

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/MISC. CIVIL APPLICATION (FOR CONTEMPT) NO. 1398 of 2022****In R/SPECIAL CIVIL APPLICATION NO. 12707 of 2019**

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**PATEL BABUBHAI KANJIBHAI & ORS.****Versus****K M BHIMJIYANI IAS, SECRETARY & ANR.**

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**Appearance:**

for the Applicant(s) No. 1,10,11,12,13,14,15,16,17,18,19,2,20,3,4,5,6,7,8,9

MR NK MAJMUDAR(430) for the Applicant(s) No.

1,10,11,12,13,14,15,16,17,18,19,2,20,3,4,5,6,7,8,9

MS. DHARITRI PANCHOLI, AGP, for the Opponent(s) No. 1,2

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**CORAM: HONOURABLE MR. JUSTICE A.Y. KOGJE**

and

**HONOURABLE MR. JUSTICE SAMIR J. DAVE****Date : 18/06/2024****ORAL ORDER****(PER : HONOURABLE MR. JUSTICE A.Y. KOGJE)**

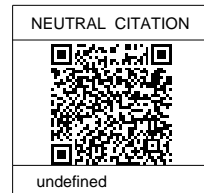
1. This petition is filed by the petitioners for following reliefs:-

“(A) YOUR LORDSHIPS may be pleased to hold and declare that the respondents herein are guilty of willful breach of order dated 07.07.2022 passed by this Hon’ble Court in Special Civil Application No.12707 of 2019 (at ANNEXURE-I hereto) and further be pleased to take appropriate action against the opponents under the provisions of Contempt of Courts Act;

(B) During pendency and final disposal of the present application, YOUR LORDSHIPS may be pleased to direct the respondents herein to forthwith comply with order dated 07.07.2022 passed by this Hon’ble Court in Special Civil Application No.12707 of 2019 (at ANNEXURE-I hereto).

(C) XXXX

(D)XXXX”

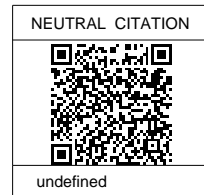


2. Indicating that the directions contained in the oral judgment dated 07.07.2022 passed in Special Civil Application No.12707 of 2019 has not complied with.

3. Learned advocate for the petitioners has submitted that though some amount has been paid as per the direction, but the same cannot be treated as a complete compliance of the direction as the issue before the Court was with regard to the inclusion of the Non Private Practicing Allowance of the basic pay and to thereafter, pay the Dearness Allowance. Learned advocate submitted that though this aspect appears to be have complied with, but with regard to the fact that period after 2005 to 2009 being the period in question, there was application of 5<sup>th</sup> Pay Commission, by which from 01.01.2006, applicants were entitled to revision of pay and therefore, the exercise of pay fixation was also required to be undertaken. The department not having undertaken this exercise cannot be said to have been complied with the direction of this Court in letter and spirit.

3.1 Learned advocate has therefore, drawn attention of this Court to a communication dated 26.04.2023 in case of one of the applicants to support of his argument as such. He has also drawn attention of this Court to minutes which the petitioners have received under the Right to Information Act to indicate that the exercise of pay fixation has not been undertaken and therefore, the order cannot be said to have been complied with.

4. As against this, learned Assistant Government Pleader has drawn attention of this Court to the affidavit in reply and submitted that the directions contained in the order dated 07.07.2022 was restricted only to include the Non Private Practicing Allowance as a part of basic pay and to calculate Dearness Allowance thereon and



there is no other direction with regard to undertaking the exercise of pay fixation however, the department on its own has undertaken that exercise the same is still pending at the stage of Finance Department.

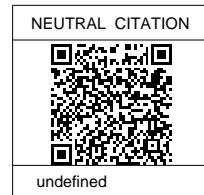
5. Heard learned advocates for the parties and perused the documents placed on record. The direction contained in oral judgment dated 07.07.2022 passed in Special Civil Application 12707 of 2019 would read as under:-

“3. Accordingly, the petition is allowed. It is hereby declared that for the period between 1st April 2004 and 31st March 2009, the Non-Private Practicing Allowance shall be treated as a Basic Pay and shall be calculated along with the Basic Pay for the purpose of determining the Dearness Pay. The authority concerned shall calculate the difference accordingly in the case of each of the Veterinary Officers and pay the consequential benefits within a period of three months from the date of receipt of this order. Rule is made absolute accordingly.”

6. According to this Court, the directions were to treat the Non Private Practicing Allowance as a Basic Pay and after considering the same, to determine the dearness pay. The Court has taken into consideration the document which is placed alongwith the affidavit-in-reply of the respondents, particularly, with regard to one of the applicants dated 26.04.2023, which would read as under:-

“...Apropos the above subject and reference-2, it is to inform that as mentioned in above reference-1, upon adding N.P.P.A. in the Basic Pay for the period from 01/04/2004 to 31/03/2009 and calculating the Dearness Pay @50% on the the sum, this office has paid to you the amount of Rs.1,22,709.00/-, including the difference of D.A. and N.P.P.A., on 19/04/2023.

Furthermore, regarding implementation of the Six Pay Commission, as per revised DP, the pay fixation has to be done w.e.f. 01/01/2006. Also, regarding that of the implementation of the Seventh Pay Commission, the pay fixation has to be done w.e.f. 01/01/2017. Pursuant to prevailing rules of the

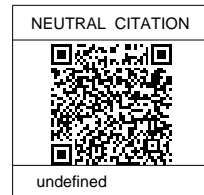


Government, the said pay fixation needs to be approved from the Pay Fixation Unit, Gandhinagar. Therefore, it is to inform that on being directed by the Director of Animal Husbandary, upon making proposal from this office and getting approval of pay fixation; the amount of arrears of revision of pay, retirement benefits and pension refixation according to the revision of pay for the period from 01/01/2006 to 31/07/2022 shall be paid....”

7. The Court has also taken into consideration the steps taken with regard to the pay fixation which is evident from the notings on the file which are placed on record as under:-

“...Thus, keeping in view the above facts, , the consequential benefits are to be paid in pursuance of the direction given by the Hon’ble High Court of Gujarat in the order dated 07/07/2022 (modified on 15/07/2022) in SCA No.12707/2019. It is observed by the Hon’ble High Court of Gujarat that the benefits are only partly given through approval on office note of the Finance Department i.e. above Judgment of the Hon’ble High Court of Gujarat has not been complied with completely. Therefore, in pursuance of the original Judgment given by the Hon’ble High Court of Gujarat in SCA.No.12707/19 and the Judgment dated 16/10/2023 given in MCA No.1388/2022, we may request Finance Department to give approval/direction to consider N.P.P.A. as a part of the Basic pay and that all the consequential benefits as per the order of the Hon’ble High Court may be paid, within the time limit of four weeks.”

8. The directions therefore, contained in the oral judgment is only with regard to treating the Non Private Practicing Allowance as part of the basic pay, whereas there is no such direction with regard to pay fixation. However, the department having initiated action on its own as in case of every employee for undertaking the exercise of pay fixation, the Court is of the view that the directions contained have been complied with by the department and there is no scope for invoking contempt against the action of the department. It is however, expected that the exercise that been undertaken as is reflected in the preceding paras is expected to be concluded by the



Department as expeditiously preferably within period of six months. For any discrepancy in the calculation that may arise, it is open for the applicants individually to represent to the concerned Department.

9. With the aforesaid direction, the petition stands ***disposed of***.

**(A.Y. KOGJE, J)**

**(SAMIR J. DAVE, J)**

SIDDHARTH