

Filed on - 26-05-2017
 Order reserved on 16-10-2021
 Order pronounced/ issued on - 24-11-2021
 Duration-- 4 Years, 05 Month, 28 Days.



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

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

Grievance Petition No. 01/2019

Applicant : Dr. Rajesh Manikraoji Naik,
Grievance Plot No. 52/5, Shivaji Nagar,
Petitioner Near Ganesh Temple,
 Chitnavispura, Mahal,
 NAGPUR-440023.

- VERSUS -

Non-Applicant/
Respondent : 1. Renuka College,
 Near Bank of India,
 Nagpur through its Principal.
 2. Renuka Shikshan Prasarak
 Mandal, Dr. Ambedkar Nagar,
 Dharampeh, Nagpur through
 its Secretary

ORDER

(Delivered on 24-11-2021)

1. This is the second round of litigation on remand of the matter by the Hon'ble High Court of Bombay Bench at Nagpur vide order dated 02.09.2021 in Writ Petition No. 1053/2020 filed by the Non-Applicants.

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2. In this case the Applicant seeks the following reliefs as per prayer clause


"In view of the above said facts and circumstances it is most respectfully prayed before this Hon'ble Grievances Committee to direct the Respondent No. 1 & 2 to pay my salary from 20.08.2014 till 16.08.2016 which is Rs. 11,09,993/- with penal interest."

3. Initially when the Applicant approached this forum with the present Grievance Petition on 26.05.2017, the Registrar, RTM Nagpur University (who also happens to be the Ex-Officio Member of this Grievances Committee) declined to accept and register the grievance on the ground that the day on which the Applicant approached this forum, was no more in service, since he was terminated during probationary period and hence the relationship of employer and employee ceased to exist and hence grievance does not lie. The Applicant then challenged the aforesaid administrative decision dated 13.06.2017 before the Hon'ble University & College Tribunal, Nagpur, which by order dated 08.02.2019 set aside the order dated 13.06.2017 and remanded the matter to this forum for consideration on merit. Thereafter, the present Grievance Petition was registered on 18.02.2019, although it was

initially filed on 26.05.2017 and notices were issued to the Non-Applicants.

4. After following due procedure and considering the pleadings of the parties and the material produced on record, this forum vide order dated 10.10.2019 allowed the Grievance Petition and granted the necessary relief to the Applicant, except that of the interest on the ground that the claim is being partly allowed.

5. Aggrieved by the previous order dated 10.10.2019 of this forum, the Non-Applicants approached the Hon'ble High Court of Bombay Bench at Nagpur in the above referred Writ Petition No. 1053/2020, in which the matter is remanded for fresh consideration. The present Grievance Petition was then taken up for fresh consideration and notices were issued to both the parties. The record shows that the Hon'ble High Court remanded the matter only on the ground that the previous impugned order dated 10.10.2019 is signed by the Chairman of this Grievance Petition alone and not by the other members of the Grievances Committee who were present at the time when the matter was heard finally.




6. This is how the matter is again required to be heard and decided on merit, on the same set of pleadings filed by the parties earlier, since no additional pleadings are filed by them after remand, obviously for the reason that they have not sought liberty of the Hon'ble High Court in Writ Petition for the same cause and Writ Petition is decided only on one ground referred above. However, since the matter is remanded it has to be decided afresh after hearing both the parties. As such, the Grievances Committee has to take fresh decision on same set of pleadings, which are already on record. Since the matter is to be considered afresh, it is necessary to mention the facts of the case in nut shell.

7. It is undisputed that the Applicant was appointed as Assistant Professor in Commerce in Non-Applciant No. 1 College run by Non-Applciant No. 2 vide appointment order dated 20.08.2014, which was duly approved by the R.T.M. Nagpur University. However, while the Applicant was still undergoing probationary period of two years, the Management terminated him from service with effect from 16.08.2016 on certain allegations. The Applicant challenged the said Order of termination before the Hon'ble University and College Tribunal, Nagpur, which is

separate issue not directly connected with the present Grievance Petition, which relates to non-payment of salary to the Applicant for the services rendered by him from 20.08.2014 to 16.08.2016. The fact remains that the Applicant was no more in service of the Non-Applicants, when he initially approached this forum on 26.05.2017.

8. In the Grievance petition it is alleged that the Non-Applicants did not release full salary to the Applicant as per 6th Pay Commission. By way of additional pleadings dated 26.06.2019, he prayed for grant of salary as per 7th Pay Commission with effect from 01.01.2016 till 16.08.2016.

9. After first remand, notices were issued to the Non-applicants, who appeared and filed the reply. They have raised the preliminary objection regarding maintainability of the present Grievance Petition on the ground that the Applicant was already terminated, when the present grievance Petition was filed and hence he being no longer a teacher then, he cannot file grievance regarding alleged non-payment of salary to him. It is also stated that even if it is held that the Grievance Petition is maintainable, still according to the Non-Applicants, the Applicant was paid



full salary as per 6th Pay Commission vide the Pay Roll maintained by the College which is duly signed by the Applicant and hence not due to him. The Applicant is, therefore, not entitled to any relief. It is also stated that the College is run on no grant basis and since it did not receive sufficient fees from the students, salary could not be paid in time. It is also stated that on termination of service relationship of employer and employee ceased to exist and for this reason also the Applicant is not entitled to any relief. The Grievance Petition is, therefore, liable to be rejected.

