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 Order pronounced/ issued on - 17-12-2021
 Duration-- 1 Year, 00 Month, 03 Days.



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

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

Grievance Petition No. 04/2020

Applicant : Dr. Tarkeshwar Singh,
Grievance 21, Malbar Colony,
Petitioner Seminary Hills,
 NAGPUR-440006.
 Mob. No. 7387742251

- VERSUS -

Non-Applicant/
Respondent : 1. Ramdeobaba Sarvajanik
 Samiti, Ramdeo Tekdi,
 Katol Road, Gittikhadan,
 Nagpur-440013.
 2. Shri Ramdeobaba College of
 Engineering & Management,
 Nagpur through its Principal

ORDER

(Delivered on 17-12-2021)

1. The Applicant approached this forum under Section 79(1) of the Maharashtra Public Universities Act, 2016 for seeking the following reliefs:-

(a) Issue a suitable order or direction directing the respondent to make the payment of the arrears of 6th

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Pay Commission recommendation from 01.01.2006 to 31.03.2010.

- (b) The pay the arrears of 7th Pay Commission recommendation from 01.01.2016 to 31.01.2019.
- (c) Issue a suitable order or directions and direct the respondent to pay the amount towards leave encashment by considering 130 day earned leave, 594 days half pay commutable leaves and 60 days compensatory leave.
- (d) Issue a suitable order or direction and direct all the payments to be made by the Respondent within one month from the date of order and grant interest at 18% per annum on failure to make the payment within the stipulated period
- (e) Grant any other relief deemed fit.

2. The Applicant's grievance in short is that he rendered services as teaching faculty in the subject of Mathematics in Non-Applicant No. 2 college from 29.09.1986. He stands retired on superannuation on 31.01.2019 from the post of Professor. The college has secured necessary approval from All India Council for Technical Education (AICTE) and Directorate of Technical Education (DTE), Maharashtra State. It is autonomous college permanently affiliated to Rashtrasant Tukadoji Maharaj Nagpur University, Nagpur. (for short RTMNU, Nagpur). It is thus Non-Govt. i.e. private educational institution established by the Non-Applicant No.1 Society for running professional courses in Engineering and it, however, does not receive

any grant-in-aid from the State Govt. i.e. it is self-financing. It, therefore, raises its funds to run the college for payment of salary to the teaching & non-teaching staff and also to meet the necessary administrative expenses towards salary out of the fees recovered from the students admitted to various courses in the college.

3. It is stated that the recommendations of 6th Pay Commission were made applicable from 01.01.2006 to the teaching staff. However, the revised pay-scale was made applicable from 01.04.2020 by the Non-Applicants instead of 01.01.2006. Hence the Applicant is entitled to receive arrears of salary on pay fixation as per 6th Pay Commission for rest of the period from 01.01.2006 to 31.03.2010, which remained unpaid inspite of repeated representations.
4. It is also stated that the college has implemented the recommendations of 7th Pay Commission w.e.f. 01.01.2016. However, the actual monetary benefits by revision of pay scale has been extended to the Applicant which remained unpaid for the period from 01.01.2016 to 31.01.2019 date of his retirement.
5. Thus the Applicant is entitled to receive monetary benefits in the form of arrears of revised pay on the basis of recommendations of 6th Pay Commission for the period


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from 01.01.2006 to 31.03.2010 and pay revision as per 7th Pay Commission and arrears thereof from 01.01.2016 to 31.01.2019, during which period the Applicant was paid salary as per 6th Pay Commission.

6. It is stated that beside the arrears on account of pay revision, the Applicant seeks leave encashment for 130 days unutilized earned leave to his credit at the time of his retirement and also that of 594 days of half pay / commuted leave in addition to 60 days of compensatory leave then to his credit.
7. On 30.01.2019 i.e. a day prior to his retirement, the Applicant submitted first representation for payment of arrears of 6th & 7th Pay Commission, second representation for the same cause on 05.09.2019 followed by last one on 15.11.2019 seeking arrears. Similarly, for claiming benefit of leave encashment on the above referred dates separate representations are made to the Non-Applicants. However, no steps were taken and simply assurances were given to him to do needful. The Applicant is, therefore, constrained to approach this forum for seeking necessary redress. The Applicant during the course of arguments relied on several decisions of Hon'ble Supreme Court and that of the Hon'ble High Court of

Bombay and of this forum. We shall consider it at appropriate stage.

8. It is stated that after the Central Govt. adopted recommendations of 6th & 7th Pay Commissions for revision of pay scales of Central Govt. Employees, the same is adopted by AICTE vide Notification No. 05.03.2010 followed by State Govt. Resolution dated 20.08.2010 and for 7th Pay Commission Notification dated 01.03.2019 and 11.09.2019 respectively issued by aforesaid authorities. In view of above, it is stated that the Applicant is entitled to the reliefs sought.

