
(2019) 12 BOM CK 0044
In the Bombay High Court
Case No : Writ Petition (L) No. 2189 Of 2019

Dr. Sudheer Kumar Lakavath & Ors

APPELLANT

Vs

National Board Of Examination & Ors

RESPONDENT

Date of Decision : 18-12-2019

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2019) 12 BOM CK 0044

Hon'ble Judges : S.C. Dharmadhikari, J;R.I. Chagla J

Bench : Division Bench

Advocate : V.M. Thorat, M.V. Thorat, Anukul B. Seth, Ganesh Gole, Neel Helekar, Anil D. Yadav, Suresh Kumar

Judgement

R.I. Chagla, J

1. Rule. Rule made returnable forthwith. Heard by consent of parties.
2. The Petitioners by this Petition have sought a writ of mandamus for quashing and setting aside the decision/letter dated 10th April 2019 issued by the Respondent No. 3, Medical Director, Western Railway, Jagjivan Hospital, Mumbai, by virtue of which the stipend of Diplomate of National Board ("DNB") trainees which includes the Petitioners, was revised and reduced. This Petition also seeks a direction against the Respondent No. 3, Medical Director to continue to pay the Petitioners stipend which was payable prior to December 2018.
3. The Petitioners are doctors by profession having completed their MBBS undergraduate courses from their respective recognised medical colleges. They were interested in pursuing the postgraduate DNB courses conducted by the National Board of Examination ("NBE"). The Petitioner Nos. 10, 11 and 12 were admitted to two years postgraduate courses, as they were given credit of one year on account of completing the diploma earlier. The rest of the Petitioners were admitted to three years postgraduate courses. All the Petitioners were admitted to their respective postgraduate courses at Respondent No. 7, Jagjivan

Ram Railway Hospital, Mumbai Central, Mumbai. The hospital is owned and established by the Union of India through its Department of Railways. The said hospital is also created for NBE for conducting postgraduate DNB courses.

4. Respondent No. 1 is the NBE, a statutory body created by Union of India and empowered to conduct postgraduate medical courses viz. DNB courses throughout India. Respondent No. 2 is the Union of India through its Ministry of Health and Family Welfare. Respondent No. 3 is the Medical Director, Western Railway, Jagjivan Ram Railway Hospital. Respondent No. 4 is the Divisional Railway Manager, Mumbai Division, Western Railway, whereas Respondent No. 5 is the Chief Medical Director, Western Railway, Mumbai. Respondent No. 6 is the Chairman, Railway Board, Rail Bhavan, New Delhi and Respondent No. 7 is the Jagjivan Ram Railway Hospital.

5. The Petitioners are aggrieved by the revision in the stipend which is mandatorily payable to the Petitioners after admission to their DNB courses which the Petitioners claim to be unilaterally revised and reduced substantially.

6. In the Petition it is stated that the Petitioners are all admitted to DNB courses as per the intake capacity granted by the NBE between the years 2016 to 2018. It is the Petitioners case that under the rules framed by the NBE, every accredited hospital is required to pay to the postgraduate students stipend which shall not be less than stipend paid by respective State Governments to their regular postgraduate students who are doing MD or MS course of respective health universities. The Petitioners state that as per the policy of NBE, the stipend prescribed under the regulation is the minimum and every institute is given liberty to decide its own pay scale to the trainee students. However, the same shall not be less than the stipend paid by the State Government to its trainee students in their medical colleges. The Petitioners further state that all the students before selecting any hospital for pursuing DNB courses, take into consideration infrastructure available in the hospital, the stipend paid every month during the three years' course as well as workload given to the students during 2/3 years' training programme.

7. The Petitioners' case is that the Indian Railway has from the beginning treated the postgraduate trainee doctors as their contractual employees and fixed the salary accordingly. The doctors admitted for postgraduate DNB courses are required to work round the clock and also required to stay in the hospital campus. The hospitals have been established by the Indian Railway for rendering service to its employees. These are specialised hospitals. Some of these hospitals are accredited to NBE for postgraduate courses. The Indian Railway has treated these resident doctors as contractual employees till they complete their postgraduate DNB courses. The doctors admitted for undergoing DNB courses are accordingly, paid a regular salary which includes basic pay plus TA, DA and non practicing allowance. Thus care is taken to see that these doctors are not paid less than the amount paid by the NBE.