10. The Applicant filed a rejoinder on 17.07.2019 by which preliminary objection raised is denied and he reiterated the grounds stated in the Grievance Petition regarding non-payment of full salary to him. According to Applicant although his signatures are obtained on the Pay Roll, payment of full amount is not made to him and the amount credited in his salary account only is received by him. According to him the Non-Applicants indulged in harassing the Applicant, who is facing financial crises for non-payment of legitimate dues/salary from 20.08.2014 to 16.08.2016 (date on which the termination order is served on him).

11. In support of his contentions, Applicant placed reliance on the order dated 20.01.2009 passed by Hon'ble High Court of Bombay, Bench at Nagpur in Writ Petition No. 2156, 2157, 2158 and 2159 of 2008 Shri Saibaba Gramin vikash Sanstha, Gadchiroli and Another Vs. Rashtrasant Tukadoji Maharaj Nagpur University and Others, in which the contention of the College/Management is rejected and held that the College/Management is not justified on non-payment of pending salary or arrears thereof on the ground that the fees paid by the students is not sufficient to meet the expenditure. In another case relied upon by the Applicant, the Hon'ble High Court of Bombay, Bench at Nagpur in Mrs. Vaishali V. Chandekar and Others Vs. State of Maharashtra and Others, decided on 09.09.1997, 1998(1) Bombay Case Reporter 227, in which it is held that it is the statutory obligation of the educational institution to pay its employee as per rules. It is stated that this Grievances Committee also in Petition No. 7/2016 in the matter of Vaibhav College of Education, Wardha filed by Dr. Ravindra Gulabrao Bhende decided on 13.03.2018 raising the same grievance of non-payment of salary and relying on the aforesaid law laid down by the Hon'ble High

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Court of Bombay, granted necessary relief to the Applicants herein. The Applicant is, therefore, entitled to the relief claimed on the ground of parity.

12. After remand full opportunity is given to both the parties to put up their case based on the pleadings already available on record. In pursuance thereof the Applicant filed a submission claiming 18% compound interest on the arrears of salary and also relied on a decision dated 10.02.2020 of the Hon'ble High Court in State of U.P. & Others Vs. Virendra Kumar & Others in special Leave Petition Nos. 4802 - 4803 of 2019, and also that of Central Administration Tribunal, Allahabad Bench Allahabad dated 09.07.2019 in Original Application No. 330 of 2016 Ram Garah Singh Vs. Union of India through General Manager Diesel Rail Engine Factory, Varanasi and others. On behalf of Non-Applicants also written notes of arguments are filed reiterating the grounds stated in their reply. Both the parties were also permitted to file additional statements regarding due drawn and difference of salary.

13. The members of the Grievances Committee present have heard the Applicant and Smt. Manjusha Gedam, Secretary of the Society on behalf of the Non-Applicants on 16.10.2021. The matter was then closed for orders.

14. The members of the Grievances Committee present have carefully gone through the entire case record and the documents/material produced on record by them in support of their rival contentions.
15. We have discussed the issues involved in the matter and came to unanimous conclusion. Thereupon the Chairman of the Grievances Committee authored the present order and circulated it on e-mail to the members of the Grievances Committee who attended hearing of the case for consideration and approval. Considering their suggestions/ modifications, the final draft is prepared which is duly approved by the members. It was then placed for pronouncement today in presence of the parties.
16. On the basis of the pleadings of the parties, the material produced on record and submissions made by them before this Grievances Committee, the following points arise for consideration. We have recorded our findings thereon as under, for the reasons that follow:-

<u>Sr.No.</u>	<u>Points</u>	<u>Finding</u>
1.	Whether this Grievances Committee lacks jurisdiction to consider the present Petition, based on the objections raised by the Non-Applicants?	No It has jurisdiction.

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2. Whether the Applicant is entitled to the relief sought regarding payment of full salary to him as per 6th Pay Commission from the date of his appointment i.e. 20.08.2014 till 31.12.2015 and thereafter as per 7th Pay Commission from 01.01.2016 to 16.8.2016 the date of his termination from service? Yes, to the extent Rs. 7,06,631/-
3. Whether the Applicant is entitled to get 18% compound interest on the arrears of salary as claimed? No However, entitled to 9% interest per annum on the arrears.
4. What order? As per concluding para.

