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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3244 OF 2017

Dr. Bachina Nageshwara Rao
Age – 69 years, Occ- Pensioner,
R/o 404, S. S. Heights,
Gokul Nagar,
Tarnaka, Secunderabad – 500 017
Telangana State

PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary,
Medical Education & Drugs Department
Mantralaya, Mumbai -32
2. The State of Maharashtra
Through its Secretary,
Finance Department,
Mantralaya, Mumbai – 32
3. The Dean
Government Medical College and Hospital
Aurangabad
4. The Accountant General,
Maharashtra – II,
Nagpur

RESPONDENTS

.....
Mr. Pallav Sinha h/f Mr. S. V. Adwant, Advocate for the Petitioner
Mr. A. V. Lavte, AGP for Respondent - State
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[CORAM : NITIN B. SURYAWANSHI, &
VAISHALI PATIL-JADHAV, J. J.]

RESERVE DON : 11th DECEMBER, 2025
PRONOUNCED ON : 17th DECEMBER, 2025

JUDGMENT (PER NITIN B. SURYAWANSHI, J.):

1. Rule. Rule is made returnable forthwith. Heard finally with the consent of the learned Advocates for the parties.
2. This Petition is filed by the Petitioner under Article 226 of the Constitution of India, seeking following reliefs:

“B. By issuing an appropriate writ or direction, the respondents be directed to refund the amount of Rs.4,55,368/- forcefully recovered by the State from the petitioner without any lawful authority alongwith interest @ 12% per annum from the date of recovery till the date of the payment thereof.

C. By issuing an appropriate writ or direction, the respondents be directed to pay Gratuity of Rs.3.5 lacs, which is the revised ceiling limit, to the petitioner alongwith interest thereon @ 12% from the date on which it became payable till the date of its actual payment.

D. By issuing an appropriate writ or direction, the respondents be directed to pay the amount of Non Practicing Allowance (NPA) to the petitioner as per the MCS Rules, along with interest thereon @ 12% from the date on which it became payable till the date of its actual payment.

E. By issuing an appropriate writ or direction, the respondents be directed to grant the benefit of Earned Leave Encashment to the petitioner as per the GR dated 15.1.2001.

F. By issuing an appropriate writ or direction, the respondents be directed to pay Dearness Allowance to the petitioner as per the GR dated 20.7.2004 along with interest on the difference amount from the date on which it became payable till the date of its actual payment.

G. By issuing an appropriate writ or direction, the respondents be directed to revise the basic pay of the petitioner from Rs.21,900/- to Rs.22,400/- and calculate the pensionable pay on the basis thereof as per G. R. dated 27.1.2000.

J. By issuing writ of mandamus or an appropriate writ, it be declared that the petitioner is entitled to claim, receive and recovery full pension i.e. 50% of the sum of minimum of pay in the pay band and grade pay corresponding to his pre-revised pay scale without pro-rata deduction as per Office Memorandum dated 6.4.2016 and 13.6.2016 filed at Exh-X and Y and further respondents be directed to revise the pensionable pay of the petitioner by applying the above rule.”

3. It is the case of the Petitioner that, the Petitioner is MD in Radiation Oncology and was appointed as Professor with Government Medical College and Hospital, Aurangabad on 7th December, 1981. On the request made by the then State of Andhra Pradesh, the Petitioner was sent on deputation, for being appointed as Director of M.N.J. Institute of Oncology and Regional Cancer Center, Hyderabad, as per Government Resolution dated 21st June, 2001. Petitioner's Deputation period was extended by the State Government twice, vide Government Resolution dated 9th March 2004 till 24th June 2005 and vide Government Resolution dated 5th October, 2004 till 24th June 2005. In view of the extensions granted by the State of Andhra Pradesh, the Petitioner worked there till 4th April 2007 and

thereafter he claims to have relinquished the said post.

4. In the interregnum, the Petitioner, on attaining the age of superannuation, retired from his parent department i.e. Government Medical College and Hospital, Aurangabad, as Professor of Radiotherapy on 31st August 2005. The Petitioner claims to have rendered total 23 years, 8 months and 24 days' service from 7th December 1981 to 31st August 2005. By Government Resolution dated 30th August, 2008, the State of Maharashtra granted *post facto* sanction extending the period of deputation of the Petitioner from 25th June, 2005 to 31st August, 2005. The Petitioner claims that while issuing the said GR, the Respondents have wrongly recovered an amount of Rs.4,55,368/- which was deposited by the Government of Andhra Pradesh towards his leave salary and pension.

