

Filed on - 10/08/2022
Order reserved on 16/03/2024
Order pronounced/ issued on - 04/05/2024.



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

Grievance Petition No. 15/2022

Applicant : Shri Babarao Vishwanath Sanap,
Grievance Plot No. 34, Pandurang Nagar,
Petitioner Behind SRPF Camp,
Hingna Road, Nagpur.

- VERSUS -

Non-Applicant:

1. Lokmanya Tilak Janakalyan
Shikshan Sanstha,
Near Water Tank,
Laxmi Nagar, Nagpur.
through its Secretary
2. Priyadarshini College of Engineering,
Near CRPF Campus,
Hingna Road, Nagpur.
through its Principal
3. Jyotiba College of Physical
Education,
Near CRPF Camp.,
Hingna Road, Nagpur.
through its Principal

Order Delivered on 04.05.2024

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:

2. The Applicant was appointed as an Accountant in the Non-Applicant No.2 College on 02.12.1991. He worked with Non-

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Applicant No. 2 till November, 1998, thereafter he was transferred to Priyadarshini Polytechnic College and he continued working as an Accountant. The Applicant was again transferred to Non-Applicant No. 2 College in ~~the~~ 2001 and lastly, he was transferred to Non-Applicant No. 3 College in same capacity of Accountant. It is submitted by the Applicant that all the colleges in which he was transferred are run by the Non-Applicant No. 1 Society. He was never paid the salary as per the recommendations of Pay Commissions.

3. It is stated by the Applicant that the Non-Applicant College is affiliated to Rashtrasant Tukadoji Maharaj Nagpur University as per the provisions of Maharashtra Universities Act, 1994 and the provisions of affiliated colleges Standard Code (terms and conditions of services of non-teaching employees) Rules 1984 were framed and as per the provisions, the Applicant is entitled to the protections and benefits which are available to him and the Non-Applicants have to comply with the provisions of law including pay scales.

4. It is submitted by the Applicant that he has been retired on 31.05.2017 after completing the total service of 26 years. But he has not been paid the salary as per the recommendations of the Pay Commissions. It is submitted by the Applicant that he was a full-time non-teaching employee appointed on the scale of pay and the post of Accountant falls in category-III under Standard Code Rules-1984.

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5. It is further submitted by the Applicant that Govt. of Maharashtra framed the Maharashtra Non-Agricultural Universities and Affiliated Colleges Standard Code (terms and conditions of service of non-teaching employees) Rules-1984 and the Rules of pay are made enforceable by Notification No. NGC.1288/1418/UNI-IV issued by the Govt. of Maharashtra through Education and Employment Department dated 27th July, 1989.
6. It is further submitted by the Applicant that as per the judgement of Hon'ble Apex Court in the case of Secretary, Mahatma Gandhi Mission & Another V/S Bhartiya Kamgar Sena & Others reported in (2017) (IV) SCC 449), it is held that whether the college is aided or not, immaterial and college are required to pay the salary to the employees as per the recommendations of Pay Commissions.
7. The Applicant has approached to direct the Non-Applicants to fix the pay of the Applicant in the appropriate pay scale and to pay arrears after fixation and further prayed to direct the Non-Applicants to pay the arrears as per the pay scale applicable to the post of Accountant as prescribed by the University and the UGC as per the recommendations of 6th & 7th Pay Commissions and also claimed the cost.
8. The Non-Applicant No.3 College resisted the claim of the Applicant by filing reply dated 12.10.2022. It is submitted that Applicant was appointed as an Ad-hoc employee against the non-

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advertised and non-sanctioned post and the appointment of the Applicant was never in some specific college affiliated to the University and on the date of initial appointment of the Applicant, the institute was governed by the trust Lokmanya Tilak Jankalyan Shikshan Sanstha and the Applicant on the date of appointment was not eligible for seeking any regular appointment and his name was not also recommended by the District Social Welfare Officer under the Standard Code Rules 1984 and the appointment granted to the applicant was purely Ad-hoc in nature and he was paid the salary as agreed between himself and the management of the trust. And he was shifted from one workplace to another, depending upon work exigency and it is further submitted that Applicant being an Ad-hoc appointee could not continue till the age of 60 and he was relieved on 31.05.2017 and submitted that the petition be dismissed.

