

vdk

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12468 OF 2019

Dr. Sampada s/o Sandip Sant
Age: 50 years, Occupation: Professor
(Sharir-kriya) in Government Ayurved
College, Nanded
R/o: 22/23, Minashi Banlow, near Tyni
Angels school Bhandari Nagar, Nanded
431602 and others

...Petitioners

VERSUS

The State of Maharashtra and others

...Respondents

.....

Mr. Mukund R. Kulkarni, Advocate for the petitioners
Mr. S. N. Kendre, Assistant Government Pleader for respondents

.....

[CORAM : SUNIL P. DESHMUKH AND
S. M. GAVHANE, JJ.]

DATE : 14th October, 2019

ORDER :

1. Issue notice to respondents. Learned Assistant Government Pleader waives notice for respondents.
2. Heard learned counsel for the parties and matter has been taken up for hearing finally.
3. After hearing learned counsel for the parties, there is absolutely no dispute on that present petitioners are similarly placed persons as petitioners in the group of writ petition bearing

no. 6261 of 2017 and other accompanying writ petitions which have been disposed of by a division bench of this court on 26th April, 2019.

4. The Division bench in its order has observed in paragraph no. 1, reading, thus,

“ 1. All these writ petitions are based on similar set of facts and involve common issue. To avoid rigmarole they are decided by common judgment. The petitioners contend that Clause 3 of the clarification dated 17.01.2012 issued by the Assistant Secretary, Department of Medical Education and Drugs, of the State of Maharashtra thereby directing to non-practicing allowance to the petitioner on the basis old pay by ignoring the 6th revised pay by applying ceiling limit be quashed and set aside and the said clarification be declared as ultra-virus to Rule 15 of the MCSR pay Rules, 1981 and the terms of the appointment orders. The petitioners also claim declaration that they are entitled for non-practicing allowance proportionate to their revised pay at the rate of 50% of the revised pay as provided under the Government policy enumerated in the Government Resolutions dated 27.03.2008 and 18.08.2010.

2.

 ”

then, in paragraphs no. 14, 15 and 16.

“ 14. The Tribunal has not committed any error in negating the contention of the petitioner.

15. Some of the petitioners have been paid non-practicing allowance at the revised rate with effect from 01.09.2008 and some from 01.01.2006. It appears that Government Resolution dated 10.11.2009 was interpreted by the authorities to the effect that the non-practicing allowance would be paid from 01.09.2008. It appears that the authorities interpreted Clause 10(i) of Government Resolution dated 10.11.2009 in a manner that non-practicing allowance also would be included in the

special allowance and shall take effect from 01.09.2008. The said interpretation was erroneous. However, some of them have been given the benefit of non-practicing allowance from the earlier date than prescribed under the Government Resolution dated 24.07.2012.

16. We do not find that petitioners in any way had misrepresented the authorities. It is probably on interpretation (though erroneous) of the Government Resolution dated 10.11.2009 the benefit was accorded to some of the petitioners of payment of non-practicing allowance as per the revised pay scale. In view of that, we direct that if the recovery has not been made by the respondents from petitioners regarding the excess amount of non-practicing allowance paid, the same shall not be made as the same would be inequitable. ”

5. Having regard to that relevant factual aspects being almost same, we deem it appropriate to fall in line with the reasoning given in aforesaid order and, thus, we dispose of writ petition similarly, and direct that if recovery from petitioners has not been made by the respondents regarding excess amount of non-practising allowance paid, the same shall not be made as the same would be inequitable.

6. With aforesaid direction, writ petition stands disposed of.

[S. M. GAVHANE]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE