

HIGH COURT OF DELHI

Bench: JUSTICE TUSHAR RAO GEDELA

Date of Decision: April 3, 2024

W.P.(C) 7852/2018 & CM APPL.30119/2018

PROF DR. MOHAN RAO & ORS. ...Petitioners

Versus

JAWARHARLAL NEHRU UNIVERSITY & ORS. ...Respondents

Legislation:

Article 226 of the Constitution of India, Fundamental Rule 9(25) of the Fundamental Rules, Fundamental (Second Amendment) Rules, 1962, Indian Medical Council Act, 1956, Dentists Act, 1948

Subject: Petition for quashing certain letters and decisions regarding Non-Practicing Allowance (NPA) withdrawal and for restoration and payment of arrears of NPA to the petitioners – Qualified MBBS doctors employed as Assistant Professors at Jawaharlal Nehru University (JNU) challenging withdrawal and recovery of NPA.

Headnotes:

Quashing of Impugned Letters – Grant of Non-Practicing Allowance (NPA) to Professors with MBBS Qualifications – Writ Petition against Jawaharlal Nehru University’s decision to stop NPA and recover past payments – Delhi High Court holds impugned letters quashed, NPA admissible to petitioners since their induction, University directed to pay arrears of NPA from January 2017 with interest if delayed. [Paras 1-33]

Eligibility for Non-Practicing Allowance – Analysis of Essential Qualification for Appointment as Assistant Professor – MBBS Degree Requirement – Court finds petitioners eligible for NPA based on their qualifications as MBBS doctors, upholds continued payment of NPA till date of entitlement. [Paras 21-27, 31-32]

Jurisdiction of Executive Council of University – Necessity for Rescinding or Modifying Previous Decisions – University’s unilateral decision without Executive Council’s resolution found invalid – Past payments of NPA not recoverable without appropriate decision from the Executive Council. [Paras 28, 31]

Decision – Restoring NPA to Petitioners – Delhi High Court directs Jawaharlal Nehru University to pay arrears of NPA from January 2017, failure to do so within 6 weeks to attract simple interest at 6% per annum. [Para 32]

Referred Cases:

- State of Punjab & Ors vs. Rafiq Masih (White Washer) & Ors reported as (2015) 4 SCC 334
- State of Rajasthan vs. Mohinuddin Jamal Alvi & Anr, reported as (2016) 12 SCC 608
- Surya Narain Yadav & Ors vs. Bihar State Electricity Board & Ors, reported as (1985) 3 SCC 38

Representing Advocates:

For Petitioners: Mr. Gautam Narayan, Ms. Asmita Singh, Mr. Sukrit Seth

For Respondents: Mr. Navdeep Singh, Ms. Devika Thakur, Mr. Ranvijay Singh, Mr. Apoorv Kurup, Ms. Nidhi Mittal, Ms. Gaur, Ms. Muskan Gupta, Mr. Dev P. Bhradwaj, Mr. Dhurv

JUDGMENT

TUSHAR RAO GEDELA, J.

[The proceeding has been conducted through Hybrid mode]

1. The present petition has been filed under Article 226 of the Constitution of India, *inter alia*, seeking the following reliefs:-

“i. Issue a writ of Certiorari calling for the records and quashing the letter dated 5.7.2017 issued by Respondent No.1; ii. Issue a writ of Certiorari calling for the records and quashing the clarification dated 28.12.2016 issued by Respondent No. 2 as being wholly illegal, arbitrary and unconstitutional ;

iii. Issue a writ of Certiorari calling for the records and quashing the letters dated 02.06.2016, and 02.12.2016, and decision dated 29.11.2016 issued by Respondent No. 3 as being wholly illegal, arbitrary and unconstitutional ;

iv. Issue a writ of Mandamus directing Respondent No. 1 to restore the payment of the Non-Practicing Allowance to the Petitioners ;

v. Issue a writ of Mandamus direction Respondent No.1 to pay the arrears of the Non-Practicing Allowance to the Petitioners commencing from January 2017 till date of payment with interest; and

vi. Pass such other order/s as may be deemed fit and proper in the facts of the present case.”

2. The facts as narrated in the present petition are as under:-

i) The President of India, in exercise of powers conferred by the Proviso to Article 309 and clause (5) of Article 148 of the Constitution, inserted Non-Practicing Allowance (hereinafter referred to as “NPA”) in the category of Special Pay defined in Fundamental Rule 9(25) of the Fundamental Rules by way of the Fundamental (Second Amendment) Rules, 1962.

ii) The petitioners submit that the Centre of Social Medicine and Community Health was established in 1971 in the respondent no. 1/

University in order to shape, and to provide academic content, to the discipline of public health, making it relevant to the situation in India by understanding health problems and health needs of the mass of the Indian people. The centre provides facilities for the academic programmes: i) M.Phil. in Social Sciences in Health; ii) Master of Public Health; iii) Ph.D. Programme.

iii) Thereafter, the Ministry of Finance approved grant of NPA to medical and public health posts created by various Ministries, Administrations and Organizations *vide* O.M. dated 24.07.1971.

iv) Consequently, the respondent no. 2/ UGC, approved revision of rate of NPA admissible the incumbents of those posts for which a medical qualification recognized under the Indian Medical Council Act, 1956 or under the Dentists Act, 1948 has been prescribed as an essential qualification on 24.06.1976.

v) In pursuance thereto, that the Executive Council of the University, *vide* Resolution dated 13.04.1977, approved the respondent no. 2/ UGC Notification/ Order dated 24.06.1976 with respect to payment of revised rate of NPA for incumbents of those posts for which a medical qualification recognized under the Indian Medical Council Act, 1956 or under the Dentists Act, 1948 has been prescribed as an essential qualification, with effect from the dates they draw pay in the revised pay scales.