9. The Non-Applicant No.2 College resisted the claim of the Applicant by filing reply dated 03.02.2023. It is submitted by the Non-Applicant No. 2 that the Applicant was never as an approved and regular employee and his services were purely on Ad-hoc basis on non-sanctioned post. And it is submitted that the advertisement was not issued for full time appointment and the Applicant is required to prove that he was appointed as per prescribed post as per necessary advertisement indicating the clear vacant post and the nature of appointment, constitution of Selection Committee,


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recommendations of the Applicant by the said Committee and further as regard the appointment order issued in the prescribed format thereby confirming the services of the Applicant as a full time employee in the institute and it is submitted that the Applicant has not placed any document. It is submitted that the Applicant has filed the instant proceeding after delay of 5 years and it is further submitted that the Applicant has filed other such proceedings before the various authorities to cause harassment to the management and the petition be dismissed.

10. 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 Applicant was a regular employee in the institution of the Non-Applicants?	Yes.
(ii) Whether the Applicant is entitled for pay scale to him as per revised pay scale as recommended by the Pay Commission with the arrears of difference of salary and other benefits?	Applicant is entitled for revised pay scale with other benefits as per recommendation of 6 th Pay Commission from 01.01.2006 till his retirement i.e. 31.05.2017
(iii) What Order?	As per order given below.

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REASONS

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

11. The present Grievance Petition is filed by the Applicant on 12.08.2022, after his retirement from the service of the Non-Applicants on dated 31.05.2017 along with the application for condonation of delay and by order dated 17.06.2023 passed by this Committee, the delay was condoned for filing the Grievance Petition.

12. In the present case the Applicant has claimed the fixation of his salary as per the revised pay scale recommended by 6th & 7th Pay Commission and the Applicant has come forward with the contention that he was a regular employee of the Non-Applicant institution and continuously served on the post of Accountant for a period of 26 years i.e. from 02.12.1991 to 31.05.2017. The Non-Applicants have come forward with the case that the Applicant was appointed on Ad-hoc basis and he was not a confirmed employee of the Non-Applicants' institution and therefore, the Non-Applicants have opposed the claim of the Applicant. The Applicants and Non-Applicants both have made their respective submissions in support of their contention. In the facts and circumstances of the dispute involved, the important aspect which needs to be considered as to whether the Applicant was a regular employee of the Non-Applicants' institution till his retirement on dated 31.05.2017.

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Therefore, in order to ascertain as to whether the Applicant was a regular employee, it is necessary to consider the relevant factors.

13. So far as the continuity of the service of the Applicant with the Non-Applicants, it is an admitted fact that services of the Applicant as an Accountant i.e. a non-teaching staff was without any break in the service from 02.12.1991 till 31.05.2017 and undisputedly, the Applicant had completed total service of 26 years with the Non-Applicants.

The Applicant has filed the copy of the Service Book and the entry of the Service Book shows that he was appointed as an Accountant from 02.12.1991 and even the entry shows that his post was permanent and such entry was duly verified by the Principal of the college. The entries made in the Service Book also shows that the Applicant was given Annual Increments & Allowances. The entries also shows that from time to time he was transferred in the colleges run by the institution. The Applicant has also filed the copies of Salary Certificates, copy of Joining Report and on perusal of these certificates nowhere it was mentioned that the Applicant was working as an Ad-hoc employee. The Applicant has also filed the copy of statement issued by the Principal of the Non-Applicants college showing the details of regular non-teaching staff who are in regular scale and it shows that the Applicant was working as an Accountant since 02.12.1991 and the statement was issued in the month of October-1997 by the Principal of the Non-Applicants

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College. The Applicant has also filed the copy of judgement dated 23.03.2023 delivered in PGA Application No. 01/2018 by the Judge, first Labour Court, Nagpur under the Payment of Gratuity Act and as per the judgement, the Non-Applicants were directed to pay the gratuity amount with interest to the Applicant. And it is observed in the judgement that the Applicant had completed 26 years service in the employment of the Non-Applicants. Therefore, considering these relevant factors, the Committee has come to the conclusion that the Applicant was a regular employee of the Non-Applicants.