REASONS

17. As to Point No. 1:

So far as the objection raised regarding jurisdiction of this Grievances Committee/tenability of the Grievance Petition on the ground that he ceased to be employee when he approached this forum is concerned, it is obvious that the matter is elaborately considered by the Hon'ble University and College Tribunal in its Order dated 08.02.2019 in Appeal No. N-12/2017 filed by the Applicant. The aforesaid finding rejecting the contention of the Non-Applicants is binding on this forum, especially

when the Non-Applicants have not challenged the said decision. As such this Grievances Committee will not be justified to take a different view, especially when no contrary view taken by higher forum i.e. Hon'ble Bombay High Court by the Hon'ble Supreme Court has ever brought to our notice by the Non-Applicants. The position is, therefore, very clear that even after termination of service & thereby ceasation of relationship of employer and employee, the later still will have a legal right to claim the unpaid salary for the period he actually rendered service till his termination. Since no limitation is prescribed under the Act of 2016 or by any Statute, Ordinance, Rules, Regulations, Notification or Directions issued by the University, to approach this Grievances Committee from the date of accrual of the cause of action, which in the present case is the date of termination of service for claiming the arrears of full salary, there is no legal bar, to entertain the present grievance application. Further cause of action to claim salary is continuous and occurred on completion of each month to claim salary. Even otherwise, the Applicant approached this Forum on 26.05.2017 i.e. within one year from 16.08.2016 date of termination of service and hence it cannot be said that this Grievances Committee has no jurisdiction nor the present Grievance

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Petition is barred by limitation or is untenable on the grounds alleged by Non-Applicants.

18. On behalf of the Non-Applicants, it is stated that since the claim of salary including the arrears relates to the period prior to coming into force of the Maharashtra Public Universities Act, 2016 and when the old Maharashtra Universities Act, 1994 was in force, the present Grievance Petition is not maintainable under the provisions of Section 79 of the new Act. We find that this statement is devoid of any substance since on coming into force of the new Act of 2016, the old Act of 1994 stands repealed and hence whatever grievance then exists when the new act came into force w.e.f. 17.1.2017, it can't be said that the Grievances does not lie under the new Act. As such the present Grievance Petition having been filed on 26.05.2017 i.e. after coming into force of new Act of 2016, it cannot be said to be unsustainable/untenable in law on any pretext. This being so, the objection raised by the Non-Applicants in this behalf regarding maintainability of the present petition under the new Act of 2016 is devoid of any substance and hence it is overruled.

19. So far as another objection raised on behalf of Non-applicants, during the course of arguments that the

Grievance is not filed nor claim made during the subsistence of employment i.e. till Applicant's termination and hence it is not maintainable, like other objection raised, we do not give any force in this contention, since although the cause of action to claim the salary as per rules i.e. in accordance with 6th & 7th Pay Commission accrued from day to day i.e. it is continuing and since the Non-Applicants have shown some bonafides by making part payment of salary to the Applicant during the subsistence of service, no adverse inference can be drawn against him, simply because the present Grievance Petition has not been filed while the Applicant was in service. In this respect it cannot be forgotten that the Applicant was under probation of 2 years, during which he was terminated from service on certain allegations of misconduct, and on interrogation he stated that he made oral requests to the Non-Applicants to make full payment as per rules, although written notice not issued by him. Further it cannot be forgotten that during the probation and especially when the college is running on no grant basis, there is a hanging sword on the employees and threat of termination from service at any moment in the event they take any step against the Management, even by raising a legitimate claim. This being so, it cannot be said

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that only because the Grievance Petition is not filed while in service & the Applicant approached this forum only after termination of service, it cannot be said that the same is not maintainable and is liable to be dismissed. Point No. 1 is therefore, answered accordingly.

20. As to Point No. 2:

So far as the main grievance of the Applicant is concerned, according to him after joining the post of Assistant Professor on 20.08.2014 till he was terminated from service vide office order dated 12.08.2016 served/ received on 16.08.2016, he was not paid the salary as per his entitlement i.e. according to UGC Scale/6th Pay Commission for the period from 20.08.2014 to 31.12.2015 and as per 7th Pay Commission for the period from 01.01.2016 to 16.08.2016. According to him he was paid less amount i.e. his pay is not properly fixed and even grievance is made that on few occasions the Management obtained self drawn bank cheques from him and on its realization retained the amount of cheques from the amount of salary credited to his Bank Account.

21. In support of his contentions, the Applicant has given details of Salary Statement from August, 2014 (paid in September) to August 2016 (paid in September) and

also one months salary paid in September on his termination from service, indicating the amount deposited by the college in his bank account, the amount shown as per salary register and the amount deposited in his bank account, the amount to which he is entitled as per UGC Scale/ Government Resolutions issued by the Govt. of Maharashtra on implementation of 6th Pay Commission and the balance salary which is still due to him. This statement is filed by him along with the Grievance Petition as document No. 5. On interrogation he stated that he prepared said statement / chart manually on the basis of the quantum of salary paid to him. For the sake of convenience and ready reference photocopy of the said statement bearing his signature, is marked as Annexure-A. (One Page) The Applicant claims arrears on revision of pay scale on implementation of 6th and 7th Pay Commission. He was called upon to secure details from internet by logging the relevant website, as per the pay scale prescribed by 6th & 7th pay Commission. He accordingly obtained it from internet and placed on record as document No. 9. It is marked as Annexure-A-1 (Three Pages) for the sake of convenience and ready reference.

