



{1}

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.56 OF 2026

Dr. Jayant S/o. Dagdu Kotkar,
Age: 65 years, Occu.: Retired,
R/o. Nagardelola, Tal. Pachora,
Dist. Jalgaon.

... Petitioner

VERSUS

1. The State of Maharashtra,
Through Principal Secretary,
Public Health Department,
Mantralaya, Mumbai – 32.
2. Upper Secretary of Public Health
Department, Mantralaya,
Mumbai- 32.
3. Director of Public Health,
Mantralaya, Mumbai-32.
4. Dy. Director of Public Health,
Nashik Division, Nashik.
5. Chief Executive Officer,
Zilla Parishad, Jalgaon
6. District Health Officer,
Zilla Parishad, Jalgaon
7. Pay and Account Officer
(Health Department),
Zilla Parishad, Jalgaon.

... Respondents

AND

WRIT PETITION NO.65 OF 2026

Dr. Rajendra S/o. Narayan Ahirrao,
Age: 68 years, Occu.: Retired,
R/o. Jagnath Nagar Plot No.10,
Deopur, Dhule.

... Petitioner

VERSUS

{2}

1. The State of Maharashtra,
Through Principal Secretary,
Public Health Department,
Mantralaya, Mumbai – 32.
2. Upper Secretary of Public Health
Department, Mantralaya,
Mumbai- 32.
3. Director of Public Health,
Mantralaya, Mumbai-32.
4. Dy. Director of Public Health,
Nashik Division, Nashik.
5. Chief Executive Officer,
Zilla Parishad, Dhule
6. District Health Officer,
Zilla Parishad, Dhule
7. Pay and Account Officer
(Health Department),
Zilla Parishad, Dhule.

... Respondents

.....

Mr. Paresh B Patil (Borse), Advocate for Petitioners in Both WPs
 Mr. R.S. Wanti, AGP for Respondents/State in WP/56/2026
 Mr. S.B. Narwade, AGP for Respondents/State in WP/65/2026

.....

**CORAM : SMT. VIBHA KANKANWADI AND
 HITEN S. VENEGAVKAR, JJ.**

DATED : 06 JANUARY, 2026

JUDGMENT [Per Hiten S. Venegavkar, J.] :-

1. Rule. Rule is made returnable forthwith. With the consent of the learned counsel appearing for the parties, the petitions are taken up for final disposal at the stage of admission.

2. These two writ petitions under Article 226 of the Constitution of India, being Writ Petition No.56 of 2026 and Writ Petition No.65 of 2026, raise a common challenge and hence are heard together and are being disposed of by this common judgment.

3. The petitioners are medical officers who served under the Zilla Parishad set-up and retired upon attaining the age of superannuation, one on 30.06.2018 and the other on 31.07.2018. It is not in dispute that the 7th Pay Commission benefits were extended to them for the purpose of pay fixation during service and for revision of pensionary benefits after retirement. The dispute is confined to the non-practicing allowance (NPA) at the rate of 35%, which, according to the petitioners, ought to be reckoned for the purpose of their revised pension with effect from 01.01.2016, i.e., the date from which the 7th Pay Commission is stated to have been implemented. The petitioners assail the action of respondent No. 2 to the extent it denies them 35% NPA in the computation of retiral benefits and further seek a declaration that the stipulation contained in clause (2) of the Government Resolution dated 14.10.2024, whereby the State extended the benefit of 35% NPA to medical officers but fixed the effective date as 01.01.2019, is illegal, discriminatory, and unconstitutional. The consequential relief sought is to direct respondent Nos. 1 and 2 to grant the benefit of that Government Resolution from 01.01.2016, modify the said clause (2),

{4}

and revise the petitioners' pensionary benefits by reckoning 35% NPA with interest from the date of their retirement.

4. Learned advocate for the petitioners submitted that once the State has adopted the 7th Pay Commission benefits from 01.01.2016, the petitioners, who were admittedly in service on that date and retired thereafter (though prior to 01.01.2019), form part of the same homogeneous class of "7th Pay Commission retirees", and therefore denial of NPA for the period 01.01.2016 to 31.12.2018 amounts to hostile discrimination offending Article 14 of the Constitution of India. It was urged that the Government Resolution dated 14.10.2024 merely acknowledges the entitlement of medical officers to NPA at 35% and the State has no rational basis to postpone it to 01.01.2019 when the foundational event for revision and implementation of the 7th Pay Commission commenced on 01.01.2016. The petitioners further relied on an instance of one similarly placed co-employee, Prabhakar Ramdas Pawar, who retired in 2019 and is stated to have received pension revised by including 35% NPA, to contend that the petitioners are identically circumstanced and ought not be treated differently merely because they retired before 01.01.2019.