vi) The petitioners assert that all faculty at the Centre of Social Medicine and Community Health, who have a medical background and possess M.B.B.S. degree, were granted NPA. Reference may be made to office order dated 01.11.1988 issued by the respondent no. 1/ University which lists the then existing faculty of the Centre of Social Medicine and Community Health, with medical degrees, who were entitled to, and were paid NPA.

vii) The petitioners submitted that as per O.M. dated 24.03.1975, the NPA rates were revised on the recommendations of the Third Pay Commission.

viii) It is the case of the petitioners that the petitioner no. 1 had completed the M.B.B.S. course in August 1977 from Bangalore Medical College, and registered with the Karnataka Medical Council in September, 1977. The petitioner no. 2 had completed the M.B.B.S. Course in the year 1981 from Lady Hardinge Medical College and registered with the Medical Council of India in April, 1983.

ix) It is the case of the petitioners that the petitioner no. 1 joined Jawaharlal Nehru University (in short "*JNU / University*") on 26.03.1987 as an Assistant Professor in the Centre of Social Medicine and Community

Health, School of Social Sciences. Subsequently, *vide* Office Order No. 509 dated 16.07.1987 issued by the respondent no. 1/ University granted the petitioner No. 1 NPA at Rs. 150/- per month in addition to his pay from the date of his appointment.

x) In the meanwhile, *vide* O.M. dated 18.09.1987, the NPA rates were revised on the recommendations of the Fourth Pay Commission. xi) The petitioners submitted that by *vide* Office Order no. 734 dated 01.11.1988, the NPA of the petitioner no. 1 was revised to Rs. 600/- per month. This Office Order also revised the NPA for other teachers in the Centre of Social Medicine and Community Health who occupied posts where MBBS was an essential qualification.

xii) It is the case of the petitioners that the petitioner no. 2 was appointed as an Assistant Professor in Centre of Social Medicine and Community Health, School of Social Sciences, JNU with effect from 12.12.1990 and *vide* a Office Order no. 150 dated 12.03.1991, respondent no. 1/ University granted NPA to the petitioner no. 2 with effect from the date of her appointment i.e., 12.12.1990. xiii) The petitioners stated that the petitioner no. 3 obtained the M.B.B.S. Degree from Calcutta University in the year 1990 and got registered with the West Bengal Medical Council in March 1991. The petitioner no. 1 was appointed as an Associate Professor on 10.05.1996 in the same Centre pursuant to Advertisement No. A&E-11/4/95, and his pay fixation was approved at the minimum of Rs. 12000+25% NPA.

xiv) That *vide* O.M. dated 15.04.1998, the NPA rates were revised on the recommendations of the Fifth Pay Commission. xv) The petitioners submitted that pursuant to Advertisement no. RC/18/2002 published in July 2002, the petitioner no. 3 was appointed against the post of Assistant Professor in Community Health in the Centre of Social Medicine and Community Health, JNU, with effect from 15.10.2003 and *vide* Office Order no. 60 dated 04.02.2004, the respondent no. 1/ University specified the petitioner no. 3's pay structure which included duly sanctioned NPA with effect from his date of joining respondent no. 1/ University.

xvi) It is the case of the petitioners that the petitioner no. 1 was promoted as Professor on 10.05.2004, his pay fixation was approved at the minimum of Rs. 16400+25% NPA and the petitioner no. 3 was promoted as an Associate Professor with effect from 16.10.2005, his pay as Associate Professor was revised once again including NPA.

xvii) The petitioners stated that the report of the Sixth Central Pay Commission released in March 2008 which discusses the rationale of

granting NPA to medical doctors and reiterates the earlier recommendation that doctors should continue to be paid NPA at the existing rate of 25% of the aggregate of the band pay and grade pay subject to the condition that the basic pay + NPA does not exceed Rs. 85,000/- and the same was notified by the Ministry of Finance *vide* Office Memorandum no. 7(19)/2008-E.III(A) dated 30.08.2008.

xviii) It is the case of the petitioners that the petitioner no. 2 was appointed as a Professor in the Centre with effect from 01.01.2010 and her pay was re-fixed. It, once again expressly included the NPA.

xix) The petitioners submitted that the petitioner no. 3 was promoted as a Professor *vide* Office Order no. 1952 dated 30.10.2014, with effect from 16.10.2011 and *vide* Office Order no. 461 dated 25.02.2014, the petitioner no. 3's pay was fixed as a Professor, which included NPA, with effect from 16.10.2011.

xx) It is the case of the petitioners that one Dr. Vikas Bajpai, M.B.B.S., M.D. (Oncology Radiologist) was appointed as an Assistant Professor in the Centre in April 2014. He has been raising a grievance over the nonpayment of NPA to him despite being eligible for the same.

xxi) The petitioners stated that Dr. Bajpai wrote a letter dated 04.07.2014 to the respondent no. 1/ University requesting grant of NPA.

xxii) It is the case of the petitioners that Academic Branch-I of the University, based on medical qualification being an essential qualification for the post, sought approval as it taken at every instance of pay fixation, of the Internal Auditor on 05.08.2014 for grant of NPA to Dr. Vikas Bajpai. Before expressing any view, the Consultant, Internal Auditor of the University on 08.08.2014, requested a list of teachers and staff getting NPA with relevant decisions of the University. The Academic Branch-I on 10.09.2014, replied to the queries raised by the Consultant, Internal Audit, giving all the relevant particulars. The Internal Audit of the University, on a selective reading of the response of the Academic Branch, stated that *"since the Academic Branch has stated that they do not have any ordinance/order of UGC in relation to payment of NPA to teachers in JNU, the matter may be referred to UGC/MHRD for clarification."* xxiii) It is the case of the petitioners that the