9. On notice, the Non-Applicants appeared and by a common reply dated 31.07.2021 signed by the Principal Non-Applciant No. 2 under authority, resisted the claim by denying all the adverse averments, contentions and grounds raised by the Applicant in support of his claim. Beside denial of claim on merit few preliminary objections are raised by the Non-Applicants regarding maintainability / jurisdiction of this forum by contending that on the day of filing of this application, the Applicant ceased to be teaching faculty and since grievance is not filed prior to his retirement, this forum has no jurisdiction. Secondly, plea of limitation is also raised by the Non-Applicants by stating that the claim is barred by limitation by virtue of the
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provisions of Article 7 of the Limitation Act, 1963. Thirdly, it is stated that few similarly placed retired teaching and non-teaching faculty members have moved the Hon'ble High Court of Bombay Bench at Nagpur in Writ Petition No. 1941/2021 (Annexure-1) filed with the reply, seeking similar relief in which the notices are issued and hence claiming the same relief before this lower forum is not maintainable or atleast it is liable to be stayed till the decision of the Hon'ble High Court in the aforesaid pending Writ Petition. Fourthly, it is stated that vide State Legislation bearing Maharashtra Act No. XIII of 2019 under the name and style The Ramdeobaba University, Nagpur Act, 2019 is enacted and hence Applicant's claim is not maintainable for the reason that the said enactment empowered the Non-Applicants to frame its own rules in the matter of appointment and fixation of pay of the teaching and non-teaching staff on their selection and appointment. Therefore, this Grievance Petition cannot be entertained and is liable to be dismissed.

10. On merit, it is stated that the arrears of 7th Pay Commission cannot be granted as the Non-Applicant No.2 is a private unaided minority institution. Hence, the Non-Applicants are entitled to fix the salary of its employees. It is stated that this rights flows from Article 19(1)(g) read

with Article 30 of the Constitution of India. In this behalf reliance was placed on the decision rendered by the Hon'ble Supreme Court in T.M.A. Pai Foundation V/S State of Karnataka and others, (2002) 8 Supreme Court cases 481. The claim is, therefore, liable to be rejected.

11. It is stated that so far as 7th Pay Commission is concerned which provides for retrospective implementation of the recommendations in the matter of Revision of Pay from 01.01.2016, the same is not binding on the Non-Applicants nor enforceable against them and since they are not in a position to pay dues. Similar is fate of 6th Pay Commission to be operated retrospectively. The Application is, therefore, liable to be rejected. In this behalf, the Non-Applicants relied on the decision rendered by Hon'ble Supreme Court in Sushmita Basu and others V/S Ballygunge Shiksha Samiti and others, (2006) 7 Supreme Court cases 680 (Annexure-3), in which it has been held that the recommendations of the Pay Commission cannot be implemented retrospectively against private unaided minority institutions. The claim is, therefore, liable to be dismissed.

12. It is stated that the salary was paid to the Applicant in accordance with the recommendations of 6th Pay Commission and hence it cannot be said that it was either

inadequate or un-reasonable. It is stated that when the salary paid by the employer is just and fair no authority can prescribe higher salary as the same amounts to infringement of Article 19(1)(g) and 30 of the Constitution of India. For this reason, the Applicant is not entitled to the benefits of 7th Pay Commission also, & the Grievance Petition is liable to be dismissed.

13. So far as the claim for leave encashment is concerned, it is stated that the decision rendered by the Hon'ble Supreme Court in Khandesh College of Education Society, Jalgaon and anothers V/S Arjun Hari Narkhede & others Special Leave Petition Nos 17039-17040/2008 decided on 05.01.2011 relied on by the Applicant is not applicable to the present case since it was pertaining to Pune University. It is also stated that there is no provision in Statute governing RTM Nagpur University to pay leave encashment to the teaching staff of unaided colleges.

14. Similarly, the State Govt. Resolution dated 11.09.2019 relied upon by the Applicant to claim arrears of leave encashment cannot be applied since it came into force on 11.09.2019 i.e. after the Applicant retired on 31.01.2019. The claim is, therefore, liable to be rejected.

15. The Applicant then filed a rejoinder to the reply filed by the Non-Applicants on 04.09.2019 in which all the

contentions raised by the Non-Applicants for non-maintainability of the Grievance Petition on preliminary objections raised and on merit are traversed and it is stated that same are not maintainable, since not in accordance with the legal position. The claim is, therefore, liable to be allowed. For the purposes of his claim the decision rendered by the Hon'ble Supreme Court in Secretary Mahatma Gandhi Mission & Another V/S Bhartiya Kamgar Sena & Others Civil Appeal No. 115 & 116 of 2017 decided on 05.01.2017 by which both the appeals were dismissed, rejecting the grounds stated by the Appellants therein. Referring the decision rendered by the Hon'ble High Court of Bombay in D.Y. Patil College of Engineering V/S AICTE and Other dated 06.07.2018, it is stated that the claim of the Management of Technical Institution that it is not bound to implement the norms prescribed by the AICTE and State of Maharashtra in Higher & Technical Education Department and it cannot be directed to pay arrears. These grounds are rejected. The Applicant's case is squarely governed by the said decision. The Regulations issued by the AICTE and the State Govt. Resolutions are binding on the Non-Applicants in the matter of applicability of 6th & 7th Pay Commission and to pay arrears thereof. It is stated that it is a statutory



obligation of educational institution to pay its employees salary as per rules. In this behalf couple of judgements delivered by this forum are also relied on.

16. Referring the decision rendered by the Hon'ble Supreme Court in Secretary Mahatma Gandhi Mission & Another V/S Bhartiya Kamgar Sena & Others, AIR 2017 SC 505 in which the previous decisions rendered by Supreme Court in T.M.A. Pai Foundation and Others V/S State of Karnataka and others (2002) 8 Supreme Court cases 481 and Islamic Academy of Education and Anothers V/S State of Karnataka and others (2003) 6 SCC 697 are considered and the following proposition of law is laid down in paragraph No. 89, **"Even otherwise, if 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"**.