8. The Petitioners who were stated to have been admitted to DNB courses at the Respondent No. 7 Jagjivan Ram Railway Hospital., Mumbai in the years 2016, 2017 and 2018 were informed that they would be entitled to a stipend of Rs. 22,890/-; Rs. 22,520/-and Rs. 22,140/- respectively as basic pay and the gross salary would be calculated accordingly, after adding TA, DA and non practicing allowance. It is the Petitioners case that only after knowing the salary/stipend did the Petitioners decide to join the DNB courses at the Respondent No. 7 Hospital. The Petitioners in fact, were provided a basic salary of Rs. 22,520/- after their admission and the gross salary for the year 2016 came to Rs. 78,896/-, the gross salary for the year 2017 came to Rs. 77,748/- and for the year 2018 came to Rs. 76,570/-. According to the Petitioners, they preferred railway hospitals for their DNB courses only because the stipend was a little better than other hospitals. The Petitioners did not face any problem with regard to stipend till February 2019.

9. In the month of March 2019, the stipend paid to the Petitioners was revised and substantially reduced to an amount of Rs. 37,961/- for the first year; Rs. 37,794/- for the second year and Rs. 37,541/- for the third year. Upon making enquiries the Petitioners were informed that from the month of January 2019, the stipend payable would be approximately Rs. 55,251/- for the first year, Rs. 54,912/- for the second year and Rs. 55,473/- for the third year and since they were paid an extra amount of Rs. 22,220/- for the first year; Rs. 22,836/- for the second year and Rs. 23,424/- for the third year, decision was taken to deduct the extra amount of stipend of Rs. 23,424/- paid in February 2019 and after such deduction of the said amount, the net amount of Rs. 37,961/- would be paid for the first year; Rs. 37,794/- for the second year and Rs. 37,541/- for the third year. In the months of March and April 2019, the Respondent Railway Authorities deducted Rs. 23,423/- from the revised salary of Rs. 55,437/- paid for each month. The net amount was paid to the Petitioners in March and April 2019.

10. The Petitioners further state that although according to the Respondent Railway authorities, the revised stipend policy was implemented from February 2019, the Petitioners were given stipend as per the earlier policy for February 2019. Therefore, the additional salary given in the month of February 2019 was proportionately recovered in the month of March and April 2019. The Petitioners upon enquiry were told by letter dated 21st January 2019 issued by the Railway Board, Government of India, Ministry of Railways that the Medical Director/Chief Medical Superintendent of Railway Hospitals were empowered to finalise the rate of stipend payable to the DNB trainee based on NBE guidelines dated 12th June 2018. The Petitioners were further informed that on the basis of the said letter dated 21st January 2019, the Medical Director of the Respondent No. 7 Hospital where the Petitioners were undergoing training for DNB courses by letter dated 10th April 2019 revised the stipend structure for DNB first year, second year and third year and the same was implemented from March 2019. The Petitioners have stated that the letter dated 21st January, 2019 shows that stipend payable to the junior and senior residents engaged in railway hospitals has to be revised

provisionally as per the 7th Pay Commission by placing them in level 10 of the pay matrix. The letter does not empower the Medical Director to reduce the stipend. The Petitioners accordingly, met the Medical Director of the Respondent hospital and pointed out that some hospitals established by the railways and under control of the Central Railways conducting DNB courses are paying stipend as per the earlier policy. It was further pointed out that the new policy, even if applicable to the Western Railway, the same will have to be imposed for the students who join henceforth. The Medical Director of the Respondent Hospital showed his inability to help the Petitioners. Being aggrieved by the revision in the stipend and the substantial reduction thereof, the Petitioners have filed the present Petition.