Finance and Accounts Department of the University prepared notes dated 27.01.2015 and 20.04.2015 on the issue of grant of NPA to Dr. Vikas Bajpai, clearly suppressing the Resolution of the Executive Council of the respondent no. 1/ University dated 13.04.1977, which adopted the revised rates of payment of NPA to incumbents of those posts for which a medical

qualification has been prescribed as an essential qualification. They further attempted to create an illusory distinction between Medical and Clinical Posts and raised baseless doubts. Consequently, the respondent no. 1/ University sent a letter dated 07.05.2015 to respondent no. 2/ UGC requesting clarification on the admissibility of NPA to Dr. Vikas Bajpai. This letter also does not refer to the Resolution of the Executive Council of respondent no. 1/ University dated 13.04.1977, adopting the revised rates of payment of NPA to incumbents of those posts for which a medical qualification has been prescribed as an essential qualification. xxiv) The petitioners stated that in response dated 01.02.2016 to the letter dated 07.05.2015, the respondent no. 1/ University, not just suppressed the Executive Council Resolution dated 13.04.1977, but raised doubts by creating a superfluous distinction between medical and clinical posts. xxv) It is the case of the petitioners that respondent no. 2/ UGC, wrote to the respondent no. 3/ MHRD (hereinafter referred to as “MHRD”) on 02.05.2016 seeking views of the Ministry with respect to admissibility of grant of NPA to Dr. Vikas Bajpai. While respondent no. 3/ MHRD was asked to opine on the admissibility of NPA to the post of Assistant Professor in the Centre, the Executive Council Resolution dated 13.04.1977 on the basis of which the incumbents have been granted NPA since the inception of the Centre, was not revealed since the background note was based on the letters from respondent no. 1/ University. The respondent no. 3/ MHRD sent its opinion dated 02.06.2016 to respondent no. 2/ UGC stating that the requisite criteria are not met in the case of Dr. Vikas Bajpai, therefore, NPA is not admissible in his case.

xxvi) The petitioners submitted that on 17.08.2016, the Secretary, UGC further discussed the matter, which was then followed by the noting of the Joint Secretary dated 23.08.2016 wherein it is stated that in terms of the O.M. dated 30.08.2008 as “*we may inform JNU that if the essential qualification prescribed for the post of Asst. Professor in Centre of Social Medicine and Community health is a medical qualification recognized under the Indian Medical Council Act, 1956, then the NPA is payable to Dr. Vikas Bajpai or alternatively, we may again refer the case to MHRD for reconsideration in view of the said OM dated 30.08.2008.*” xxvii) It is the case of the petitioners that the Secretary, UGC decided to refer the matter to respondent no. 3/ MHRD for reconsideration on 26.08.2016. Consequently, on 14.09.2016, respondent no. 2/ UGC wrote to respondent no. 3/ MHRD citing the contents of O.M. dated 30.08.2008 reiterating the fact that Medical Posts were those for which medical qualification was an essential criterion.

- xxviii) The petitioners submitted that the respondent no. 3/ MHRD, it appears, referred the matter to its Integrated Finance Division (IFD). The IFD in its opinion dated 29.11.2016 stated that the post of Assistant Professor in the Centre cannot be treated as a Medical Post and therefore does not qualify for additional allowance of NPA as respondent no. 1/ University does not have a hospital.
- xxix) It is the case of the petitioners, in January 2017, the respondent no. 1/ University stopped payment of NPA to the petitioners in perverse exercise of powers. On becoming aware that the NPA for the month of January had not been credited as part of their monthly salaries, a letter dated 02.02.2017 was addressed by the petitioners to the Finance Branch of respondent no. 1/ University pointing out the error and requesting that the said payment be credited. The petitioners once again pointed out to the University, by letter dated 19.06.2017, that the NPA had been abruptly and unlawfully stopped from January 2017 without any change in rules and without any intimation to the petitioners whatsoever.
- xxx) The petitioners stated that the respondent no. 1/ University sent the very first communication to the petitioners after 6 months of abruptly and unlawfully stopping payment of NPA, which is impugned by way of the present petition. By letter dated 05.07.2017, the respondent no. 1/ University revealed that the NPA had been stopped purportedly in light of a letter dated 28.12.2016 sent by respondent no. 2/ UGC to the university in response to a clarification sought by the respondent no. 1/ University from respondent no. 2/ UGC, to the effect that NPA was not admissible in the case of Dr. Vikas Bajpai, an Assistant Professor at the Centre. By the impugned letter dated 05.07.2017, the respondent no. 1/ University sought to recover from the petitioners from the date of initial payment till December 2016, i.e. for a period ranging from 14 years to 31 years.
- xxxii) It is the case of the petitioners that *vide* O.M. dated 07.07.2017, revising the rate of NPA in respect of medical posts in accordance with the recommendations of the Seventh Central Pay Commission. On 12.07.2017, a reply was sent by the petitioners to the impugned letter dated 05.07.2017 to the respondent no. 1/ University. In light of continued withholding of NPA, the petitioners wrote a reminder to the University on 07.12.2017.
- xxxiii) The petitioners submitted that the petitioner no. 1 retired on 31.03.2018 without the respondent no. 1/ University addressing the issue of stoppage of his NPA. Thus, he was not paid NPA due to him for the period January 2017 to March 2018, and there was consequential impact on TA/DA and other

allowances. The petitioners wrote a further reminder on 01.05.2018 to the respondent no. 1/ University in light of continued withholding of NPA. Not having received gratuity and leave encashment on retirement, the petitioner no. 1 requested release of the same at the earliest *vide* letter dated 25.05.2018. Having received no formal reply to date, it is apprehended that the withholding of statutory amounts due to him is on account of the unlawful withholding of NPA due to him since January, 2017.

xxxiii) Hence, the present petition.