17. So far as averments made for denial of leave encashment is concerned, it is stated there are two different categories of teachers in the State of Maharashtra viz one of University and Colleges affiliated to it governed by the University Grants Commission(UGC) and the other

teachers of AICTE approved colleges imparting education in technical courses approved by the AICTE. It is stated that the facility of leave encashment at the time of retirement may differ from University to University but for AICTE approved institution it is defined as pensionary benefits and accordingly teachers of all Govt. Engineering Colleges of Maharashtra are getting the benefit of leave encashment. The Applicant is governed by the same and hence he is entitled to leave encashment.

18. It is also stated that the issue of encashment of leave is already settled by the Supreme Court in favour of teachers vide decision rendered in Khandesh College of Education Society, Jalgaon on 05.07.2011 and by the Hon'ble High Court of Bombay in case of Gokhale Education Society V/S State of Maharashtra decided on 11.07.2019.

19. It is stated that the Non-Applicants ignored /defy the regulations issued by the AICTE and State Govt. Resolution in the matter of leave encashment although it is binding on them. It did not matter that the Govt. Resolution dated 11.09.2019 was issued after Applicant's retirement, however, it is pertaining to enhancement of the previous period for leave encashment based on recommendations of 7th Pay Commission, which is made



applicable from 01.01.2016. The claim is, therefore, liable to be fully allowed.

20. To this rejoinder the Non-Applicants submitted reply on 18.09.2021 practically reiterated the grounds stated in their reply and it is stated that on the grounds raised the Applicant is not entitled to any relief.

21. The parties were heard and were allowed to file written submissions in support of their rival contentions. The matter was then closed for orders on 31.10.2021.

22. The members of the Grievances Committee who attended the final hearing of the matter, have carefully gone through the entire case record including various documents, notifications and Govt. Resolutions and also citations of the case law relied upon by both the parties. We have given thoughtful consideration to the submissions advanced by both the parties.

23. On the basis of the submissions made and the material produced on record, the following points arise for consideration of this forum and findings recorded thereon is given below:

<u>Sr.No.</u>	<u>Points</u>	<u>Finding</u>
1.	Whether the preliminary objections raised by the Non-applicants regarding maintainability of the Grievance Petition / jurisdiction of this forum are liable to be allowed?	No
2.	If no, whether the Applicant is entitled to get arrears of salary as per pay scale prescribed by 6 th & 7 th Pay Commission?	Yes
3.	Whether the Applicant is entitled to get leave encashment of earned leave that of half pay leave and compensatory leave as claimed by him?	Partly Yes
4.	What order?	As per concluding para.

REASONS

24. As to Point No. 1:


So far as the first preliminary objection raised by the Non-Applicants is concerned, it is stated that since present Grievance Petition has been filed after retirement of the Applicant and not during subsistence of his service, it cannot be said to a grievance within a meaning of Section 79(1) of Maharashtra Public Universities Act, 2016 since on that date he ceased to be their employees. It is true that the word teacher is mentioned under Section 79(1) of the Act of 2016. However, co-joint reading of entire provisions of that Section indicates that the former/retired/ex-



teachers are also covered under the said provision and it did not matter even if the grievance is filed after retirement or during non-subsistence of service i.e. before retirement. The only condition required is that the grievance should relate to the period of service and not thereafter except that of the pensionary benefits. In the present case Applicant's claim relates to the period of service rendered by him and he seeks arrears of unpaid salary on revision of pay and retirement benefits in the form of leave encashment. This being so we do not find any force in the contentions of the Non-Applicants that the present Grievance Petition is not maintainable on the ground that the Applicant ceased to be their employee/ teaching faculty on the day of filing of this petition on 14.02.2020. This is for the reason that otherwise it will not be possible for any teaching staff to approach this forum for the Grievance relating to his service period, in the event contentions of the Non-Applicants are accepted. We, therefore, reject this preliminary objection.

25. So far as the second preliminary objection raised by the Non-Applicants relates to the plea of limitation by making reference to the provisions of Article 7 of the Limitation Act, 1963. Like previous one this objection is also devoid of any substance for the simple reason that

the provisions of Limitation Act are not applicable to this forum since it relates to civil and criminal court matters only. Further, it is the settled law that period of Limitation can be conferred only under Statute and not by any Govt. Resolution, Notification, Circular, Directions and not even under court order. There is no provision under Maharashtra Public Universities Act, 2016 fixing any period of limitation for filing the Grievance Petition. This being so it does not lie in the mouth of the Non-Applicants that the claim is barred by limitation since filed after more than seven years from the date of applicability of the recommendations of 6th Pay Commission or more than three years from applicability of 7th Pay Commission. The only effect of not approaching this forum at the earliest from the date of accrual of cause of action will be that the claimant may not be entitled to get relief of interest on the monetary claim if allowed, on account of delay and laches of his part. However, in no case it can be said that on account of delay the claim cannot be entertained or adjudicated as barred by limitation as alleged by the Non-Applicants. We therefore, hold that there is no force or substance in the second preliminary objection also.

