

Filed on - 28/09/2018

Order reserved on 07-11-2020.

Order pronounced/ 20/01/2021.
issued on -

Duration-- 2 Years, 03 Months, 23 Days.



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

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

Grievance Petition No. 05/2018

**Applicant
Grievance
Petitioner**

Dr. Waman Mahadevrao Lonkar,
C/o Shri Sudhir V. Hivre Plot No.69,
Mannat Vaidya Layout Suraj Society
New Manish Nagar Nagpur -440005.

- VARSUS -

Non-Applicant:

President/ Secretary.
Shri Samnrag Shikshan Sanstha
E-2/F-3, New Nandanwan
Trimurti Chowk, Nagpur

OPERATIVE ORDER

(Delivered on 20/01/2021)

In the result the grievance petition is allowed in the following terms:

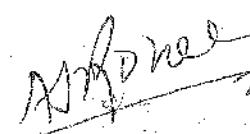
- (a) The Non-Applicant Education Society is directed to pay the salary to the Applicant as per the pay-scale prescribed under 7th Pay Commission for the post of Principal from 01.03.2016 to 31.03.2019. The amount of arrears be settled as per rules and it be paid to the Applicant in five monthly instalments commencing from March, 2021 after adjusting the amount of salary, if any paid to him.
- (b) The Non-Applicant is also directed to take necessary steps for payment of contribution of Employees Provident Fund

outstanding to the credit of the Applicant in his account for the period from 01.09.2008 to 31.03.2019, by remitting the amount and making necessary correspondence with the concern Authority. However, this amount be paid in lumpsum to the Applicant by the end of April, 2021.

- (c) The Applicant's claim for grant of gratuity and the interest on the arrears is, however, disallowed.
- (d) The Applicant will not be entitled to get any salary or remuneration for the services rendered by him after 01.04.2019 till he handed over the charge of the post of Principal, since he ceased to be in service by the end of 31.03.2019.
- (e) In the facts and circumstances of the case, the parties are directed to bear their respective costs of this Grievance Petition.
- (f) The office is directed to forward the authenticate copy of this order to both the parties for taking necessary steps in the matter.

Nagpur.

Dated:20-01-2021.


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

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ORDER

(Delivered on 20/01/2021)

1. The Applicant approached this forum under section 79 (1) of the Maharashtra Universities Act 2016 for redressal of his grievance regarding non-payment of salary as par 6th Pay Commission.

2. The Applicant's case in short is that the Non-Applicant Education Society runs Vasant Shikshan Mahavidyalay in Nandanwan area of Nagpur City for B.Ed Course. The applicant was duly appointed as lecturer in the said college with effect from 01/09/2008 his appointment is duly approved by Nagpur University. Subsequently the Applicant was appointment as Principal of the said college in the year 2009-10 and he joined the

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said post on 20/12/2009. It is stated that prior to this appointment the Non-Applicant society started M.Ed Course in the aforesaid College and the Applicant was appointed as lecturer during the year 2008-09. This was on no grant basis like the B.Ed course. However, it appears that the Applicant continued to work as Principal beside doing lecturer ship in M.Ed College. It is alleged by the Applicant that the Non-Applicant did not Pay him the salary from March 2016, although he made repeated oral requests to the office bearers of the Society. It is also alleged that the Non-Applicant did not even deposit Employees Provident Fund (EPF) Contribution of the Applicant with the authority and only assurances were given in this behalf.

3. The Applicant continued his work without salary and thereafter submitted a representation dt. 12/09/2018 to the Secretary of the Society, since he was due for retirement on 31/03/2019. However, there was no response. Hence Applicant claimed salary as per 6th Pay Commission from 01/03/2016 till the date of retirement and refund of EPF Contribution. Although in the Grievance Petition the Applicant claims revised pay scale as per 6th Pay Commission, for the reason that on the date of filling of the petition on 28-09-2018, 7th Pay Commission was yet to be made applicable to the teaching staff of University and Affiliated Colleges. The same was subsequently made applicable w.e.f.01/01/2016.

4. It is also alleged by the Applicant that on his retirement the Non-Applicant did not issue the reliving order nor no dues Certificate nor experience certificate to him nor sought approval for extension. It is also stated that the financial position of the Non-applicant is sound and is capable of payment of arrears. It is also alleged that the Secretary of the Society used to operate Bank Account of the College without Applicant's signature and

hence he is not aware about financial transactions done behind his back. Hence this Petition.

5. On notice the Non-Applicant appeared and filed reply dt. 06/11/2019 in which all the adverse averments made in the Petition are denied. It is stated that on account of financial crisis the EPF Contribution of Applicant could not be deposited with the concern Authority. However, the applicant's salary of March 2016 is paid in December 2018. Financial crisis is stated to be on account of reduction in strength of students taking admission to B.Ed Course from the Academic Year 2015-16 onwards, when the College was receiving Rs. 20,600/- per student towards fees, as settled by the Fees Regulatory Authority.