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22. As against this, according to the Non-applicants the entire amount as per his entitlement is paid to the Applicant and nothing is due to him and consequently false claim is raised by him. A statement showing salary paid by the college from 20.08.2014 to 16.08.2016 is annexed with their reply. For the sake of convenience and ready reference, and for perusal and consideration, photocopy of the said statement is marked as Annexure-B. (One Page) This shows amount of salary paid to Applicant in cash and credited in Bank Account, according to Non-Applicants. They stated that this statement has been prepared manually based on office record and according to it, Applicant is entitled to receive Rs. 6765/- only as difference in salary.

23. In addition to Annexure-B, another statement giving the details of the basic pay, grade pay, dearness allowance, house rent allowance, city living allowance, transportation allowance admissible and deductions made towards the professor tax and income tax per month is also filed, by the Non-Applicants. The said statement is marked as Annexure-C (Two Pages) to refer it conveniently. It is obvious that statement Annexure-B is summary of Annexure-C. On interrogation with the

Non-Applicants they submitted that they have prepared Annexure B and C manually on the basis of official record of the college. Subsequently they have also filed statement obtained from inter which shows details of pay but as per un-revised pay, without including 5 increments to which Applicant is entitled under the Rules, he being Ph.D. holder, from the date of joining the service i.e. 20.08.2014.

24. Beside the above documents, the Applicant has produced on record photocopy of statement of Bank accounts. On behalf of Non-Applicants also photo-copies of the extract of Salary Register maintained by College, Form No. 16 given to the Applicant for submission of Income Tax Return and other documents are produced on record in support of their contentions.

25. The statement Annexure-A shows that according to the Applicant, he is entitled to receive Rs. 11,09,993/- from the Non-Applicants for the period in question as balance of unpaid salary. Whereas, perusal of statement Annexure-B reveals that Rs. 10,82,748/- is paid to the Applicant according to his entitlement for the period of service rendered by him and hence nothing is due to him.

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In order to resolve the controversy, we have to compare the above referred two statement in the light of other documents produced on record.

26. On comparative study of the aforesaid statements, it can safely be said that for the month of August 2014 in which the Applicant rendered service on regular basis from 20.08.2014 to 31.08.2014, according to him he was entitled to get Rs. 22,859/- as total salary as per 6th Pay Commission, without additional increments he being Ph.D. holder. Whereas according to Non-Applicants they have released total salary of Rs. 3340/- through Bank Cheque & Rs. 10859/- in cash in all Rs. 14,199/- and hence nothing is due to him. It is obvious from record that the Applicant was entitled to pay scale of Rs. 16,500+Grade Pay of Rs. 6000/- for the post of Assistant Professor, which is as per the 6th Pay Commission from the month of August 2014 and Annual increment of Rs. 650/- in the month of July 2015 and July 2016, when it became due. It is obvious that as per the statements Annexure-B and C full salary is not paid to Applicant as per 6th Pay Commission. They however, admitted that the salary is paid without adding Ph.D. increments as stated in Col. No. 2 of statement Annexure-B filed by

them and it is as per pay scale prescribed by 6th Pay Commission. However, this is not correctly stated. This is so, because it is revealed on careful consideration of the documents produced on record that from the time of his service on regular basis, the Applicant being Ph.D. holder as per the recommendations of 6th Pay Commission and the notification issued by the State Government / University, he was entitled to five additional increments from the date of joining, which are to be added in the basic pay and D.A. thereon. It is obvious that this has not been done by the Non-Applicants so also pay as per 6th Pay Commission is not considered or paid to the Applicant and consequently there is difference in the total emoluments to be received by the Applicant.

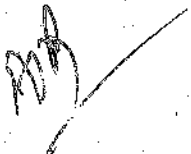
27. On perusal of record, it is needless to say that the Non-Applicants will have to revise/modify the salary as per recommendations of 6th Pay Commission for the period from 20.08.2014 to 31.05.2016 and later on as per 7th Pay Commission for the period from 01.01.2016 to 16.08.2016 as adopted by Government/ University for college teaching staff. As such necessary revision/modification of monthly salary will have to be done as per statement Annexure-A and A-1 filed by

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Applicant in which he mentioned actual salary to be received inclusive of additional increments as per 6th Pay Commission and obtained the said statement by downloading it from internet as stated earlier, which cannot be denied.