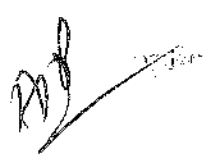


26. So far as third preliminary objection raised by the Non-Applicants is concerned, it is stated that few similarly placed retired employees of the same college approached the Hon'ble High Court of Bombay Bench at Nagpur in Writ Petition No. 1941/2021 seeking similar relief and hence this forum being subordinate to the Hon'ble High Court and since the claim is under consideration of the higher forum, it will not be proper for this forum to proceed with the present Grievance Petition and atleast it is liable to be stayed till the decision of the Hon'ble High Court in the above referred pending Writ Petition. The Non-Applicants have also filed copy of the aforesaid Writ Petition on record, prayer clause of which shows that beside claiming arrears of salary on revision of pay scale under 6th & 7th Pay Commission, the petitioners therein have also sought a direction for closure of the college. First relief claimed clearly comes within the jurisdiction of this forum. However, the petitioners therein have preferred to choose higher forum since they have clubbed the other relief of closure of college also in it, which is obviously beyond the jurisdiction of this forum and in this Grievance Petition the Applicant has not sought the said relief.

27. In any case simply because Writ Petition filed by few similarly placed employees is pending consideration before the Hon'ble High Court coupled with other relief of closure of college, law does not require that this forum should refrain from entertaining / considering / adjudicating the present Grievance nor we think that it is necessary to stay further proceeding of this Grievance Petition till decision in pending Writ Petition. We, therefore, reject the third preliminary objection also of the Non-Applicants.

28. Fourthly, it is stated by the Non-Applicants that by Maharashtra Act No. XIII of 2019 Ramdeobaba University is established under the provisions of Ramdeobaba University, Nagpur Act, 2019, which is established vide G.R. dated 13.09.2019 issued by the Higher & Technical Education Department, Maharashtra State from 13.09.2019. According to Non-Applicants on account of this change of circumstance, the present Grievance Petition cannot be entertained since everything is now being governed by the provisions of the aforesaid Act of 2019.

29. It is true that Ramdeobaba University is established by State Legislation under a Statute w.e.f. 13.09.2019. However, the Applicant's claim is prior to



this date and seeks relief till his retirement on 31.01.2019. At that time the Non-Applicant No. 2 college was affiliated to RTM Nagpur University, Nagpur and it is still so since it is not disputed that college is permanently affiliated to said University. Further, the Applicant has produced on record documentary evidence by which it is obvious that the said college has recently applied for getting approval of the RTMNU, Nagpur for various other courses in technical subjects. This being so it cannot be said that this forum has lost jurisdiction to consider the present Grievance Petition only on establishment of Ramdeobaba University and therefore, the claim cannot be entertained. The very preamble of the aforesaid Act of 2019 provides for establishment, incorporation and regulation of the Ramdeobaba University, Nagpur for the development and advancement of Higher Education in the State and to provide for matters connected therewith or incidental thereto. By no stretch of imagination, it can be said that the present grievance is connected with or incidental to any of the provisions of the aforesaid Act of 2019. This being so it is not necessary for this forum to throw its responsibility from deciding the present grievance. Any appointment of teaching and non-teaching staff and the fixation of their pay after

commencement of the Act of 2019 would certainly be covered under the provisions of said Act of 2019. As stated earlier, since the Applicants claim is prior to establishment of the aforesaid University and further the educational society Non-Applicant No. 1 still exists so also the college, Non-Applicant No. 2, they cannot deny their liability, so also this forum for consideration of Applicant's claim. We, therefore, reject all the preliminary objections raised by Non-Applicants and answer point No. 1 in the negative.

30. **As to Point No. 2:**


It is not disputed that the Applicant joined as a Lecturer on 29.09.1986 and after securing promotions of Lecturer (Senior Grade), Lecturer (Selection Grade), Assistant Professor and finally Professor (CAS) retired from the said post on 31.01.2019 vide certificate dated 21.05.2019 issued by the Non-Applicant No. 1. It is true that the Non-Applicant No. 2 is self-financing institute, which receives no grant in aid from the State Government. However, by this time it is the settled law that the recommendations of the Central Pay Commission in the matter on revision of pay scales of teaching and non-teaching staff in the Govt., University and Non-Govt./Private colleges which are affiliated to the University

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are governed by the subsequent Notifications/Govt. Resolutions issued by the State Govt. adopting the revision of pay scales of various cadres. In the present case, since Non-Applicant No. 2 is a technical institution and it is approved by AICTE and also by State Govt. teaching faculty is governed by the Notifications issued by the AICTE in the matter of revision of pay scales, based on acceptance of the recommendations of the Pay Commissions by the Central Govt. and later by the State Govt. which are binding on Non-Applicants, and based on it RTM Nagpur University also issued necessary directions in this behalf.

31. During the course of arguments, the Non-Applicants tried to argue that Non-Applicant No.2 is a private unaided minority institution and hence they are entitled to fix the salary of its employees without reference to Pay Commissions. A reference to decision in T.M.A. Pai Foundation cases referred earlier is also made. However, there is nothing on record to show that Non-Applicant No. 2 is a "minority" institution since no documentary evidence is produced on record by the Non-Applicants in the form of any notification issued by the concerned department of the State Govt. conferring "minority status on the Non-Applicant No. 2. This being so the decision relied upon,

although cannot be disputed is not helpful to the Non-Applicants. In fact, in that case it has been specifically held that right to recover fees from the students can be regulated by the State Govt. and further that education is treated as noble occupation on no profit and no loss basis and those who establish and manage the educational institutions are not expected to indulge in profiteering or commercializing said activity. In any case, it does not lie in the mouth of the Non-Applicants that Non-Applicant No.2 is "minority" institution and hence it has power to frame its own rules and regulations for imparting education and hence they are not subjected to any AICTE Notification or G.R. issued by the State Govt. in the matter of fixation of pay/ pay revision of the teaching faculty.