6. It is also stated that the Applicant continued his Job even after retirement without any authority and failed to hand over the charge of the post of Principal, nor handed over the keys of cupboard and his cabin. The Applicant failed to follow the written instructions to hand over the charge of his office to Dr. Shirin Shaikh as Executive Principal, which is duly approved by Pro-Vice-Chancellor of the University. The claim is, therefore, liable to be rejected.

7. The pleadings of the parties include counter reply and rejoinder, sum and substance of which is stated earlier. The members of Grievances Committee present heard the Applicant and the reply arguments of Shri Girish Pandav President of the Society on behalf of the Non-Applicant.

8. The members present have carefully gone through the entire case record and discussed the issues involved in the matter including legal aspect. On the basis of the submissions made and the material produced on record, the following Points arise for consideration and findings thereon is recorded as under ---

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PointsFindings

- 1) Whether the Applicant is entitled to the reliefs sought ?
- 2) What order ?

Partly Yes

As per the
concluding paraREASONS

9. It is not disputed that the Applicant was serving with the Non-Applicant as Principal of B.Ed College and retired on 31/03/2019. He claims salary as per 6th Pay Commission from 01/03/2016 till his retirement. However, as stated earlier by that time 7th Pay Commission was made applicable and hence his grievance is to be considered in relation to 7th Pay Commission. It is surprising that there is nothing in the reply or rejoinder by the Non-Applicant to infer that salary was paid to the applicant for 01/03/2016 onwards which is stated to be paid for the month of March 2016 sometime in December 2018. To establish payment of salary for rest of the period, no documentary evidence is produced on record by the Non-Applicant such as copies of bills, receipts and vouchers etc. As such legitimate conclusion can be drawn that salary was not paid to the Applicant, except for the month of March 2016 or it has not been paid as per 7th Pay Commission. However, salary as token amount might have been paid to Applicant and it will have to be adjusted in amount of arrears to be paid.

10. It is stated on behalf of the Non-Applicant during the course arguments that since the College is being run on no grant basis, the only source available for payment of salary was the collection of fees from the students admitted to first year and second year of B.Ed Course. Hence, it was not possible to pay full salary to the Applicant as per pay scale prescribed by the Pay Commission. The particulars of fees received and strength of students in this behalf is given. However, although college is

being run on no grant basis, it is affiliated to the University and further the Applicant's selection and appointment is duly approved which is through regular process. This being so Non-Applicant is governed by relevant Rules, Notifications and Government Resolutions issued from time to time. The Applicant cannot be blamed for reduction in strength of students, since many factors are responsible for it.

11.

So far as revision of pay-scale as per 7th Pay Commission from 01.01.2016 is concerned, it is stated by the Non-Applicant that those recommendations are made applicable to the University teaching staff only and so far as teaching staff attached to Education Colleges run on no grant basis is concerned, no orders are issued by the Govt. which are still awaited. The Applicant disputed this position and relied on UGC Regulations and Govt. Resolution No. Misc-2018/CR 56/18/UNI-I-13 dated 08.03.2019 and Direction No. 20 of 2019 issued by RTM Nagpur University dated 10.04.2019. We find substantial force in the contention of the Applicant, since as per Clause 10 of said Direction No. 20, date of implementation of revised pay is 01.01.2016 to teachers in Non-Agricultural Universities, affiliated colleges, etc. There is no need to issue separate G.R. for teachers serving in colleges of Education, since all the colleges are covered under G.R. Hence, he is entitled to pay revision from 01.01.2016, although, there is no specific reference in the aforesaid G.R. about its applicability to non-aided colleges also. This being so he is entitled to get the revised pay-scale from 01.01.2016 till the date of his retirement on 31.03.2019.

12.

In this respect, so far as applicability of Pay Commission and Pay Scale prescribed therein even to the non-aided colleges is concerned, the Hon'ble Supreme Court has ruled that such colleges are also liable to pay salary to the teaching and non-teaching staff as per prescribed Pay Scale and no defence

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regarding poor economic condition of college is validly taken. This has been held in Civil Appeal No. 1152120 of 2017 Secretary Mahatma Gandhi Mission and others V/s Bhartiya Kamgar Sena and others decided on 05.01.2017. In that case the teaching and non-teaching staff claimed revised pay scale as per 5th Pay Commission. The colleges run by the Appellant No. 1 were not receiving any grant from the State Govt. However, the submissions made by the Appellant institution were over-ruled by the Hon'ble Supreme Court. It is worthwhile to reproduce paragraph 85, 86, 89 & 90 of the said judgement, from which it is clear that financial restraint on any ground by the non-aided colleges cannot be raised as a ground to dis-allow the payment of salary as per the recommendations of the Pay Commission, on its acceptance by UGC & Govt. The above relevant paras are quoted herein below for ready reference.

"85. 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 an 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 incoherence T.M.A. Pai Foundation & Others V. State of Karnataka & Others, (2002) 8 SCC 481 38 and Islamic Academy of Education & Another V. State of Karnataka & Others, (2003) 6 SCC 697 39. 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 factors to the notice of the body competent to determine the fee structure and raise appropriate revenue.

87.

88.

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 order as to costs."

13.