28. During the course of arguments, the Non-Applicants stated that as per the statement Annexure-B and C i.e. for the period from August 2014 to May 2015 some amount as shown in column No. 7 of the statement Annexure-B (column 14 of Annexure-C) is paid to the Applicant in cash which he has denied. Similarly, some amount is shown to have been paid to the Applicant for the aforesaid period by crediting it in his Bank account as shown in column No. 6 of the Statement Annexure-B (column 13 of the statement Annexure-C), which the Applicant has rightly accepted. When specifically asked, what was the difficulty in crediting the entire amount due per month to which the Applicant was entitled as salary in his bank account or by issuing A/C Payee cheques to him thereof instead of crediting part of amount and showing payment of substantial amount in cash, no justifiable explanation/reason is given by the Non-Applicants except that the college was receiving no salary grant. On the contrary, the Non-Applicants simply stated

that total amount which was due to the Applicant according to them is entered in the Salary Register for the month of August 2014 to September 2016 which is inclusive of payment made by cheque and in cash and each entry is countersigned by him on a revenue stamp according to Non-Applicants. This follows that the entire amount mentioned therein is received by the Applicant (partly by crediting in his salary account by A/C Payee cheque and remaining by cash) for the period from August 2014 to February 2015. The Applicant has specifically denied the fact of payment of portion of salary to him in cash. Whereas according to Non-Applicants, the amount shown as per salary Register in Annexure-B in Col. No. 6 is by bank cheque and shown in col No. 7 is paid in cash and in col No. 1 total salary for the period from August-2014 to May 2015 is shown. Since denied, Applicant further stated that he made complaints to the University, Joint Director of Higher Education and office bearers of Society regarding alleged payment of salary in cash and reiterating that. He was not paid any amount in cash and his signatures only are obtained. This shows his bonafides, especially when no plausible explanation is forthcoming from the Non-Applicants for making part payment in cash and remaining by cheque on few



occasions. It is difficult to rely on the contention of Non-Applicants in this behalf. Only because salary register bears his signatures and total amount of salary, which he has reasonably and reliably explained, it is difficult to disbelieve him in this behalf. As such since the Non-Applicants have not paid entire salary to Applicant to which he was entitled, even according to them by Bank cheque, adverse inference will have to be drawn against them holding that there is something fishy in the matter.

29. In order to remove any doubt about payment of portion of salary to the Applicant in cash, vide Order dated 14.09.2019 the Non-Applicants were called upon to produce the original Cash Book, Vouchers, Bank Statements and Audited Statements of Accounts. Accordingly, on 03.10.2019 the Non-Applicants have produced Cash Book of the years 2014, 2015 and 2016. We have carefully perused it. Although there is reference about payment of amount to Applicant on different dates in the month of August 2014 to May 2015 in cash, separate vouchers are not produced duly bearing the endorsement of the Applicant for having received the said cash amount. As stated earlier the Non-Applicants rely on the endorsement made by the Applicants on the Salary Register for the above months. When entry is made in

the Cash Book regarding payment made, there should be separate vouchers obtained from the concerned for having received the said amount. In absence of separate vouchers, it is difficult to believe that any payment is in fact made to the Applicant as alleged by the Non-Applicants, beside the one by cheque credited to his Bank Account, and it is simply shown as entered in Cash Book. Similarly, although extract of Audited Statement of Accounts in the form of Balance Sheet, Income and Expenditure Account, Receipt and Payment Account for the year ending on 31st March, 2015 and 31st March, 2016 bearing signature of the Chartered Accountant without mentioning any date are produced on record giving details, it cannot be gathered from it that any payment has been made to the Applicant in cash, since individual entries are not given therein and total amount of salary paid to all the staff members is given so also the receipts on various counts and other expenses made. In view of above, from perusal of the aforesaid extract of Audited Statements it cannot be gathered that the Non-Applicants have paid any amount in cash, out of the gross salary to the Applicant for the period from August 2014 to May 2015 as alleged. It is, therefore, difficult to



believe Non-Applicants' contention in this behalf and the Grievances Committee, therefore, ~~is~~ the same.

30. In this respect, as stated earlier the Applicant has specifically denied the fact that any amount has been paid or received by him in cash for the aforesaid period from August 2014 to May 2015, although he has rightly admitted the fact that the amount shown in column 6 of the statement Annexure-B only is credited to his bank account as stated earlier. This follows that two conclusions can be drawn to the effect that the amount is not at all paid in cash and is retained by the college, although endorsement of the Applicant is obtained in the Salary Register for having received the said amount or that after making payment of the said amount to the Applicant in cash the said amount has been taken back by the college since no reason is given for failing to credit entire amount due in the Bank account of Applicant. This being so the Applicant is entitled to receive the amount shown in column No. 7 of Annexure-B, which is alleged to have been paid by the college to the Applicant in cash. The amount shown could have been credited to his bank account and it is not known why about 1/3rd of total emoluments only is credited to his bank account for

all these months from August 2014 to May 2015. Hence, it can safely be inferred that the amount shown as paid in cash has never been in fact paid to Applicant and it is retained by the Non-Applicants. The Applicant is, therefore, entitled to receive the aforesaid amount in addition to proper fixation of his pay by including the five additional increments in basic pay he being Ph.D. holder, from the date of his initial appointment i.e. at entry level as per the provisions of 6th Pay Commission.