11. An Affidavit of Dr. Hafeezunnisa, Medical Director of Respondent No.7, Jagjivan Ram Railway Hospital, Mumbai has been filed on 3rd October 2019 on behalf of Respondent Nos. 3 to 7 in Reply to the Petition. It is stated in the Affidavit in Reply that the DNB students are paid/entitled to the payments either fixed by the NBE or as fixed by the respective State Governments, whichever is higher. It is stated that the Respondent No. 7 Hospital is accredited to the NBE in Department of Medicine, General Surgery, Paediatrics, Anaesthesia, Cardiology and Gastrointestinal Surgery. The Department of Obstetrics and Gynaecology, Orthopaedics, ENT and Ophthalmology have applied for accreditation in the current year. At present, there are 14 students enrolled every year in the Respondent No. 7 Hospital through NBE to pursue DNB courses in different specialties (total 38 at a time). The amount of stipend was paid to DNB candidates as per NBE guidelines issued/accepted by the Railway Board. There could be an increase/decrease depending upon the guidelines issued by the NBE for payment of amount of stipend. It is stated in the said Affidavit in Reply that the amount of stipend of DNB students was initially fixed by the Ministry of Railways in the year 2014 vide letter dated 31st October 2014 which was based upon the notification issued by the NBE. There is no contract which is signed between the Western Railway and DNB students at the time of admission to the DNB course in the Respondent No. 7 Hospital. The amount of stipend may be legally varied before the completion of the courses depending upon the guidelines issued by the NBE. The action for revision of the stipend which is payable to the DNB candidates had been effected in terms of the letters of the Railway Board dated 31st October 2014, 1st January 2018, 17th August 2018 and 21st January 2019 wherein it is mentioned that the DNB trainees working in Western Railway Hospitals should be paid stipend as per NBE stipend guidelines. It was according to the NBE guidelines in consultation with Department of Personnel and Finance of Western Railway Mumbai that the stipend has been revised. The action of the Respondent No. 7 Hospital is in compliance with the NBE stipend policy. According to which it was effective from the date when it was issued by NBE and implemented by the Railway Board. However, it was not implemented from the date of NBE guidelines issued. The action of revision of stipend was issued in consultation with the Department of Personnel, Western

Railway Head Quarter office/CCG, and vetted by Department of Associate Finance, Mumbai Central, Mumbai.

12. It has further been stated in the said Affidavit in Reply that the DNB students are not contractual employees and are admitted in Railway Hospital for education purpose only. The DNB trainees in the Respondent No. 7 Hospital were initially paid stipend as per NBE stipend guidelines and since the amount of stipend fixed by the State Government of Maharashtra was higher than the amount fixed by NBE, they were paid according to the stipend fixed by the State Government. The trainees were initially being paid the amount equivalent to MD/MS trainees of Maharashtra State Government. In the year 2009, fresh instructions were issued from the Railway Board wherein it was decided to pay DNB trainees working in Railway Hospital stipend as per the rates of VI Central Pay Commission and DNB trainees were placed in revised pay band 3 of Rs. 15,600-39,000 carrying grade pay of 5400 and stipend was fixed at Rs. 22,140; Rs. 22,520 and Rs. 22,890/- respectively for first, second and third years along with allowances as admissible in 6th pay commission. Accordingly, the amount of Rs. 76,570/-, Rs. 77,748/- and Rs. 78,896/- after including the various allowances were paid to first, second and third year DNB trainees respectively till January 2019. It has been stated that it was in the light of the stipend guidelines issued by the NBE vide letter dated 26th December 2013 that the Railway Board had issued revised guidelines in the matter of stipend payment to DNB trainees in the year 2014 and 2018 vide Railway Boards letters dated 31st October 2014 and 1st January 2018 wherein it was mentioned that DNB trainees working in Railway Hospitals should be paid stipend as per the NBE stipend guidelines dated 26th December 2013. It was in accordance with the decision to revise stipend of DNB trainees of Respondent No. 7 Hospital as per the Maharashtra State Government stipend policy which was higher than the stipend fixed by the NBE, the revised stipend was taken out by the administration with effect from 1st February 2019. The details of the stipend fixed by NBE and State Government have been set out in the said Affidavit in Reply at pages 49 - 50 of the paper book.