From the above discussion, it is obvious that the Non-Applicant cannot escape from the liability of payment of salary as per the revised pay scale to the Applicant in pursuance of the recommendations of the 7th Pay Commissions which are accepted by the UGC & State Govt. It is stated that the Non-Applicant runs other colleges in Nagpur City. The society will have to find ways and means to raise sufficient funds from other sources to meet the claim of Applicant.

14.

So far as claim for refund of EPF contribution is concerned, it appears from record that Non-Applicant did not credit the contribution deducted from the Applicant's salary and adding to it the share of College to the office of the Commissioner of Employees Provident Fund, Nagpur. Since salary is paid to the Applicant prior to 01.03.2016, he is entitled to get refund of amount credited to his EPF account. It appears

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that the Non-Applicant alleged some technical lapse / flaw on the part of the office of Provident Fund Commissioner in the matter of showing deposit of contribution in EPF account of Applicant. However, Applicant sought information from the said office from which it can safely be said that college did not credit amount of EPF in Applicant's account. The Non-Applicant also accepted this position and only raised issue of financial crisis, as stated earlier to make payment of EPF amount. Be that as it may, the thing remains that Applicant was not paid the amount outstanding in his EPF account on his retirement, for which the Non-Applicant is solely responsible. The Applicant is, therefore, entitled to get the amount EPF contribution outstanding to his credit in his account on deposit of contribution deducted from Applicant's monthly salary and adding to it the share of contribution of college.

15.

It has come on record that the Applicant blamed the Non-Applicant for not relieving him from the post of Principal after retirement since no relieving order is issued nor no dues certificate is granted to him nor any steps were taken for getting extension for Applicant. As against this Non-Applicant blamed the Applicant for not handing over the files and keys of his cabin and the cupboards kept therein and he continued to work suo-motto even after 31.03.2019 without any authority. The Grievances Committee finds substantial force in the contention of the Non-Applicant. This is, so because for any reason the Applicant is not supposed to continue his job after 31.03.2019 on retirement, unless of course extension is granted to him. Admittedly, no extension is granted to him. For this reason the Applicant will not be entitled to get any salary or remuneration from 01.04.2019 onwards till he handed over the charge of the post of Principal.

16.

From the above discussion, it is obvious that the Applicant is entitled to get salary as per the revised pay scale approved by 7th Pay Commission for the post of Principal from 01.03.2016 till 31.03.2019 the date of his retirement since he has not specifically claimed the salary for any period prior to 01.03.2016. This being so it can safely be presumed that he is satisfied with whatever he received towards salary prior to 01.03.2016. It is stated that the salary for the month of March, 2016 is already paid to the Applicant in the month of December, 2018. It will have to be adjusted in the amount of arrears to be paid to the Applicant.

17.

The Applicant has claimed the gratuity for the service rendered by him. However, since the B.Ed. course is sanctioned on permanent no grant basis, there is no question of grant of pension or gratuity to its employees on retirement including the Applicant. However, he will be entitled to get the balance standing to his credit in EPF account. In this respect, as stated earlier, the Non-Applicant frankly admitted that on account of financial crunch and some technical problem monthly contribution from the amount of salary towards EPF and the share of the college has not been deposited with the concerned Authority. The Applicant will be entitled to get amount outstanding to his credit from 01.09.2008 to 31.03.2019.

18.

The Non-Applicant while admitting that they could not pay salary to the Applicant expressed willingness to pay it in 5-6 instalments. Thus the Non-Applicant has not denied the liability to pay the amount of salary. However, needs some breathing time for clear dues. During the course of hearing on behalf of Non-Applicant cheque of part payment was brought for being handed over to the Applicant. However, he declined and

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insisted for full payment. Considering the reason given by the Non-Applicant for non-payment of salary, it will not be in the fitness of the case to grant the Applicant interest on the amount of arrears to be paid to him.

19.

In the result the Grievance Petition is allowed in the following terms:

- (a) The Non-Applicant Education Society is directed to pay the salary to the Applicant as per the pay-scale prescribed under 7th Pay Commission for the post of Principal from 01.03.2016 to 31.03.2019. The amount of arrears be settled as per rules and it be paid to the Applicant in five monthly instalments commencing from March, 2021 after adjusting the amount of salary, if any paid to him.
- (b) The Non-Applicant is also directed to take necessary steps for payment of contribution of Employees Provident Fund outstanding to the credit of the Applicant in his account for the period from 01.09.2008 to 31.03.2019, by remitting the amount and making necessary correspondence with the concern Authority. However, this amount be paid in lumpsum to the Applicant by the end of April, 2021.
- (c) The Applicant's claim for grant of gratuity and the interest on the arrears is, however, disallowed.
- (d) The Applicant will not be entitled to get any salary or remuneration for the services rendered by him after 01.04.2019 till he handed over the charge of the post of Principal, since he ceased to be in service by the end of 31.03.2019.

(e) In the facts and circumstances of the case, the parties are directed to bear their respective costs of this Grievance Petition.

(f) The office is directed to forward the authenticate copy of this order to both the parties for taking necessary steps in the matter.

Nagpur.

Dated:20-01-2021.



(Arvind J. Rohee)
Chairman, Grievances Committee,
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