31. The statement Annexure-B from June 2015 till August 2016, however, shows that no amount has been paid to the Applicant in cash and the entire amount due (without addition of increments as Ph.D. holder) has been credited in his bank account. It appears that the Non-Applicants subsequently realized their mistake of crediting part of amount of salary by bank cheque and remaining in cash and hence they discontinued old practice. This follows that according to Non-Applicants nothing is due from them, atleast for the period mentioned above. In this respect on interrogation, the Applicant stated that the statement Annexure-A includes the salary as per 6th Pay Commission which is inclusive of additional increments for his Ph.D status as shown in

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Col No. 6 thereof. He submitted separate sheet claiming salary as per Pay Commission, for the period from 01.01.2016 to 31.03.2016 date of his termination from service, and arrears to be paid, vide Annexure-A-2, as stated earlier.

32. To proceed further, the Applicant has vehemently contented that although the entire amount of salary for the month of March-2015 to August-2016 has been credited to his bank account, on the same day of crediting the amount, the Non-Applicants have compelled and pressurized him to issue self drawn Bank cheques for different amount out of the said amount deposited, as shown in column No. 5 of statement Annexure-A and on encashment of the said cheques the amount shown therein at Sr. No. 8 to 21 viz. Rs. 61320, 32440, 32440, 29340, 31240, 31240, 31240, 31240, 30040, 28740, 28750, 26875, 31240 and 31240 for the month of March 2015 to April 2016 has been retained by the college. As stated earlier, according to the Non-Applicants, the Applicant was paid some amount in cash as mentioned in column No. 7 of the statement Annexure-B from August 2014 to May 2015 (which is disbelieved) and thereafter from June 2015 nothing has been paid to him

in cash and the entire amount shown in column No. 6 of the statement Annexure-B till August 2016 has been credited to his Bank account, which fact is not disputed by Applicant. The Non-Applicants have, however, denied the fact of compelling and pressurizing the Applicant to issue self drawn cheques and some amount therefrom is retained by them on realization of cheques, as alleged by the Applicant. However, it is difficult to believe the contention of the Applicant in this behalf to the effect that he was compelled to issue a self drawn cheque in his name, he encashed it and then amount shown therein has been retained by the college, in absence of any corroborative evidence in this behalf. Had it been that the bearer cheques in the name of Secretary/ President of Society or Principal of College or any other employee of the college were issued by the Applicant on the same day of deposit of amount in his salary account and it was encashed and this was not on account of any private dealing between Applicant and bearer of cheques, then it could have been said that there is some truth in the contention of the Applicant. However, this has not happened. Further in this behalf it is not an isolated incident of retaining amount by Non-Applicants from self drawn cheque and in this behalf it appears that he did

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not make any police complaint nor Applicant seems to have approached in this behalf to any other authority. Hence, it is difficult to place reliance on the contentions of the Applicant and hence he is not justified in claiming /return of the amount of self drawn cheques referred above as shown in statement Annexure-A.

33. As stated earlier, since self drawn cheques in his name were drawn and issued and the amount shown therein was debited to his bank account as per statement, a logical inference can be drawn that he himself must have withdrawn / received the amount of cheques and none else. Normally when the bank cheque is drawn as self i.e. in the name of account holder the amount is paid to the account holder or to his authorized agent. It is not the case that amount is withdrawn under his authority by any other person. For this reason also, it is not possible to place reliance on the version of the Applicant that self drawn cheques as stated by him on various dates and of different amount for the period from March-2015 to April-2016, although were encashed by him, but the amount of these cheques has been collected/retained by Non-Applicants or by the college. Having been issued a self drawn cheque of a particular

amount, it can safely be said that the Applicant must have been aware about its consequences and it is difficult to believe that the amount shown in the self drawn cheque has been collected by the Non-Applicants or by any representative of the administration or having received the said amount, the Applicant was compelled to part with the amount of cheques under threats of termination from service as alleged by him.

34. This being so, it cannot be said that the Applicant is entitled to receive the entire amount as shown by him in column No.7 of statement Annexure-A, of course, as stated earlier he is entitled to receive five additional increments for the entire period from August 2014 to August 2016 after deducting the amount credited to his bank account as shown in column No, 3 of the statement Annexure-A and column No. 6 of the statement Annexure-B. Similarly the amount shown as paid in cash will have to be ignored and added to Applicants salary. However, amount shown by Applicant as retained by Non-applicants on encashment of self drawn cheques as mentioned in Sr.No. 8 to 21 of Annexure-A for the period from March 2015 to April 2016 will have to be ignored or not to be taken into consideration and he will not be



entitled to this amount, since that amount is already credited to his Bank Account.

35. It is also obvious from perusal of the statement Annexure-B that for the period from August 2014 to May 2015, no amount has been deducted towards TDS from the salary of the Applicant. However, from June 2015 onwards till August 2016 amount shown therein has been deducted as TDS. In support of this contention the copies of form 16 issued by the college administration to the Applicant for the period from 01.04.2015 to 31.03.2016 (Assessment Year 2016-17) marked as Annexure-D and for the period from 01.04.2016 to 31.03.2017 (Assessment Year 2017-18) marked as Annexure-E are produced on record by the Non-Applicants. We have carefully perused it. It is obvious that the Applicant is not entitled to refund of his amount, since it is the mandatory deduction and being responsibility of the employer to recover the tax at source and credit it to the Government. Since no tax has been deducted from the salary of August 2014 to May 2015, the same has been subsequently recovered and credited. Perusal of both the Forms No. 16 reveals that amount of Rs. 31,765/- and Rs. 14,000/- respectively has been

deducted and credited to the Government. Since this amount is already shown as deduction in the statement, no relief can be granted to the Applicant in this behalf, except his grievance that he has not been issued Form 16 for the period from April 2014 to May 2015 (Assessment Year 2015-16). The same can now be issued to the Applicant by the college administration (if not issued earlier), in order to facilitate him to submit the Income-Tax Return for the aforesaid Assessment Year, belatedly by crediting the penalty for the same, if not submitted by him earlier.