5. The Respondents have opposed the Writ Petition, by filing a detailed reply. They have claimed that though extension was granted to the Petitioner up to 24th June 2005, he did not resume his duty in the Government Medical College and Hospital, Aurangabad, hence *post facto* sanction was required to be given to the Petitioner from 25th June 2005 to 31st August 2005, subject to payment of dues against the Petitioner. Calculations of the dues of the Petitioner are also given in the affidavit in reply.

The Respondents have submitted that all the benefits claimed by the Petitioner are already extended to him and entire dues of the Petitioner are paid.

6. Heard learned Advocate for the Petitioner and learned AGP for the Respondents, at length. Perused the memo of Writ Petition and the documents annexed thereto.

7. In support of his case, learned Advocate for the Petitioner has relied on following judgments :

- I. *“Rajendra Prasad Upadhyaya V/s State of U.P. through Prin. Secretary Irrigation” 2012 SCC OnLine All 621.*
- II. *“K. C. Bajaj and Others V/s Union of India and Others” (2014) 3 SCC 777*
- III. *Writ Petition No. 5042 of 2016 dated 2nd February, 2024 (Association of College and University Superannuated Teachers V/s Union of India and Others)*
- IV. *Writ Petition No. 8987 of 2014 dated 8th May, 2015 (Dr. Shafat Hussain Shafaquat Hussain Talib V/s The State of Maharashtra)*

8. Learned AGP, on the other hand, has strenuously opposed the petition by relying on the affidavit in reply and documents annexed thereto, by submitting that all the retiral benefits are

already paid to the Petitioner in accordance with the rules and the Petition is misconceived and hence is liable to be dismissed with costs.

9. It is evident from the documents placed on record by the Respondents that, though the period of Petitioner's deputation was up to 24th June 2005 and he was supposed to resume in service of the State of Maharashtra from 25th June 2005, however, he did not resume Maharashtra Government service and opted to remain on deputation at Hyderabad, till he attained the age of superannuation. The Maharashtra Government was, therefore, required to give *post facto* sanction for the period 25th June 2005 to 31st August, 2005, by order dated 30th August 2008.

10. In the reply affidavit, it is stated that, following dues were recoverable from the Petitioner:

a.	House Building Advance	:	Rs.1,09,124/-
b.	Pay and Allowance	:	Rs. 32,557/-
c.	Government Quarter Recovery	:	Rs.1,50,019/-
d.	Recovery of excess payment	:	Rs. 54,165/-

TOTAL	:	<u>Rs. 3,45,865/-</u>
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11. Since the Petitioner was liable to pay the above dues, the said amount is rightly recovered from the Petitioner. Hence, we find no merit in the contention of the Petitioner that the said

amount is illegally recovered from him.

12. Admittedly, 6th Pay Commission benefits were conferred on the Government servants with effect from 1st January, 2006. The Petitioner stood retired on 31st August, 2005 and, therefore, he is not entitled to claim benefits of 6th Pay Commission. Therefore, there is no merit in the contention of the Petitioner that, his basic salary was wrongly considered while fixing the pension.

13. The record further reveals that, while calculating his pension, as per GR dated 15th November, 1999, since the Petitioner's highest pay was Rs.24,500/-, the same was taken into consideration while granting pension to the Petitioner. Accountant General, by communication dated 22nd March, 2010, informed that as per the GR dated 15th November, 1999, the Petitioner is entitled to get pension of RS.13,086/- per month. An amount of Rs.2,50,000/- towards Death Cum Retirement Gratuity, which is the maximum, was sanctioned and paid to the Petitioner.

14. As per Government Resolution dated 18th March, 2000, 25% NPA was made applicable to the Petitioner, subject to the condition that total basic pay plus NPA should not exceed Rs.29,500/-.

15. It appears from the record that at the time of retirement, the Petitioner's basic pay was Rs.20,900/-, therefore, 50% Dearness Pay (Rs.10,450/-) payable to the Petitioner in terms of GR dated 20th July, 2004 was sanctioned.

16. The record further reveals that, the Petitioner was granted total 279 days' leave encashment.

17. Thus, it is clear that, the Petitioner is paid all his dues. The retiral benefits granted to the Petitioner are verified and sanctioned by the Accountant General, Nagpur. Thus, the Petitioner has received all the retiral benefits payable to him, as per the Rules and Government policy.

18. The decisions relied upon by the Petitioner are rendered in different facts and are of no help to the Petitioner's case.

19. For the aforesaid reasons, we find no merit in the Petition and the same is, therefore, dismissed. Rule is discharged. No order as to costs.

[VAISHALI PATIL-JADHAV]
JUDGE

[NITIN B. SURYAWANSHI]
JUDGE