32. During the course of arguments, the Non-applicants stated that the Govt. has accepted the recommendations of the 7th Pay Commission with retrospective effect from 01.01.2016 and the same is not binding on the Non-Applicants nor it is enforceable against them it being self-financing institution. They have raised this plea in respect of implementation of 6th Pay Commission also from 01.01.1996. It is true that after establishment of Pay Commission, with due exercise after considering various factors, it submits its report to the
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Central Govt. in the matter of revision of pay and other service conditions of the teaching and non-teaching staff. Those recommendations are accepted by the Central Govt. with certain modifications and there after AICTE or UGC adopts the same and issues necessary notifications. There upon the concerned State Govt. also accepts those recommendations and direct its implementation from the date fixed by the Pay Commission, which is obviously with retrospective effect. The Universities in a State are also bound to accept the decisions of AICTE, UGC and State Govt. and they adopt the same for its employees. The affiliated colleges under University, unaided or aided are governed by the aforesaid decisions and it is binding on them.

33. In this case AICTE issued notification in respect of implementation of 6th & 7th Pay Commission in the above matters and on its basis State Govt. followed by RTMN University issued necessary Notifications / Resolutions in this behalf. It, therefore, does not lie in the mouth of the Non-Applicants that the decision of retrospective implementation of the Pay Commendations is not binding on them and those cannot be enforced. In this behalf the Applicant has rightly referred the decision dated 06.07.2018 rendered by Hon'ble High Court of Bombay in

Writ Petition No. 1262/2018, D.Y. Patil College of Engineering and Another V/S All India Council for Technical Education (AICTE) and others in which the same issue was involved and the petitioners therein have taken a plea that Govt. Resolutions issued by the Higher & Technical Education Department, Govt. of Maharashtra dated 20.10.2000 (regarding 5th Pay Commission) and dated 07.10.2009 (regarding 6th Pay Commission) to the extent they direct retrospective effect to be given to the pay revision to its employees and quashing of the above GRs is also sought. After referring to number of decisions rendered by Hon'ble Supreme Court and Bombay High Court, the said plea was rejected consequently.


34. From the above discussion, it can't be said that Non-Applicants are justified or have any legal right to deny /differ/delay retrospective implementation of 6th & 7th Pay Commissions. In this respect, decision rendered by Hon'ble Supreme Court in Sushmita Basu's case referred earlier and relied upon by the Non-Applicants in which it has been held that the recommendations of the Pay Commission cannot be implemented retrospectively against private unaided minority institution. As stated earlier, the Non-Applicants although is private unaided institution, however since minority status is not conferred



on it, in absence of any documentary evidence, it, therefore, does not lie in the mouth of the Non-Applicants that they are not bound for implementation of the recommendations of 6th & 7th Pay Commission in the matter of revision of pay, which is approved by the AICTE/State Govt. Followed by RTM Nagpur University, Nagpur, and the same are not binding on them. Further above referred case relates to private schools and there was no statutory provision to implement recommendations of 3rd Pay Commission by private schools for its employees, retrospectively, although the institution in aforesaid case on its own applied it prospectively from the date of notification. The Non-Applicants are differently situated and hence decision in above case has no implication on the stand taken by them since facts are different.

35. Record shows that the Non-Applicants have shown some bonafides in fixing the salary of the Applicants as per pay scales recommended by 6th Pay Commission and made part payment of it but prospectively from 01.04.2010 as stated by Applicant. The Applicant, therefore, claims pay revision and arrears there of as per 6th Pay Commission for the earlier period from 01.01.2006 to 31.03.2010, which remains unpaid inspite of repeated representations. It is obvious from record that the Non-Applicants continued to

pay salary as per 6th Pay Commission, even on implementation of 7th Pay Commission w.e.f. 01.01.2016 till 31.01.2019 date of his retirement. In other words the salary of the Applicant is not revised w.e.f. 01.01.2016 as per 7th Pay Commission nor its arrears are given to him. This being so, the Applicant is entitled to receive monetary benefits in the form of arrears on revision of pay on the basis of recommendations of the 6th Pay Commission for the earlier period from 01.01.2006 to 31.03.2010 and as per 7th Pay Commission from 01.01.2016 to 31.01.2019.

36. In this respect, the Applicant was produced on record details of 6th Pay arrears and 7th Pay arrears vide (Annexure-1 & Annexure-2) filed alongwith the submission dated 25.10.2021. Its copy is served on the Non-Applicant No. 2 on the same day. On interrogation with the Applicant, he stated that he obtained the said statement in tabular form from internet by supplying necessary information regarding basic pay, grade pay, DA, HRA, CLA and TA. As per Annexure-1, after deducting the amount paid to the Applicant towards salary from 01.01.2006 to 31.03.2010, he is still entitled to get arrears of Rs. 11,95,400/-. Similarly, as per statement Annexure-2 for the period from 01.01.2016 to 31.01.2019, the Applicant is still entitled to receive arrears of Rs. 15,60,860/- after deducting the salary received as per 6th Pay Commission. For the sake of convenience and ready reference Annexure-1(2 pages) and Annexure-2(1 page) are annexed to this order and the Non-Applicants are directed to verify the
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correctness of entries made in those statements so that necessary amount due to the Applicant can be paid to him.