36. During the course of arguments, it is contended on behalf of the Non-Applicants that the college is being run on no grant basis and hence the payment of teaching and non-teaching staff is made out of the tuition fees collected from the students admitted to various courses. It is also contended that it is not possible for the Non-Applicants to make payment of dues as claimed by the Applicant as per 6th & 7th Pay Commission for want of sufficient funds. However, it is obvious that the Non-Applicants cannot escape the liability on the ground alleged by them.

37. In this respect, it may be mentioned here that it is the settled law that the educational institution cannot



deny liability of payment of salary to its employees, alleging gross of no recovery or less recovery of from the student's lack of other resources. In this case, we have come across the land mark decision rendered by the Hon'ble Supreme Court in case of Secretary Mahatma Gandhi Mission & Another V/S Bhartiya Kamdar Sena & Others (2017) 4 Supreme Court cases 449. It was a case under Maharashtra Universities Act, 1994 under Section 8(3) and the Rules of 2009 framed thereunder. In that case the non-teaching staff in unaided affiliated colleges were treated differently in respect of pay revision against their counterpart in aided colleges. This was held to be discriminatory and hence it is obvious that non-teaching staff of unaided colleges and affiliated colleges are also governed by the same pay scale and revision of pay from time to time on acceptance of the recommendations of the Pay Commissions by the Govt. The Applicant's case is fully governed under said decision. In the aforesaid case, it is further, held that Section 8(3) of the Maharashtra Universities Act, 1994 clearly authorizes the State Govt. to frame rules dealing with service conditions of the employees (both teaching and non-teaching) of various educational institutions. While exercising such powers, it is held that the State of Maharashtra drew artificial

distinction between aided and unaided educational institutions, which is not permissible.

38. In the aforesaid decision so far as fee structure is concerned and right of the educational institutions to calculate fees from the students and pay salary to its employees out of it, para 93 to 98 are worth quoting. The same are reproduced here for ready reference.

"93. Another submission of the appellants that is required to be dealt with is that since the appellant does not receive any financial aid from the State, calling upon the appellants to pay its employees in terms of the revised pay scales would be compelling them to perform in impossible task. The appellants submitted that their only source of revenue is the fee collected from the students. Their right to collect fee is regulated pursuant to judgements of this Court in coherence with T.M.A. Pai Foundation V. State of Karnataka and Islamic Academy of Education V. State of Karnataka. Therefore, if they are compelled to pay their staff higher salaries they would be without any financial resources as they do not receive any aid from the State.

94. On the other hand it is argued by the respondent that the determination of the fee structure and the amount of the fee that could be collected by the appellants from the students is made by the Fee Regulatory Committee and such a body is bound under law and does in fact take into account the various relevant factors in determining the fee structure. It is, therefore, submitted that it is always open to the managements to make an appropriate application before the Fee Regulatory Committee bringing all the relevant factor to the notice of the body

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competent to determine the fee structure and raise appropriate revenue.

95. At the outset we make it clear that at least insofar as non-teaching staff are concerned, the appellants have no excuse for making such a submission because in the earlier round of litigation the respondents non-teaching employees of the appellants, though succeeded both before the High Court and this Court in obtaining appropriate directions to the appellant and other authorities to revise the pay scales of the employees in tune with the Fifth Pay Commission, entered into a settlement dated 30-1-2006, the terms of which have already been taken note in this judgement at para 4.

96. Under the said agreement, the management agreed to revise the pay scales from time to time in tune with the revision of the pay scales of the employees of the State. Therefore, the submission of the management in this regard is liable to be rejected on the ground alone.

97. Even otherwise, if the appellants are obliged under law, as we have already come to the conclusion that they are in fact obliged, it is for the appellants to work out the remedies and find out the ways and means to meet the financial liability arising out of the obligation to pay the revised pay scales.

98. In the result, the appeals being devoid of merit are dismissed with no orders as to costs."

39. It is thus obvious from the above discussion that no legal grounds are made out by the Non-Applicants to deny the Applicant's claim for salary as per 6th & 7th Pay Commission or to escape their liability from payment thereof to the Applicant except the one which is

disallowed. Since the same has not been done and the Applicant was paid part of the salary, we declare that the Applicant is entitled to receive the difference in salary and its arrears on revision of pay scale as per 6th & 7th Pay Commission as stated & discussed above deducting the one allegedly retained by Non-Applicants on self drawn cheques by him in all to the extent of Rs. 706631/-, for the period from March-2015 to April-2016. Similarly, the Applicant is entitled to receive arrears on revision of salary as per 7th Pay Commission, to the extent of Rs. 78595/- as mentioned in statement Annexure-A-2, referred above.