5. Per contra, the learned AGP appearing for the State opposed the petitions and submitted that fixation of an effective date in a

fiscal/service-benefits policy is within the executive domain. He further argued that the Government Resolution dated 14.10.2024 expressly makes the extension of 35% NPA operative from 01.01.2019 and does not confer any retrospective entitlement to the retired employees prior to the cut-off date. According to the learned AGP, the persons who retired prior to the operative date constitute a distinct class from those who retired on or after that date and thus there is no vested or accrued right in the petitioners to demand that a later policy be applied retrospectively. He further argued that the Court, in exercise of judicial review under Article 226, ought not to rewrite a policy or alter its effective date merely because another date is also possible. The learned AGP specifically relied on a Division Bench judgment of this Court, Principal Seat, in *Dr. M.M. Swami Sirsikar & Ors. v. State of Maharashtra & Anr.*, 2017 (5) Mh. L.J. 236 , where a challenge to a cut-off date for implementing revised NPA was rejected and the petitions were dismissed, holding that such cut-off based on financial constraints and policy choice is not arbitrary and does not offend Article 14 of the Constitution of India.

6. Having heard the learned counsel for the parties, the controversy, in substance, narrows down to whether clause (2) of the Government Resolution dated 14.10.2024, to the extent it makes the benefit of 35% NPA effective from 01.01.2019, is so arbitrary, irrational

or discriminatory as to warrant interference under Article 226 of the Constitution of India, and whether the petitioners have an enforceable right to demand that the said benefit be applied from 01.01.2016.

7. At the outset, it is necessary to bear in mind the nature of the relief sought. The petitioners do not merely seek quashing of an individual order. They seek, in effect, judicial modification of a Government Resolution by substituting the executive's chosen effective date (01.01.2019) with another date (01.01.2016). Such a relief, if granted, would not be a mere correction of illegality but would amount to restructuring a policy decision and imposing a retrospective financial liability upon the State and the Zilla Parishad establishments. The scope of judicial review in matters of pay structure, allowances and fixation of operative dates is well settled. The Courts can examine legality, arbitrariness, perversity and hostile discrimination, but it does not sit as an appellate authority over the wisdom of fiscal choices. The petitioners' primary submission is founded on Article 14 of the Constitution of India. It is true that classification must satisfy the twin tests of intelligible differentia and rational nexus. However, in service jurisprudence, it is equally well established that fixing an effective date for implementing revised benefits often creates two groups, those who fall on one side of the date and those on the other and such a division is not *per se* unconstitutional.

8. The Hon'ble Supreme Court in ***State of Rajasthan v. Amrit Lal Gandhi***, (1997) 2 SCC 342 upheld a cut-off date where the justification was "wholly economic" and observed that financial impact can be a valid basis for fixing a date and the Court should not substitute another date merely because it appears fairer. The Hon'ble Supreme Court in ***Tamil Nadu Electricity Board v. R. Veerasamy***, (1999) 3 SCC 414 reiterated that financial constraints can be a valid ground for introducing a cut-off date while implementing or extending pensionary benefits and that retirees before the cut-off date can form a separate class. Similarly, in ***State of Punjab v. Amar Nath Goyal***, (2005) 6 SCC 754, the Supreme Court upheld a cut-off date for enhanced retiral benefits and rejected a challenge under Article 14 of the Constitution of India, holding that "financial constraints" may constitute a valid rationale and that the Court should be slow to interfere with such executive choices.

9. The learned AGP's reliance on judgment of ***M M Swamy Sirsikar*** (supra), directly addresses the jurisprudential core of the present dispute. In ***Dr. M.M. Swami Sirsikar*** (supra), the petitioners challenged a Government Resolution dated 17.08.2002 which revised and sanctioned NPA with effect from 01.10.1998, while the pay scales had been revised from 01.01.1996. The petitioners had retired after

01.01.1996 but before 01.10.1998 and contended that they were discriminatorily excluded from NPA and that the cut-off date was arbitrary. The Division Bench noted the State's explanation that the decision was a policy decision taken in view of financial constraints and that the recommendations were accepted with modifications. It held that "financial constraints" can constitute a valid ground for introducing a cut-off date and relied, *inter alia*, upon ***State of Rajasthan v. Amrit Lal Gandhi*** (1997) 2 SCC 342, ***T.N. Electricity Board v. Veeraswamy*** (1999) 3 SCC 414, and ***State of Punjab v. Amar Nath Goyal*** (2005) 6 SCC 754. The Court concluded that the petitioners who had retired prior to the operative date had no accrued right to claim NPA from an earlier date and that fixation of the operative date did not offend Article 14 of the Constitution of India.

10. That the Division Bench while distinguishing the judgment of the Apex Court in ***D.S. Nakara and Others v. Union of India***, 1983 (1) SCC 305, on facts, noted that in that case a liberalized pension formula was made applicable only to those retiring on or after a specified date, whereas in the NPA case the State had revised the pay scales from an earlier date but, as a matter of policy and financial capacity, postponed certain allowances, including NPA, to a later date.

11. The factual parallel between *Dr. M.M. Swami Sirsika*r (supra) and the present petitions is direct and substantial. Here too, the petitioners seek to contend that because the 7th Pay Commission regime is said to have commenced from 01.01.2016, NPA (a component/element affecting emoluments and consequentially pension computation, as the petitioners contend) must also be deemed to operate from that date for all who retired after that date. Here too, the Government has, by the petitioners' own pleading, extended 35% NPA but chosen 01.01.2019 as the effective date. Here too, the petitioners retired before the effective date and seek parity with those retiring after it. The binding ratio of *Dr. M.M. Swami Sirsika*r (supra), being a decision of a co-ordinate Division Bench of this Court on materially similar principles, compels judicial discipline unless shown to be distinguishable. We find no distinguishing feature that would justify departure. On the contrary, the logic applies with full vigour. The petitioners' reliance on the instance of a co-employee who retired in 2019 does not advance their case. Once an operative date is fixed, those retiring on/after that date form a class distinct from those retiring earlier; the co-employee belongs to the former class.

12. The petitioners' plea is, in essence, to argue that the classification itself is wrong because another date (01.01.2016) would,

in their submission, be more aligned with the 7th Pay Commission timeline. That is precisely the type of “substitution of date” which the Hon’ble Supreme Court has cautioned against in matters of fiscal and service policy, as seen in above referred cases of *Amrit Lal Gandhi* (supra) and *Amar Nath Goyal* (supra).

13. We also note that the petitioners’ case proceeds on the assumption that NPA must inevitably follow the date of implementation of the pay commission. That assumption is not a legal proposition. Pay commissions make recommendations and Governments accept them wholly or with modifications. Governments routinely stagger implementation of different components (pay, allowances, pension revision, caps, etc.) depending on financial implications and administrative feasibility. This is explicitly recognized in *Dr. M.M. Swami Sirsika* (supra), where pay scale revision was from 01.01.1996 but NPA was implemented from 01.01.1998, and the Court held such staging to be lawful and not violative of Article 14 of the Constitution of India. Therefore, even if 01.01.2016 is the reference point for 7th Pay Commission pay/pension revision, it does not follow as a constitutional mandate that every allowance or every consequential reckonable component must be retrospectively granted from that very date to all retirees irrespective of the executive’s chosen operative date. The

{11}

petitioners also sought a declaration that clause (2) of the Government Resolution dated 14.10.2024 is “illegal and unconstitutional”. A cut-off date becomes unconstitutional not because it causes hardship, but because it is demonstrably arbitrary, capricious or based on an unintelligible differentia having no rational nexus to the object.

14. Here, the State’s stand as argued by the learned AGP is that the benefit was consciously extended from 01.01.2019 and that retrospective extension to those who retired between 01.01.2016 and 31.12.2018 was not accepted, including on the basis of financial and audit considerations. Such justification fits squarely within the zone recognized by the Hon’ble Supreme Court as permissible for cut-off dates in financial/service benefit matters. In judicial review, once the State demonstrates a plausible policy rationale, the Court does not require the “best” or “most equitable” date; it requires a “reasonable” date.

15. It was urged that denial of 35% NPA results in discrimination because the petitioners are receiving revised pension under the 7th Pay Commission but not the NPA component. This again conflates two distinct matters; first, the revision of pension under a pay commission regime; and second, the extension of a particular allowance with an expressly stipulated operative date. The petitioners received what the

applicable rules/resolutions entitle them to as retirees up to their date of retirement. The subsequent policy extension of 35% NPA from 01.01.2019 cannot be converted into a vested right for earlier retirees merely because they are beneficiaries of some other aspect of the pay commission regime. ***Dr. M.M. Swami Sirsika***r (supra) is explicit that “no rights were accrued in their favour to claim the NPA” from the earlier date when they retired prior to the operative date chosen for NPA. The same legal conclusion follows here. The petitioners have also prayed for interest. Once the principal entitlement fails, the question of interest does not arise.

16. In view of the foregoing discussion, we hold that the petitioners have failed to establish that clause (2) of the Government Resolution dated 14.10.2024, fixing the effective date as 01.01.2019 for extension of 35% NPA, is unconstitutional or violative of Article 14 of the Constitution of India. The classification between medical officers who retired prior to 01.01.2019 and those who retired on or after 01.01.2019 constitutes a permissible classification in law for the purpose of implementing a fiscal or service-benefit measure, and the petitioners, having retired prior to the operative date, do not possess any accrued or vested right to demand retrospective extension of the allowance for the purpose of pension computation. The reliefs sought

{13}

would require the Court to rewrite the Government Resolution by substituting the operative date, which is impermissible in exercise of jurisdiction under Article 226 of the Constitution of India in the absence of demonstrated arbitrariness or illegality.

17. Accordingly, both Writ Petition No.56 of 2026 and Writ Petition No.65 of 2026 are dismissed. Rule discharged. There shall be no order as to costs.

[HITEN S. VENEGAVKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

S P Rane