37. During the course of arguments, it has been stated on behalf of the Non-Applicants that the institution is not in a position to pay arrears, since it does not receive any grant from the Government and payment of salary to the teaching and non-teaching staff is made from the tuition fees collected from the students admitted to various courses. It is also stated that it is not possible to Non-Applicants to make payment of dues as claimed by the Applicant as per 6th & 7th Pay Commission for want of sufficient funds. In this respect, it may be mentioned here that it is the settled law that the self-financing educational institutions cannot deny liability of payment of salary to its employees, alleging ground of no recovery or less recovery of fees from the students or lack of other resources to raise adequate funds to meet the burden. In this behalf, the Applicant rightly relied on the land mark decision rendered by the Hon'ble Supreme Court in case of Secretary Mahatma Gandhi Mission & Another V/S Bhartiya Kamgar 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 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 collect fees from the students and pay salary to its employees out of it. Para 85 to 90 from the said decision are worth quoting. The same are reproduced here for ready reference.

"85. Another submission of the appellants that is required to be dealt with is that since the appellant

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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.

86. 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 competent to determine the fee structure and raise appropriate revenue.

87. 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.

88. 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.

89. 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.

90. 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 of arrears thereof to the Applicant.

40. From the above decision, it is now crystal clear that the Non-Applicants denial of liability to pay arrears on the ground which are not legally acceptable and hence the Applicant is entitled to the relief sought regarding revision of pay scale and payment of arrears thereof on the basis of due, drawn and difference statement Annexure-1 and Annexure-2 referred above, towards claim for 6th & 7th Pay

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Commission. Point No. 2 is, therefore, answered in the affirmative.

41. As to Point No. 3:

The Applicant seeks leave encashment of unutilized leave of different kinds to his credit at the time of retirement on various grounds. In this behalf, the Applicant strongly placed reliance on the Notification No. F.No.37-3/Leave/2010 dated 05.03.2010 issued by AICTE. It makes provisions for pay scales, service conditions and qualifications for the teachers and other academic staff in technical institution at degree level and it applies to technical institution and universities including deemed universities imparting technical education and such other courses/programmes and areas as notified by the Council from time to time. At Page No. 30 thereof the following provision is made:

(ii) Gratuity and Encashment of Leave: Facilities of gratuity and encashment of leave accepted by Government on the recommendation of 6th CPC for Central Government employees shall be extended to teachers and other cadres in AICTE approved Technical institution.

42. Based on the aforesaid notification relating to 6th Pay Commission, the State of Maharashtra in Higher & Technical Education Department, issued Resolution No.

SPC-2010(3410)/TE-2, Mantralaya, Mumbai dated 20.08.2010. Its perusal, however, clearly shows that the provisions of gratuity and encashment of leave approved by AICTE is not denied or approved by the State Govt. since it is silent on this aspect, although other provisions are accepted. Hence it cannot be said that the Applicant is entitled to get the encashment of leave under 6th Pay Commission for the period from 01.01.2006 to 31.12.2015.

43. However, on implementation of 7th Pay Commission, the AICTE issued Notification F.No. 61-1/RIFD/7th CPC/2016-17 dated 1st March, 2019. It is made applicable to teachers and other academic staff in technical institution. Clause 2.14 thereof reads as under:

2.14 Pension Gratuity, Family Pension, GPF, Leave Encashment and Other Pensionary Benefits.

All pensionary benefits including leave encashment shall be extended to faculty members and other staff such as Library, Physical Education and Training & Placement Personnel as per the revised norms recommended by the 7th CPC and implemented by the Government of India / State and UT Governments.

44. It is obvious that AICTE approved grant of leave encashment to all the faculty members without making any distinction whether they served in vacation department or non-vacation department. In pursuance thereof the Govt. of Maharashtra in Higher & Technical

Education Department issued Govt. Resolution No सावेआ-११११-प्रक. /४४/१९/ता शि-२, मंत्रालय, मुंबई dated 11.09.2019 in which payment of leave encashment is approved in Clause 2.12 thereof which reads as under:

2.12 Pension, Gratuity, Family Pension, CPF, Leave Encashment and Other Pensionary Benefits.

All pensionary benefits including leave encashment shall be extended to faculty members and other staff such as Library, Physical Education and Training & Placement Personnel as per the revised norms recommended by the 7th CPC and implemented as per the norms of the State Government.

45. It is thus obvious from record that the Applicant being teaching faculty in technical institution, although on no grant basis, he is entitled to get the benefit of encashment of earned leave to his credit at the time of retirement. However, since G.R. issued by the State Govt. on implementation of 6th Pay Commission is silent on this point as stated earlier, he will not be entitled to get encashment of leave under 6th Pay Commission, although AICTE approved it. However, since 7th Pay Commission's recommendations in the matter of encashment of leave is approved by AICTE as well as State Government, the Applicant will be entitled to get leave encashment of earned leave to his credit at the time of retirement, but from 01.01.2016 only. On interrogation with the Applicant, he stated that 10 days of leave is credited to his account as earned leave, beside other kinds of leave. As such from 01.01.2016 till 31.01.2019, the Applicant will be entitled to get leave encashment of balance of earned leave to his credit. It be calculated by the Non-Aplicants and its payment be made to the Applicant.

46. In the result, the Applicant partly succeeds in establishing his claim and the following operative order is passed:

- (a) The Grievance Petition is partly allowed.
- (b) It is declared that the Applicant is entitled to get the arrears of unpaid revised pay as per 6th Pay Commission for the period from 01.01.2006 to 31.03.2010 and of 7th Pay Commission arrears from 01.01.2016 to 31.01.2019.
- (c) The Non-Applicants are directed to verify the Statement (Annexure-1 & 2) annexed with this order as filed by the Applicant and arrange to make the necessary payment of arrears to him on all counts within a period of 3 months from today.
- (d) The Applicant's claim for encashment of earned leave is allowed but only w.e.f. 01.01.2016 from the date of implementation of 7th Pay Commission. It be calculated and paid to the Applicant by Non-Applicant within 3 months.
- (e) The claim for encashment of half pay leave and compensatory leave, however, is dis-allowed in absence of any provision.
- (f) In the event the above order is not complied within the time stipulated above, the Non-Applicants shall be liable to pay interest at the rate of 9% per annum on the amount of arrears

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from the date of institution of this Grievance Petition i.e. from 14.02.2020 till its realization.

(g) The parties shall bear their respective cost of this petition.

(h) It is made clear that in the event of non-compliance of this order within the stipulated time, the Non-Applicants will be liable for action/penalty under the relevant Statute issued by RTM Nagpur University, Nagpur.

(i) The office is directed to issue authenticate copy of this order to both the parties at the earliest.

Milind Barhate
17/12/2021

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

Arvind J. Rohee

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

Nitin Kongre
17/12/2021

(Dr. Nitin Kongre)
Member, Grievances Committee,
RTM Nagpur University, Nagpur

Sanjay Kavishwar
17/12/21

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

Shri Rajendra Pathak
17/12/21

(Shri Rajendra Pathak)
Member, Grievances Committee,
RTM Nagpur University, Nagpur

Anuja Kulkarni
17/12/2021

(Adv. Anuja Kulkarni)
Member-Secretary
Grievances Committee,
RTM Nagpur University, Nagpur.

Nagpur.

Dated: 17.12.2021

Details of 6th Pay Arrears of Dr. Tarkeshwar Singh from 01/01/2006 to 31/03/2010
Retd Professor Dept of Mathematics, RCOEM, NAGPUR

DD/MM/year	Basic pay as per 6th Pay	AGP	DA	HRA	CLA	TA	Total Gross Salary as per 6th Pay	Received Total Gross Salary as per	Due Arrears (difference)
1/1/2006	42120	10000	0	7818	240	800	60978	35802	25176
1/2/2006	42120	10000	0	7818	240	800	60978	35802	25176
1/3/2006	42120	10000	0	7818	240	800	60978	35802	25176
1/4/2006	42120	10000	0	7818	240	800	60978	35802	25176
1/5/2006	42120	10000	0	7818	240	800	60978	36568	24410
1/6/2006	42120	10000	0	7818	240	800	60978	36568	24410
1/7/2006	43690	10000	1074	8054	240	800	63858	36568	27290
1/8/2006	43690	10000	1074	8054	240	800	63858	36568	27290
1/9/2006	43690	10000	1074	8054	240	800	63858	38195	25663
1/10/2006	43690	10000	1074	8054	240	800	63858	39707	24151
1/11/2006	43690	10000	1074	8054	240	800	63858	38409	25449
1/12/2006	43690	10000	1074	8054	240	800	63858	38409	25449
1/1/2007	43690	10000	3221	8054	240	800	66005	39380	26625
1/2/2007	43690	10000	3221	8054	240	800	66005	39380	26625
1/3/2007	43690	10000	3221	8054	240	800	66005	39380	26625
1/4/2007	43690	10000	3221	8054	240	800	66005	40978	25027
1/5/2007	43690	10000	3221	8054	240	800	66005	40978	25027
1/6/2007	43690	10000	3221	8054	240	800	66005	40978	25027
1/7/2007	45310	10000	4978	8297	240	800	69625	41990	27635
1/8/2007	45310	10000	4978	8297	240	800	69625	53708	15917
1/9/2007	45310	10000	4978	8297	240	800	69625	41990	27635
1/10/2007	45310	10000	4978	8297	240	800	69625	48542	21083
1/11/2007	45310	10000	4978	8297	240	800	69625	43628	25997
1/12/2007	45310	10000	4978	8297	240	800	69625	43628	25997
1/1/2008	45310	10000	6637	8297	240	800	71284	44681	26603
1/2/2008	45310	10000	6637	8297	240	800	71284	44681	26603
1/3/2008	45310	10000	6637	8297	240	800	71284	44681	26603
1/4/2008	45310	10000	6637	8297	240	800	71284	44681	26603
1/5/2008	45310	10000	6637	8297	240	800	71284	48411	22873
1/6/2008	45310	10000	6637	8297	240	800	71284	58482	12802
1/7/2008	46970	10000	9115	8546	240	800	75671	50089	25582
1/8/2008	46970	10000	9115	8546	240	800	75671	50089	25582
1/9/2008	46970	10000	9115	8546	240	800	75671	50089	25582
1/10/2008	46970	10000	9115	8546	240	800	75671	55778	19893
1/11/2008	46970	10000	9115	8546	240	800	75671	61653	14018
1/12/2008	46970	10000	9115	8546	240	800	75671	55778	19893
1/1/2009	46970	10000	12533	8546	240	800	79089	57099	21990
1/2/2009	46970	10000	12533	8546	240	800	79089	57099	21990
1/3/2009	46970	10000	12533	8546	240	800	79089	57099	21990
1/4/2009	46970	10000	12533	8546	240	800	79089	57099	21990