40. During the course of arguments, the Applicant submitted document No. 9 marked as Annexure-A-1 as stated earlier, which is obtained by him from internet, giving details of Pay, Grade Pay, D.A., H.R.A., C.L.A. and Transport Allowance and it is stated that as per the revised pay of 6th Pay Commission for the period from August-2014 to August-2016, he is entitled to receive net arrears of Rs. 15,15,410/- Further, he has also obtained arrears statement on account of revision of pay as per 7th Pay Commission for the period from 01.01.2016 to September-2016 to the extent of Rs. 78,595/- as per Annexure-A-2. Based on the aforesaid statement, the

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Applicant stated that he is entitled to receive Rs. 15,15,410 + One Month's Salary on termination to the extent of Rs. 69067+ arrears 6th Pay Commission of Rs. 78,595 in all Rs. 16,63,072/-. Deducting amount of Salary already received to the extent of Rs. 4,29,989/-, he claims Rs. 12,33,083/- as net arrears alongwith 18% compound interest thereon.

41. As against this, on behalf of Non-Applicants two statements are produced on record giving details vide Annexure-A-3(Two Pages) and according to them the net arrears would be Rs. 2,51,502/-. The Non-Applicants have again submitted revised statement Annexure-A-4 (3 pages) alongwith letter dated 03.11.2021, according to which the net arrears is calculated to the extent of Rs.78,183 only. It is obvious that there is vast difference between two statements.

42. Careful scrutiny of the aforesaid statements would reveal that statement Annexure-A-1(3 pages) covers five increments to which the Applicant was entitled as Ph.D. holder from the date of joining and it also includes revision of pay as per 6th Pay Commission. However, as stated earlier as per the statement Annexure-A, the Applicant claims amount of Rs. 4,57,385/- for the period from March-2015 to April-2016 which is stated to have been

retained by the Non-Applicants on his self drawn cheques, is disbelieved, he is not entitled to this much amount.

Further as per the said statement one month's salary of September on termination of service to the extent of Rs. 2,26,000/- is already included in statement Annexure-1. As such this amount will have to be deducted from the total amount of arrears.

43. It is not possible to place reliance on the conditions of the Non-Applicants that the Applicant is not entitled to receive the amount exceeding Rs. 78,183/- or Rs. 2,51,502/- and hence it is not accepted. In view of above we find that the Applicant is entitled to receive Rs. 15,15,410/- as per 6th Pay Commission and Rs. 78,595 as per 7th Pay Commission in all Rs. 15,94,005/- and after deducting amount of Rs. 4,57,385/- as stated above, it comes to Rs. 11,36,620/-. Further, out of it since according to Applicant he already received salary to the extent of Rs. 4,29,989/-, this amount also will have to be deducted from the net amount of Rs. 11,36,620/-. Hence the net arrears comes to Rs. 7,06,631/- which amount includes all the arrears to be received as per 6th & 7th Pay Commission. Point No. 2 is, therefore, answered accordingly.

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As to Point No. 3:

44. It is the settled law that interest is liable to be paid by way of compensation for the delayed payment. In the present case, it is obvious that there is delay in making full payment to the Applicant according to his entitlement as per 6th & 7th Pay Commission till his termination. The Applicant is, therefore, entitled to get some interest to make good the loss, since he was not paid full amount as per his entitlement. The Applicant claims compound interest @ 18% per annum. However, there is no law permitting award of compound interest. We, therefore, held that the Applicant will be entitled to receive simple interest @ of 9% per annum on the amount of Rs. 7,06,631/- from the date of filing of this grievance on 26.05.2017 till its realization. Point No. 3 is, therefore, answered accordingly.

As to Point No. 4:

45. From the above discussion, the Applicant's claim is liable to be partly allowed. The following operative order is, therefore, passed.
- (a) The Applicant is entitled to receive arrears of salary to the extent of Rs. 706631/- inclusive of all claim, alongwith interest thereon @ 9% per annum from 26.05.2017.

(b) The Non-Applicants are directed to make payment of aforesaid amount to the Applicant alongwith interest as above towards full satisfaction of his claim, within a period of 3 months from today.

(c) It is further made clear that in the event this order is complied within the stipulated time settled above, the Applicant will be at liberty to take appropriate legal action against the Non-Applicants.

(d) In the facts and circumstances of the case the Parties be directed to bear their respective costs of this proceeding.

(e) Office is directed to issue authenticate copy of this Order alongwith the statements Annexure A, B, C, A-1, A-2, A-3, & A-4 to both the Parties at the earliest for ready reference.

Nagpur.

Dated: 20.11.2021

(Dr. Milind Bardiha)
Member, Grievances Committee,
RTM Nagpur University, Nagpur

(Arvind J. Rohee)
Chairman, Grievances Committee,
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