CONTENTIONS OF THE PETITIONERS :-

3. Mr. Gautam Narayan, learned counsel for the petitioners submits that the petitioners are aggrieved of the arbitrary and unjust withdrawal of the Non Practicing Allowance by the impugned Letter dated 05.07.2017 as also the Notice contained therein as to why the respondent no. 1/ University should not recover the NPA paid to them with effect from 12.12.1990 till December 2016. He submits that this was on the untenable ground that the post of Assistant Professor could not be treated as Medical Post and therefore, would not qualify for NPA as per O.M. dated 30.08.2008.

4. Mr. Narayan submits that the petitioners are qualified MBBS doctors who were inducted with the respondent no. 1/ University as Assistant Professors on various dates and were granted NPA in addition to the regular salaries without any hitch or break. He submits that it was only when one Dr. Vikas Bajpai, Assistant Professor with the respondent no. 1/ University sought payment of NPA to him too, the respondent no. 1/ University after consultation with the respondent no. 2/ UGC and respondent no. 3/ MHRD negatived such request on the basis of the O.M. dated 30.08.2008. Other than that, he submits that there is no ground to deny continuity of payment of NPA to the petitioners, muchless, any right or entitlement to the respondent no. 1/ University to demand recovery of past payments. Learned counsel submits that the refusal of NPA to Dr. Vikas Bajpai cannot translate to deprivation of NPA to the petitioners with demand of recovery of past payments.

5. To buttress his argument, learned counsel invites attention of this Court to the letter dated 28.12.2016, impugned herein to submit that the letter referred only to Dr. Vikas Bajpai's request and the reasons of refusal, ostensibly based on the O.M. dated 30.08.2008. He contends that the respondent no.1/ University, on its own and without any factual or legal basis,

issued the impugned Letter dated 05.07.2017, not only withdrawing the NPA but also demanding recovery of NPA paid to the petitioners with effect from 12.12.1990 to 31.12.2016 based on the Letter dated 28.12.2016. In continuation thereto, he draws attention to the counter affidavit filed by the respondent no.1 / University to submit that it was categorically admitted by it that the University had not passed any resolution modifying or rescinding the decision taken by its Executive Council (hereinafter referred to as "EC") on 13.04.1977. This, according to learned counsel was crucial, since *vide* the said Resolution, the EC had granted revision in payment of NPA to teachers in the University, with medical qualifications, in terms of respondent no.2/ UGC Notification/ Order No.F/1/8/75 (D-56) dated 24.06.1976. Learned counsel also took pains to read through the Notification/ Order dated 24.06.1976 to demonstrate that the revision of rate of NPA admissible to the teachers in the Medical Faculties of Central Universities was notified by the respondent no.2/ UGC in consultation with the Government of India. Thus, according to Mr. Narayan, unless the same mechanism was adopted for such proposal to be placed before the EC and such previous EC Resolution is rescinded or modified, by way of a simple notice, neither could the NPA be stopped nor could the respondent no.1/ University demand the past payments from the petitioners.

6. In addition to the aforesaid arguments, learned counsel for the petitioners referred to specific Office Order no.734 dated 01.11.1988 to impress that the respondent no.1/ University had granted further revision in NPA with retrospective effect to the petitioner no.1.

7. Learned counsel additionally refers to the recommendations of the Academic Council of the respondent no.1/ University whose comments were sought so as to take suitable action consequent upon the receipt of the Letter dated 28.12.2016 of the respondent no.1/ MHRD. He submits that after examining the earlier EC Resolutions of 1977 with the directions in the Letter dated 28.12.2016, the Academic Council of the respondent no.1/ University *vide* the Note dated 23.05.2017, placed its comments seeking suitable orders as to restoration of the NPA to the petitioners. Learned counsel invites attention particularly to para 3(c) and 3(e) of the Note dated 23.05.2017 in this regard.

8. Mr. Narayan thus submits that without rescinding the Resolution dated 13.04.1977 of the EC, which is the highest and the only Competent Body to take such decisions, the impugned Letter dated 05.07.2017 is without any legal edifice and ought to be set aside, consequently granting

continuity of NPA with effect from 01.01.2017 till the petitioners are entitled to it with interest.

9. Learned counsel also refers to the advertisement no. RC/18/2002, particularly for the Department of Social Sciences for Assistant Professor in Community Health to submit that for such post the essential qualification is MBBS with 55% marks apart from other criteria. He submits that each of the petitioners is a MBBS qualified doctor and as such there is no reason to deny NPA to any of them. According to him, no person without the MBBS degree would at all be entitled even to apply for such post. He invites attention to the O.M. dated 30.08.2008 to urge that the even by this notification, the Ministry of Finance, Department of Expenditure, did not rescind or supersede the earlier OM's or the EC Resolution granting NPA to the petitioners. Learned counsel asserts that neither any O.M. nor any notification has been placed on record by the respondents to demonstrate any modification or rescindment of O.M. dated 30.08.2008. As such, according to learned counsel there was no occasion to issue the impugned notice.

10. Mr. Narayan draws attention to the Notification of 18.05.1962 issued by the Government of India to submit that the NPA was introduced for doctors in lieu of private practice which was subsequently made applicable to the petitioners too. In fact, this notification was followed by O.M. dated 24.07.1971, 24.03.1975, 18.09.1987, 15.04.1998 and O.M. dated 07.07.2017 issued in respect of implementation of the 7th Central Pay Commission Reports. Learned counsel on the basis of the above, prays that the impugned notices be quashed and set aside and as a consequence, direction to continue payment of NPA with effect from 01.01.2017 till date of entitlement of each of the petitioners be made with interest and proposed action of recovery of NPA paid previously with effect from 12.12.1990 to 31.12.2016 be declared as illegal and *non est*.

11. Mr. Gautam Narayan, learned counsel for the petitioners relied upon the following judgements of the Supreme Court:-

- i) ***State of Punjab & Ors vs. Rafiq Masih (White Washer) & Ors*** reported as **(2015) 4 SCC 334** ;
- ii) ***State of Rajasthan vs. Mohinuddin Jamal Alvi & Anr***, reported as **(2016) 12 SCC 608** ;
- iii) ***Surya Narain Yadav & Ors vs. Bihar State Electricity Board & Ors***, reported as **(1985) 3 SCC 38**.

CONTENTIONS OF RESPONDENT NO.1 / JAWAHARLAL NEHRU UNIVERSITY :-

12. Mr. Navdeep Singh, learned counsel appearing for the respondent no.1/ University submits that the Jawaharlal Nehru University had sent a communication in respect of the request/representation for grant of NPA submitted by Dr. Vikas Bajpai to the respondent no.2/ UGC and the respondent no.3/ MHRD seeking clarification/approval. He submits that while the respondent no.1/ UGC forwarded the communication to the respondent no.3/ MHRD, the said Ministry by its Letter dated 28.12.2016 had directed that such NPA was not admissible in the case of Dr. Vikas Bajpai in view of the fact that its Integrated Finance Division opined that the post of Assistant Professor in the Department of Social Medicine and Community Health, School of Social Sciences, JNU cannot be treated as Medical Post and therefore, does not qualify in terms of O.M. dated 30.08.2008 and grant of NPA is not covered under the Rules.

13. Learned counsel for respondent no.1/ University submits that on the basis of such direction and clarification from the respondent no.3/ MHRD itself, the NPA to even the petitioners was decided to be stopped. As a consequence to the said decision, the authorities of the respondent no.1/ University issued letter dated 05.07.2017 informing each of the petitioners that as per the respondent no. 3/ MHRD directive, NPA was not admissible to them and that the same has been stopped with effect from 01.01.2017. It was also informed that the Competent Authority has also decided to recover the amounts paid as NPA to the petitioners as per the extant rule. Mr. Singh submits that the action impugned by the petitioners was issued by the respondent no.1/ University in pursuance of the Ministry's clarification and directive and as such there is neither any illegality nor any *malafide* in such action.

14. Learned counsel also invites attention of this Court to the communication dated 07.06.2018 issued by the respondent no.1/ University to the Secretary, UGC, seeking clarification as to whether recoveries of NPA paid to the petitioners are to be effected or were protected under DoPT O.M. dated 02.03.2016 based on the judgement of the Supreme Court in **Rafiq Masih (supra)** whereby recoveries for a period prior to five years from the notice were held to be barred. By the communication dated 21.08.2018, the respondent no.2/ UGC directed the Registrar of respondent no.1/ University to communicate directly with the Ministry of Finance which would be the

concerned Ministry to render opinion on waiver of recoveries of previous payments of NPA to the petitioners. By this time, the petitioners had already filed the present writ petition. According to learned counsel, there is no merit in the challenge of the petitioners and prays that the petition be dismissed with costs.

**CONTENTIONS OF RESPONDENT NO. 2/ UNIVERSITY
GRANTS COMMISSION :-**

15. Mr. Apoorv Kurup, learned Standing Counsel for the respondent no. 2/ UGC, at the outset, fairly submitted that so far as the present controversy is concerned, this respondent does not have any active role to play. In that, according Mr. Kurup, the decisions as to whether the petitioners were or were not entitled to NPA or even whether any recoveries of the past payments on that account are to be recovered or not were to be primarily taken by either the respondent no.3/ MHRD or the Ministry of Finance, and UGC had absolutely neither any role nor any responsibility on that count. To put it in the words of learned counsel, the respondent no.2/ UGC was only acting like a mere “*post office*”, receiving and/or forwarding correspondences from respondent no.1/ University to the respondent no.3/ MHRD or *vice versa*.

16. However, just to assist the Court and to complete the sequence, learned counsel had referred to various correspondences exchanged between the parties with the respondent no.2/ UGC as the common party. He submits that NPA, to the posts of Lecturers and some other staff of the Central Universities requiring MBBS degree as essential qualification, was introduced and continued by the Government of India from the year 1971 onwards. Revisions to such NPA were being notified from time to time and being made applicable to all such entitled teachers.

17. Learned counsel submits that the present controversy appears to have initiated from the request/representation of Dr. Vikas Bajpai to the respondent no.1/ University for admissibility of NPA in his case too being similarly situated as the petitioners in the present case. This case was referred to the respondent no.2/ UGC by respondent no.1/ University. In response, the respondent no.2/ UGC had sought few clarifications from the respondent no.1/ University regarding non grant of NPA to Dr. Vikas Bajpai ; essential qualification for the post of Assistant Professor at Centre for Social Medicine and Community Health. In later communication dated 02.05.2016, the respondent no.2/ UGC sought clarification from respondent no.3/ MHRD as to whether NPA is payable to Dr. Vikas Bajpai and as to whether the said

post is to be treated as “*Clinical*” or “*Non-Clinical*”. He submits that by the communication dated 02.06.2016, the respondent no.3/ MHRD had clarified that the post of Assistant Professor at the said Centre was purely academic (NonClinical) and that no prior approval was sought from the Ministry for such grant and consequently directed that Dr. Vikas Bajpai was not entitled to NPA.

18. Mr. Kurup submits that subsequently on further clarification sought by the respondent no.2/ UGC, the respondent no.3/MHRD re-considered the issue with its Integrated Finance Division which too opined that the said post cannot be treated as Medical Post and does not qualify for NPA in terms of O.M. dated 30.08.2008. This clarification was conveyed to the respondent no.1/University by the respondent no.2/ UGC *vide* the Letter dated 28.12.2016.

19. So far as recovery is concerned, the respondent no.2/ UGC directed the University to approach the Department of Expenditure, Ministry of Finance for waiver *vide* the Letter dated 21.08.2018. Thus, the role of the respondent no.2/ UGC concluded with the said correspondence.

ANALYSIS AND CONCLUSIONS:-

20. Detailed arguments of Mr. Narayan for the petitioners, Mr. Singh for respondent no.1/ University and those of Mr. Kurup, for respondent no.2/ UGC have been heard voluminous records perused and considered.

21. At the commencement itself, it would be prudent to note that the petitioners are qualified MBBS doctors having requisite qualifications to the post of Assistant Professor at the Centre for Social Medicine and Community Health, School of Social Sciences at the respondent no.1/ University. Each of the petitioners have been duly selected to such posts and have been rendering services since last many decades without any blemish. It cannot be denied by the respondent no.1/ University that all the three petitioners were found entitled to NPA since their induction into the service and have been paid the same continuously till 31.12.2016.

22. Before adverting to the facts of the present case it would be of some relevance to consider as to how the Non Practising Allowance (NPA) to doctors, in lieu of their private practice, was introduced. On 18.05.1962, in exercise of powers under Article 309 and clause (5) of Article 148 of the Constitution of India, the President of India, inserted NPA in the category of Special Pay defined in FR 9(25) of the Fundamental Rules making the same applicable to doctors falling within the above category. *Vide* the O.M. dated 24.07.1971, the Ministry of Finance approved the grant of NPA to medical

and public health posts created by various Ministries, Administrations and Organisations.

23. The respondent no.2/ UGC by its Notification/ Order dated 24.06.1976 approved the revision of rates of NPA admissible to the posts for which a medical qualification recognized under Indian Medical Council Act, 1956 or Dentists Act, 1948 has been prescribed as an essential qualification.

24. Undoubtedly, the respondent no.1/ University by way of the Resolution no. 3.8 dated 13.04.1977 of the EC, approved and adopted the UGC Notification/ Order dated 24.06.1976 and decided to grant NPA to the incumbents of those posts for which a medical qualification recognized under Indian Medical Council Act, 1956 or the Dentists Act, 1948 has been prescribed as an essential qualification. In pursuance thereto, the petitioners were found entitled to and have been receiving NPA from their respective dates of induction into service.

25. Subsequently, by the Office Order No. 734 dated 01.11.1988, the respondent no.1/ University had revised the NPA of the petitioner no.1. Simultaneously, the revised NPA was made applicable to other teachers in the Centre of Social Medicine and Community Health, who occupied posts requiring MBBS as an essential qualification. To understand the manner in which the NPA was inducted into services by the Government of India, the following notifications and OMs would provide clarity:-

NOTIFICATION DATED 18.05.1962:-

“TO BE PUBLISHED IN THE GAZETTE OF INDIA PART II,

SECTION 3, SUB SECTION (ii)

No. F.2(21)-E.III/62

Government of India

Ministry of Finance

(Department of Expenditure)

New Delhi - 2, the 18th May, 1962

NOTIFICATION

S.O. In exercise of the powers conferred by the proviso to

Article 309 and clause (5) of Article 148 of the Constitution, the

President hereby makes the following rules further to amend the

Fundamental Rules, namely : -

1. These rules may be called the Fundamental (second amendment), rules, 1962.

2. In rule 9 (25) of the Fundamental Rules, the following words shall be inserted at the end, namely

"And includes non-practising allowance granted to doctors in lieu of private practice".

Sd/-

(V.K. SUBRAMANIAN)

*UNDER SECRETARY TO THE
GOVERNMENT OF INDIA"*

OM DATED 24.07.1971:-

"No. 7(34)-E.III(A)/71

Government of India

Ministry of Finance

DEPARTMENT OF EXPENDITURE

New Delhi; dated 24th July, 1971

OFFICE MEMORANDUM

Subject: Grant of non-practicing allowance to the Medical and Public Health posts created by the various Ministries and Administrations.

It is observed that the Ministries and Administrations / Organizations participating in the Central Health Service create medical and public health posts under the powers delegated to them or in consultation with their Associate Finance on the scales of pay and non-practising allowance sanctioned for the Central health Service. While there is no objection to these Ministries and Administrations / Organizations sanctioning medical posts on a scale prevalent in that organization and with the same designations, posts should not be

created in the Central Health Service Categories with Non-practising allowance at the Central Health Service rates. If necessary, n.p.a. may be attached to such posts at the rate of 25% of pay subject to a minimum of Rs.150/- P.M. and a maximum of Rs.400/- P.M. only provided the following conditions are satisfied;

- (1) The post is a clinical one.*
- (2) The post is a whole time post*
- (3) There is ample scope for private practice.*
- (4) It is necessary to prohibit private practice in public interest.*

2. If, however, it is decided to include such posts in the Central Health Services later the C.H.S. officers appointed to them will get N.P.A. in accordance with the Central Health Service (Amendment) Rules, 1966. Each such case is required to be examined on merits and in accordance with rule 5 and 6 of Central Health Service (Amendment) Rules, 1966.

Sd/-

(KIRPA SINGH)

*DEPUTY SECRETARY TO THE
GOVERNMENT OF INDIA*

NOTIFICATION/ OFFICE ORDER DATED 24.06.1976 OF THE UGC:

Vide Resolution No. 3.8/EC/13.4.77

*“UNIVERSITY GRANTS COMMISSION
BAHADURSHAH ZAFAR MARG
NEW DELHI – 1*

No. F. 1/8/75 (D-56)

24th June 1976

The Registrar,

AMU/BHU/DU

Aligarh / Varanasi / Delhi.

Subject: Revision of rate of non-practising allowance admissible to the teachers to medical faculty of Central Universities.

Sir,

I am directed to say that as the University is aware that the question of revised rates of non-practising allowance admissible to the teaching staff of Medical Faculties of Central Universities in the revised scale has been under consideration of the Commission for some time post. **The University Grants Commission has now in consultation with Government of India decided that the revised scale of non-practising allowance admissible to the Lecturers and Readers in the medical faculties of the Central Universities** in the revised scale of pay will be as under: -

1. Lecturer

Scale of Pay : - Rs.700-1000

Stage in the scale of pay	Amount of N.P.A. payable
1 st to 6 th stage (Rs.700-900)	Rs.150/- p.m.
7 th to 11 th stage (Rs.940-1100)	Rs.200/- p.m.
12 th to 16 th stage (Rs.1150-1350)	Rs.250/- p.m.
17 th to 21 st stage (Rs.1400-1600)	Rs.300/- p.m.

2. Reader:

Scale of Pay : - 1200-1900

1 st to 4 th stage (Rs. 1200-1360)	Rs.250/- p.m.
5 th to 7 th Stage (Rs. 1420-1540)	Rs.300/- p.m.
8 th to 10 th stage (Rs.1600-1720)	Rs.350/- p.m.

11th to 13th stage
(Rs.1780-1900)

Rs.400/-

The revised rates of N.P.A. would be admissible w.e.f. the date an employee draws pay in revised scale of pay. The payment of non-practising allowance at the revised rates would further be admissible only to the incumbents of those posts for which a medical qualification recognized under the Indian Medical Council Act 1956 or under the Dentists Act 1948 has been prescribed as an essential qualification and to which the N.P.A. is attached at present.

I am also to request that the University may finalize the accounts of N.P.A. already paid and if necessary make necessary adjustment. Any additional expenditure incurred for the period 1.1.73 to 31.3.76 may be met out of the 'on account' grant paid towards revision of scale of pay etc. and expenditure for 1976-77 may be met out of the Revenue Account.

I am, however, to pay that the revised rates of nonpractising allowance for Professor in medical faculties are still under consideration in consultation with Govt. of India and a further decision in this regard will be communicated when arrived at.

Yours faithfully

Sd/-

K.N. HALDAR

ASSISTANT SECRETARY

Copy forwarded for information to :

1. Registrar, Jawaharlal Nehru University, New Delhi, in continuation of the office letter of even number dated 10.5.76.”

(emphasis supplied)

RESOLUTION NO. 3.8/EC/13-4-77 OF THE EXECUTIVE COUNCIL OF THE RESPONDENT NO.1/ UNIVERSITY:-

“3.8 The revision of rates of non-practising allowance payable to the teachers in the University, with medical qualifications, in terms of UGC's letter No. F/1-8-75 (D-5C) DATED 24TH June, 1986 (copy enclosed as 158 Annexure II) with effect from the dates they draw pay in the revised pay scales.”

From the aforesaid notifications and relevant OMs it is apparent that the Government of India had fixed NPA for posts which required MBBS degree as an essential qualification recognized under the Indian Medical Council Act, 1956 or the Dentists Act, 1948. It is also clear that the respondent no.2/ UGC by the Notification/ Order dated 24.06.1976 had extended the admissibility of NPA even to the Lecturers and Readers in the Medical Faculties of the Central Universities. The copy whereof was also sent to the Registrar, Jawaharlal Nehru University, the respondent no.1 herein, for information. Undoubtedly, the same was put up before the EC in its 52nd meeting held on 13.04.1977 whereby under Clause 3.8, the revision of NPA rates were made applicable even to the Staff of respondent no.1/ University requiring MBBS degree as an essential qualification.

26. The respondents have relied upon the OM dated 30.08.2008 to deny the continuance of payment of NPA and simultaneously sought recovery of the NPA paid previously to the petitioners till 31.12.2016. In order to appreciate the contentions of the respondent no.1/ University it would be appropriate to extract the said O.M. hereunder:-

“F.No.7(19)/2008-E.III(A)

Government of India

Ministry of Finance

Department of Expenditure

New Delhi, dated the 30th August, 2008

OFFICE MEMORANDUM

Subject: Revision of rates of Non-Practising Allowance attached to medical posts other than posts included in the Central Health Services (CHS)

The Sixth Central Pay Commission has recommended that Doctors should continue to be paid Non-Practising Allowance at the existing rate of 25% of the aggregate of the band pay and grade pay

subject to the condition that the Basic Pay + NPA does not exceed Rs.85000/-. Consequent upon acceptance of the recommendations of the Sixth Central Pay Commission by the Government, the President is pleased to decide that, in modification of this Ministry's O.M. No.7(25)/E.III(A)/97 dated 15.4.1998, the Non-Practising Allowance may continue to be paid at the existing rate of 25% of Basic Pay subject to the condition that the Basic Pay + NPA does not exceed RS.85000/-.

2. The term "basic pay" in the revised pay structure means the pay drawn in the prescribed pay band plus the applicable grade pay but does not include any other type of pay like special pay, etc. In the case of Government servants in the pay scales of HAG+ and above, basic pay means the pay in the prescribed scale.

3. The revised rate of NPA would be effective from the date an employee draws pay in the revised scale applicable to him in accordance with the provisions of the Central Services (Revised Pay) Rules, 2008.

4. The NPA should be restricted only to those Medical posts for which a Medical qualification recognized under the Indian Medical Council Act, 1956 or under the Dentists Act, 1948 has been prescribed as an essential qualification.

5. The Non-Practising Allowance will be treated as pay for the purpose of computing Dearness Allowance, entitlement of Travelling Allowance and other allowances as well as for calculation of retirement benefits.

6. These orders will not be applicable in respect of medical posts under the Ministries of Railways, Defence and Department of Atomic Energy for which separate orders will issue.

7. Hindi version will follow.

Sd/-

(Alok Saxena) Director"

(emphasis supplied)

The recitals of the aforesaid O.M. dated 30.08.2008 brings to fore that the Central Government in the modification of the Order dated 15.04.1998 had revised the NPA in respect of medical posts attached to the other posts included in the Central Health Services (CHS). The interpretation sought to be put forward by the respondents on Clause 4 is that the NPA cannot be

granted to non-clinical posts which are purely academic posts. In the considered opinion of this Court, the aforesaid interpretation does not appear to be correct. This is for the reason that, had any such interpretation been sought to be projected by the Central Government, it would have also taken note of the previous OMs in this regard which have been referred to above, *in extenso*, by this Court. In that, there is no reference to the OMs of the years 1971, 1974, 1976 and other similar OMs granting NPA to posts which only required MBBS degree as an essential qualification. More particularly, the respondent no.2/ UGC neither modified nor rescinded its own Notification/ Order dated 24.06.1976, when it made the NPA applicable to Lecturers and Readers in the Central Universities. No such reference has been made even by the Central Government while issuing O.M. dated 30.08.2008. Thus, in the absence of such connecting material, it is not possible for this Court to conclude that the posts of Assistant Professor in Central Universities like the respondent no.1/ University, requiring MBBS degree as an essential qualification, has been included in the O.M. dated 30.08.2008 or that the said O.M. deprives or disentitles Teachers such as the petitioners from admissibility of NPA. In case the Central Government had felt the necessity to do so, there was no impediment in it issuing any fresh notification or O.M. in that regard, restricting the admissibility of NPA only to medical practitioners. In the absence of any such notification having been placed on record by the respondents, this Court is unable to agree with the argument of the respondents. Moreover, the Notification/ Order dated 24.06.1976 of the UGC appears to have been specifically issued in terms of a notification of the Central Government extending NPA to faculty in Central Universities which has also not been referred to in the O.M. dated 30.08.2008. No document or Order or Notification regarding any modification in respect of admissibility of NPA to faculty of Central Universities has been placed on record by the respondents. Thus, looked at it any which way, the arguments of the respondents are unacceptable.

27. The rationale behind grant of NPA appears to be in the form of an incentive to Medical Doctors in lieu of their private practice. This rationale apparently is predicated on the individual possessing a MBBS degree recognized by the Indian Medical Council Act, 1956 or the Dentists Act, 1948 as an essential qualification alone without anything further. Thus, an individual holding the post of Assistant Professor in Central University requiring MBBS degree as an essential qualification would also be entitled to NPA. This was the basis of Notification/ Order dated 24.06.1976 of the

respondent no.2/ UGC. The said notification was issued by UGC in consultation with the Central Government. Thus, it is clear that the Central Government has itself deemed such faculty to be entitled to NPA. Hence, unless there is an O.M. or a notification rescinding the primary notification of the Central Government or Notification/ Order dated 24.06.1976 of the UGC, no such interpretation, as sought to be put across by the respondents upon O.M. dated 30.08.2008, can at all be sanctified.

28. It is also relevant to note that the entire issue concluding in deprivation of NPA to the present petitioners commenced from the representation of one Dr. Vikas Bajpai who was denied NPA on the basis of the clarification received from respondent no.3/ MHRD of the O.M. dated 30.08.2008. The question of payment of NPA to the petitioners was not a subject matter before the respondent no.3/ MHRD. This issue was raised subsequently, without the same being put up before the EC for its decision. Since the entitlement of NPA was granted by the EC, the highest body of the University, the deprivation thereto also could have been done by the EC alone. No document or any record has been filed by the respondent no.1/ University to indicate that such matter was placed before the EC and that the earlier resolution dated 13.04.1977 of the EC was rescinded by it. In that view of the matter, the arguments put across by the respondents are untenable and rejected.

29. That apart, Mr. Gautam, learned counsel for the petitioners has asserted that public health institutions across the Country have been routinely paying NPA to persons holding posts requiring MBBS degree as an essential qualification. He cited examples of the Indian Council of Medical Research, National Institute of Health and Family Welfare, National Institute of Epidemiology, The Indira Gandhi National Open University (IGNOU), Tata Institute of Social Sciences (TISS), The Indian Council of Agricultural Research and Achutha Menon Centre for Health Science Studies. Learned counsel appears to suggest that petitioners are also performing similar responsibilities like their counter parts in these Institutions and that the deprivation of NPA is arbitrary, unjust, unfair and wholly unconstitutional. It appears that Institutions like IGNOU and TISS are governed by the guidelines issued by respondent no.2/ UGC similar to the manner in which respondent no.1/ University is governed. However, there is no material placed on record to render any opinion.

30. So far as the judgement of the Supreme Court in ***Rafiq Masih (supra)***, relied upon by learned counsel for the petitioners is concerned,

since on other grounds this Court has found the impugned letter dated 05.07.2017 untenable, reference to the ratio laid down therein may not be necessary. For the same reason the judgments of the Supreme Court in ***Mohinuddin Jamal Alvi (supra)*** and ***Surya Narain Yadav (supra)*** are also not dealt with.

31. Keeping in view the aforesaid conclusion, the letter dated 05.07.2017 issued by respondent no.1/ University where it holds that the petitioners are not entitled to NPA and simultaneously directs recovery of the NPA paid to the petitioners with effect from 12.12.1990 till 31.12.2016, as also the Letter dated 28.12.2016 of respondent no.2/ UGC, to the extent where the reference to the respondent no.3/ MHRD's opinion/clarification are noted are quashed and set aside.

32. Consequently, the respondent no.1/ University is directed to pay to the petitioners the arrears of the admissible NPA with effect 01.01.2017 till the dates of their entitlement. The said exercise be carried out within a period of 6 weeks from today, failing which, a simple interest of 6% per annum shall be payable by the respondent no.1/ University.

33. The writ petition is disposed of in above terms with pending applications, if any, with no order as to costs.

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