during pendency of the enquiry. On the contrary the Non-applicants simply released additional 25% subsistence allowance by way of salary from 07-12-2016. It is not known or made clear as to which provision permits extension of the period of suspension without reviewing it and on payment of 75% subsistence allowance.

15. Considering the material of record and relevant provisions of Ordinance No.122, the Grievances Committee is of the considered view that if the disciplinary proceeding could not be concluded within the statutory period of six months and in case the suspension is not reviewed, it is deemed to have been revoked and the delinquent employee will be entitled to get 100%

subsistence allowance by way of salary and even to join the duty pending enquiry, since it is not specifically prohibited by any rule.

In the present case, although Non-applicants released 75% subsistence allowance to the Applicant by way of salary to the Applicant, meaning thereby the balance 25% has been withheld without reviewing/extending the period of suspension. The Applicant is therefore, justified in seeking 100% subsistence allowance by way of salary and to join the duty.

17. From the above discussion, it is obvious that these stand taken by the Non-applicant that there is no provision in Ordinance No.122 regarding payment of subsistence allowance at the rate 50% for the first six months and thereafter 100%, seems to be redundant.

18. It is true that the Applicant being the teaching staff of the University, he is not governed by the provisions of the Maharashtra Civil Services (joining time, foreign service and payments during suspension, dismissal and removal) Rules 1971, which provisions are applicable to government employee only. As stated earlier the teaching staff of the university and affiliated colleges for the purposes of conduct of disciplinary proceeding on the charge of misconduct are governed by the provisions of Ordinance No.122 and particularly Para No. 44 to 47 thereof, which are relevant for the purposes of the present case.

19. In support of his contention that he is entitled to 100% subsistence allowance by way of salary if the enquiry is not completed within the statutory period of six months, the Applicant relied on a decision rendered by Hon'ble High Court of Bombay Bench at Nagpur in Writ Petition No. 3131 of 2011 Dhanjay Ambadas Dabhe v/s Citizen Education Society Nagpur and others decided on 07-03-2011. In that case the petitioner's termination was set aside by the Hon'ble University and College Tribunal. However, the Hon'ble Court on challenged to the said order by the management, permitted it to conduct the departmental enquiry from the stage at which it was found invalid, by continuing the petitioner under suspension and by paying him subsistence allowance as per Law. Thereafter aforesaid Writ Petition No. The said Writ Petition was filed claiming arrears of subsistence allowance from 01-04-2003 till date, with other consequential reliefs, in which it is contended that there is no specific provision governing payment of subsistence allowance after expiry of initial period of six months thereof and the petitioner is entitled for full salary. After considering the relevant provisions of the Ordinance No. 122, the Hon'ble High Court, while granting relief to the applicant held as under in paragraph 7 and 8 of the judgement dated 07-03-2011 as under-

Para 7 : Thus, in the light of these provision, it is apparent that the ordinance permits suspension for period of six

months and mandates completion of the departmental enquiry within that period. The payment of subsistence allowance at 50% of the basic is for said period of six months. There is no provision which enables the management to continue with suspension after the period stipulated for completion of enquiry is over, and there is no provision for its upward revision.

Para 8 : The judgement of Hon'ble Apex Court reported at AIR 1968 SC 800 (Balvantrao Ratilal Patel vrs State of Maharashtra), therefore, shall govern the controversy. In absence of provisions, after 6 months if the management still wants to continue the petitioner under suspension, it has to pay him full salary as subsistence allowance.

20. It is thus obvious that suspension after a stipulated period of six months, if continued without viewing it the Applicant will be entitled to get 100% subsistence allowance by way of salary from the date of suspension. The applicant is therefore, entitled to the relief sought in this behalf and the following operative order is passed.

21. a) The Grievance petition is partly allowed.
- b) The Non-applicants are directed to pay 50% balance amount of subsistence allowance by way of salary to the Applicant for six months for a of six months of suspension from 07-06-2016 to 06-12-

2016 and thereafter 25% balance amount of subsistence allowance by way of salary from 07-12-2016 till this date immediately and continue to pay the same till completion of enquiry which is still pending.

c) However, the above payment of balance amount of subsistence allowance by way of salary will be subject to final outcome of the enquiry and the order that may be passed by the Management/Disciplinary Authority on the report of the Enquiry Officer.

d) The annual increments due to the Applicant shall also be released pending enquiry against the Applicant. The benefits of VII Pay Commission be also released to him from 01-01-2016 and arrears thereof shall be settled and paid to him at the earliest.

e) The Applicant will be at liberty to approach the appropriate forum/authority in case this order is not complied within the reasonable time by taking legal recourse.

f) The prayer of the Applicant for grant of interest is, however, disallowed for the reason that he is getting subsistence allowance/salary without rendering any service although on account of default on the part of the Non-applicants to complete the

enquiry within the stipulated period of six months as per rules.

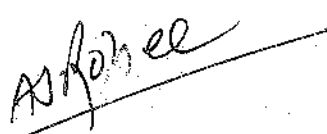
g) Since the Applicant will now be getting full salary and on interrogation with him, he stated that he is prepared to join duty, the Non-applicants are therefore, directed to allow the Applicant to join the post of Associate Professor and to resume the main job of teaching, in the interest of students and the University. The office order in this behalf be issued immediately by the Non-applicants and it be served on the Applicant.

h) Office to issue authenticate copy of this order to both the parties for taking appropriate steps in the matter.

i) In the facts and circumstances of the case, the parties are directed to bear this respective costs of this proceeding.

Nagpur.

Dated-31-10-2019


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