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Annexure - 1 (2)

DD/MM/year	Basic pay as per 6th Pay	AGP	DA	HRA	CLA	TA	Total Gross Salary as per 5Pay	Received Total Gross Salary as per 5Pay	Due Arrears (difference)
1/5/2009	46970	10000	12533	8546	240	800	79089	57099	21990
1/6/2009	46970	10000	12533	8546	240	800	79089	57099	21990
1/7/2009	48680	10000	15844	8802	240	800	84366	57099	27267
1/8/2009	48680	10000	15844	11736	240	800	87300	57099	30201
1/9/2009	48680	10000	15844	11736	240	800	87300	59964	27336
1/10/2009	48680	10000	15844	11736	240	800	87300	59964	27336
1/11/2009	48680	10000	15844	11736	240	800	87300	59964	27336
1/12/2009	48680	10000	15844	11736	240	800	87300	62543	24757
1/1/2010	48680	10000	15844	11736	240	800	87300	63991	23309
1/2/2010	48680	10000	15844	11736	240	800	87300	109898	-22598
1/3/2010	48680	10000	15844	11736	240	800	87300	65457	21843
							Total Arrears Rs		1195400
Rs Eleven Lakh ninty five thousand four hundred									



Dr. Tarkeshwar Singh



Details of 7th Pay Arrears of Dr. Tarkeshwar Singh from 01/01/2016 to 31/01/2019

Retd Professor Dept of Mathematics, RCOEM, NAGPUR

DD/MM/year	Basic pay as per 7th Pay	DA	HRA	TA	CLA	Total Gross Salary as per 7Pay	Received Total Gross Salary as per 6Pay	Due Arrears (difference)
1/1/2016	182700	0	29232	2400	240	214572	165996	48576
1/2/2016	182700	0	29232	2400	240	214572	170203	44369
1/3/2016	182700	0	29232	2400	240	214572	170203	44369
1/4/2016	182700	0	29232	2400	240	214572	170203	44369
1/5/2016	182700	0	29232	2400	240	214572	199649	14923
1/6/2016	182700	0	29232	2400	240	214572	170203	44369
1/7/2016	188200	3764	30112	2400	240	224716	175246	49470
1/8/2016	188200	3764	30112	2400	240	224716	175246	49470
1/9/2016	188200	3764	30112	2400	240	224716	179579	45137
1/10/2016	188200	3764	30112	2400	240	224716	179579	45137
1/11/2016	188200	3764	30112	2400	240	224716	179579	45137
1/12/2016	188200	3764	30112	2400	240	224716	179579	45137
1/1/2017	188200	7528	30112	2400	240	228480	213485	14995
1/2/2017	188200	7528	30112	2400	240	228480	179579	48901
1/3/2017	188200	7528	30112	2400	240	228480	179579	48901
1/4/2017	188200	7528	30112	2400	240	228480	179579	48901
1/5/2017	188200	7528	30112	2400	240	228480	235188	-6708
1/6/2017	188200	7528	30112	2400	240	228480	184634	43846
1/7/2017	193800	9690	31008	2400	240	237138	190103	47035
1/8/2017	193800	9690	31008	2400	240	237138	190103	47035
1/9/2017	193800	9690	31008	2400	240	237138	196054	41084
1/10/2017	193800	9690	31008	2400	240	237138	193078	44060
1/11/2017	193800	9690	31008	2400	240	237138	193078	44060
1/12/2017	193800	9690	31008	2400	240	237138	193078	44060
1/1/2018	193800	13566	31008	2400	240	241014	193078	47936
1/2/2018	193800	13566	31008	2400	240	241014	193078	47936
1/3/2018	193800	13566	31008	2400	240	241014	197542	43472
1/4/2018	193800	13566	31008	2400	240	241014	195310	45704
1/5/2018	193800	13566	31008	2400	240	241014	195310	45704
1/6/2018	193800	13566	31008	2400	240	241014	195310	45704
1/7/2018	199600	17964	31936	2400	240	252140	201112	51028
1/8/2018	199600	17964	31936	2400	240	252140	237042	15098
1/9/2018	199600	17964	31936	2400	240	252140	201112	51028
1/10/2018	199600	17964	31936	2400	240	252140	203411	48729
1/11/2018	199600	17964	31936	2400	240	252140	223698	28442
1/12/2018	199600	17964	31936	2400	240	252140	203411	48729
1/1/2019	199600	23952	31936	2400	240	258128	203411	54717
							Total Arrears Rs	1560860
						Rs Fifteen lakh sixty thousand eight hundred sixty		




Dr. Tarkeshwar Singh