14. So far as the claim of the Applicant regarding the payment of salary as per revised pay scale as recommended by the 6th & 7th Pay Commission is concerned, admittedly, the Applicant is a non-teaching staff as he was working as an Accountant with the Non-applicants. Hon'ble Bombay High Court, Aurangabad Bench has decided the Writ Petition No. 11259 of 2017 "Vinayak Laxmnanrao Gadhekar and others V/S State of Maharashtra and others" and in the said judgment, Hon'ble High Court has mentioned that "*the State Govt. had framed Maharashtra Non-Agricultural Universities and affiliated college Standard Code (revised pay scale of Non-Teaching Employees) Rules, 2009 prescribing pay scale as per the recommendation of 6th Pay Commission. Rules were framed in accordance with the powers conferred under Maharashtra Universities Act and the petitioners being employees of Non-Teaching staff serving in affiliated college are governed by such rules and thus their salaries and pay allowances should be in compliance with said*

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rules. Notification had also been accordingly issued" and by the said Judgment, Hon'ble High Court had directed the respondent management institution to implement the pay scales prescribed by 6th Pay Commission as adopted by State of Maharashtra w.e.f. 1st January, 2006 and pay the benefits accordingly to the petitioners/non-teaching staff.

15. 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) at paragraph No. 80, "*Therefore, we see no justification in excluding the Non-Teaching Employees of the un-aided educational institutions while extending the benefit of the revised pay scale to the non-teaching employees of the aided educational institutions. Such a classification, in our opinion, is clearly violative of Article 14 of the Constitution of India*". Therefore, it is clear that the benefits as per revised pay scale recommended by 6th Pay Commission are to be given to the non-teaching staff of the un-aided institution which are affiliated to the University.

16. In the Present case so far as the Applicant's claim for arrears of difference as per the revised pay scale as recommended by the 6th Pay Commission w.e.f. 01.01.2016 is concerned. The Applicant is entitled for revised pay scale from 01.01.2006 till 31.12.2015. Though the Applicant has claimed the revised pay scale as per the recommendations of 7th Pay Commission from

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01.01.2016 till his retirement i.e. 31.05.2017. But as the Applicant is non-teaching staff and he was retired on 31.05.2017, therefore, the Applicant is not entitled for receiving the benefits of revised pay scale as per 7th Pay Commission. Because as per Maharashtra Govt. Resolution dated 10.12.2020, revision of pay scale as per the recommendations of 7th Pay Commission is made effective to the non-teaching staff from 01.11.2020 for monetary benefits to them i.e. non-teaching staff. Therefore, Applicant is not entitled to claim the revised pay scale as per 7th Pay Commission and in view of the reason as discussed above, the Applicant is entitled for difference of salary and allowances as per the recommendations of 6th Pay Commission from 01.01.2006 till his retirement i.e. 31.05.2017. Therefore, the Committee has recorded its findings to Point No. (i) & (ii) accordingly.

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

- (i) The Applicant is entitled for the revised pay scale with other benefits as per the recommendations of 6th Pay Commission from 01.01.2006 till his retirement i.e. 31.05.2017.
- (ii) The Non-Applicants shall calculate the difference of pay/salary and other benefits, for which the Applicant is entitled as per the recommendations of 6th Pay Commission from 01.01.2006 till his retirement dated 31.05.2017 and


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release the payment of difference in favour of the Applicant within four months from the date of this order.

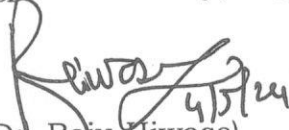
- (iii) If the Non-Applicants fails to release the payment as mentioned above to the Applicant within the period of four months, the Non-Applicants shall be liable to pay interest @ 8% per annum on unpaid amount from the date of this order.

Nagpur.

Dated: 04/05/2024.


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(Dr. Pandurang S. Dange)
Member, Grievances Committee,
RTM Nagpur University, Nagpur


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


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


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


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