13. The guidelines issued by NBE on 12th June 2018 have been referred to in the said Affidavit in Reply wherein the guidelines issued in 2013 were reiterated i.e. by stating that the hospital/institution shall have to pay the DNB candidate a basic stipend fixed by the NBE or basic stipend according to the State Government whichever is higher. This has again been reiterated in the impugned decision / letter dated 2nd April, 2019. The deponent of the said Affidavit has stated that it is a matter of fact that the stipend paid to the DNB trainee is higher than they would have received if paid as per the advise of NBE. Since they are paid higher as per the Maharashtra State Government. The Respondent No.7 hospital is following the guidelines/instructions of the NBE and hence cannot be compared to the stipend paid by other hospitals who do not follow these guidelines.

14. The Affidavit of Dr. Gaurav Sharma, Assistant Director, National Board of Examination dated 4th October, 2019 has been filed on behalf of Respondent No. 1 in Reply to the Petition. It is stated in the said Affidavit in Reply that NBE had advised the hospitals vide e-mail dated 24th June 2019 to refer to the NBE stipend guidelines notified vide NBE Notification dated 26th December 2013. These guidelines prescribed the minimum stipend paid for the NBE trainees. The guidelines stated that the NBE accredited hospital shall have to pay the DNB/FNB candidate a basic stipend as prescribed by NBE or a basic stipend according to the State Government policy (whichever is higher). By the impugned Notification dated 2nd April 2019, the NBE only revised the minimum prescribed sum in its guidelines for the benefit of the candidates keeping rest of the guidelines same as before. Those guidelines clarified that the basic stipend (as per the pay level 10 of 7th CPC whichever applicable) does not insist on any kind of allowances as might be paid to MD/MS candidates in respective states. It is stated that the Notification of November 2018 only interpreted the guidelines already in place since 2013. The impugned notification only increased the minimum sum described by NBE. In paragraph 7 of the said Affidavit in Reply, following has been stated,

"7. It is further respectfully submitted that in no way, the recent notification have changed anything in terms of stipend guidelines that are in place for hospitals the State of Maharashtra. November 2018 clarification was only an interpretation of stipend guidelines in place since 2013. April 2019 notification has only increased the minimum sum prescribed by NBE. However, hospital has decided to reduce the sum of stipend it has been paying to its DNB trainees without giving any justification. Since the hospital has paid a sum over and above the minimum required in earlier years, then what has led it to decide to reduce the sum when there has been no change in NBE guidelines remains beyond understanding."

15. A letter dated 3rd July 2019 has been referred to in the said Affidavit in Reply which has been addressed by the Respondent No. 7 Hospital, wherein it was informed that the reduction of the amount of stipend is due to change in the policy of the Railway Board from pay scale of VI pay Commission to Maharashtra State Government stipend (NBE stipend policy). It is thus, stated that the revised stipend paid by the hospital is line with the minimum stipend needed to be paid as per NBE norms.

16. Mr. V.M. Thorat, learned Counsel for the Petitioners has submitted that the impugned decision/letter dated 10th April 2019 issued by the Respondent No. 3 Medical Director, Western Railway, Jaggivan Ram Railway Hospital displays manifest arbitrariness in that it unilaterally reduces the stipend paid to the postgraduate students undergoing DNB courses at Railway Hospital situated in Mumbai. He has submitted that the Petitioners were paid a stipend which had been fixed at the time of their admission to the DNB courses. The stipend has been reduced by the impugned decision and that too made applicable retrospectively. The so-called excess amount of salary/stipend given for the

month of February 2019 had been proportionately recovered from the stipend paid to the Petitioners in the months of March and April. He has submitted that the Petitioners had preferred the railway hospital for the DNB courses because of the stipend which is more attractive than other hospitals. He has further submitted that the Indian Railway had from inception treated the postgraduate trainee doctors, as their contractual employees and fixed the salary accordingly. The Petitioners who were admitted for postgraduate DNB courses were required to work round the clock and required to stay in the hospital campus. He has submitted that the Indian Railway had treated the resident doctors as contractual employees till they completed their postgraduate DNB courses. He has submitted that the Petitioners were paid the stipend which has been fixed at the time of their admission to the DNB courses. The Petitioners were receiving salary inclusive of basic pay plus TA and DA and non practicing allowance. He has submitted that all of a sudden, the Respondent Railway Authorities revised the stipend policy and implemented the same from February 2019 i.e. before the completion of the postgraduate DNB courses. He has submitted that the Respondent No. 3 started deducting the stipend amount on the basis of a letter dated 21st January 2019 addressed by the Railway Board. The said letter on the contrary shows that the stipend payable to junior and senior residents engaged in the hospitals is to be revised provisionally as per the 7th commission and therefore, the said letter does not empower the Medical Director to reduce the stipend.

17. He has submitted that the impugned decision/letter dated 10th April 2019 issued by the Respondent No. 3 is illegal in as much as it is discriminatory and violative of Article 14 of the Constitution of India. The deduction of the stipend was carried out by the Respondent No. 7 Hospital although there were some hospitals established by the India Railways and under control of the Central Railway who were paying stipend as per the earlier policy to the trainees of DNB course. The previous policy being payment of stipend as per the 6th pay commission which was inclusive of basic pay plus TA plus DA and non practicing allowance. The Petitioners had made enquiries and came to their knowledge that majority hospitals in India paid the stipend as per the earlier policy to the trainee students in DNB courses. He has relied upon a decision of Madras High Court in a group of Writ Petitions. The common order is dated 9th October, 2018. He has submitted that the Petition in that case contained a similar challenge as in the present Petition i.e. the decision of the Southern Railway to deduct the stipend payable to DNB trainees on the basis of NBE guidelines. The Madras High Court followed its prior order dated 21st June, 2017 and quashed and set aside the order deducting stipend to DNB students on the ground of it being unreasonable, discriminatory and opposed to public policy. He has submitted that the above decision of the Madras High Court would apply in the present case. The impugned decision/letter dated 10th April 2019 being unreasonable, discriminatory and opposed to public policy be quashed and set aside and that the Respondent No. 3 be directed to continue to pay the Petitioners stipend

which was payable prior to December 2018.

18. Mr. Suresh Kumar, the learned Counsel for the Respondent No. 3 has submitted that the stipend payable to DNB students is as per the NBE guidelines. The NBE is the custodian of policy on all issues relating to the DNB students which include the Petitioners. The action of the Ministry of Railway and Railway hospitals in taking the impugned decision of revising the stipend is strictly in accordance with the policy laid down by the NBE. The policy being that the DNB students are paid/entitled for payment of the stipend either fixed by the NBE or by the respective State Government in which they are pursuing such studies, whichever is higher. The stipend paid by the Western Railway hospitals which includes the Respondent No.7 hospital to which the Petition is concerned, is as per the stipend fixed by the State of Maharashtra as this is higher than the stipend fixed by the NBE.

19. He has submitted that the payment of stipend to the DNB trainee students has always been as per the Railway Board's order as well as NBE guidelines. The DNB students are not considered as employees on contract at any point of time during their course. Any change in revision in the stipend during the course period being a policy matter is to be decided by NBE who is empowered to decide the same.

20. He has submitted that the reduction in the stipend was due to the change in the policy of Railway Board from the pay scale of 6th pay commission to Maharashtra State Government stipend (NBE stipend policy) and not due to deductions of allowance of the previous pay. This stipend is to be paid to all students including future students admitted and allotted to the Respondent No. 7 Hospital.

21. He has submitted that the policy of fixation of stipend to DNB students was issued by the Railway Board in the year 2014 and pursuant thereto the instructions were issued in the year 2019 to empower the railway hospitals to finalise the rate at their own level and to avoid repeated issuance of instructions from the Ministry level. The Railway Board's order dated 21st January 2019 is self explanatory and the revision of stipend has been done under the administrative purview of the Railway Board guidelines issued by the said order. The revision of stipend has been done strictly as per NBE stipend Notification dated 26th December 2013 and the impugned decision dated 2nd April 2019. Further, absolute parity with the State Government has been maintained and no NBE Rules have been violated. He has submitted that the Petitioners by challenging the impugned Notification dated 2nd April 2019 appear to be having a grievance against the State policy and that if they have such grievance, they should challenge the policy instead of challenging its implementation.

22. He has submitted that insofar as other grounds of challenge raised in Petition, as to the impugned decision being discriminatory and violative of Article 14 of the Constitution of India is concerned, he has submitted that there is no

such discrimination in reducing the stipend. He has submitted that the revision of stipend is as per the NBE guidelines is clear from the guidelines dated 26th December 2013 itself as well as reiterated in the impugned decision/letter dated 2nd April 2019 viz. NBE accredited hospital shall have to pay the DNB/FNB candidate a basic stipend as per the NBE stipend policy or basic stipend as per the Maharashtra State Government policy whichever is higher. He has distinguished the judgment of the Madras High Court which has been relied upon by the Petitioners and which had disposed of a group of Petitions vide order dated 9th October 2018. He has submitted that the decision of Madras High Court was decided on the facts of that case. Although, in that case the stipend was payable according to the stipend fixed by the State Government which was higher than the NBE stipend, the stipend had been reduced to the minimum prescribed by NBE. He has submitted that it was accordingly, held by the Madras High Court that the minimum stipend payable under the NBE stipend policy was unreasonable, discriminatory and opposed to public policy, as the Northern Railway had treated stipend paid to DNB students as salary from the year 2009 in the Northern Region. The Madras High Court followed its prior order dated 21st June 2017 which had allowed the Writ Petition No. 26274 of 2016 thereby forbearing the Respondents therefrom implementing the revised fee structure, the stipend and guidelines prescribed by the NBE and adopted by the Railway Board. He has submitted that there is no basis in the submission of the Petitioners that the decision of the Respondents Authorities in reducing the stipend is illegal and/or discriminatory and/or violative by Article 14 of the Constitution of India. Accordingly, he has submitted that the Writ Petition be dismissed.

23. Mr. Ganesh Gole, the learned Counsel for Respondent No. 1 has opposed the Petition by relying upon the Affidavit in Reply of Dr. Gaurav Sharma filed on behalf of the Respondent No. 1. He has submitted that the revised stipend paid by the Respondent No. 7 Hospital is in line with the minimum stipend needed to be paid as per the NBE norms.

24. Having considered these rival submissions, it would be necessary to consider as to whether the DNB trainees are at all to be considered as contractual employees and entitled to the salary payable in accordance with the earlier policy viz. 6th pay commission together with allowances of previous pay including TA, DA and non practicing allowance. It would be necessary to refer to certain definitions of 'intern' and 'trainee' as defined in the Concise Oxford dictionary which is as under:-

"Intern : A recent medical graduate receiving supervised training in a hospital and acting as an assistant physician or surgeon. A student or trainee who does a job to gain work experience or for a qualification.

Trainee : A person undergoing training for a particular job or profession."

25. It can be seen from the definition of intern that it includes a recent medical

graduate receiving supervised training in a hospital. This would thus take within its meaning a DNB trainee who is a medical graduate receiving supervised training in the hospital. Further, the word intern has been defined as a student or trainee who does a job to gain work experience or for a qualification. A trainee has similarly been defined as a person undergoing training for a particular job or profession. Thus the word trainee has been included in the definition of intern and equated with a student. This is in contra distinction to a contractual employee who is entitled to a fixed salary.

26. It is an admitted position that the DNB students who possess MBBS degree and have been admitted for postgraduate DNB courses are required to work round the clock and also required to stay in the hospital campus. This can be also seen from the letter dated 11th / 12th June 2018 issued by the NBE to the Executive Director, Health Railway Board, Ministry of Railway, Government of India, wherein it has been stated under the heading Academic Programme that "The DNB/FNB training is a residency-based training cum employment programme wherein the DNB/FNB resident discharges the duties of a Junior/Senior Resident and undergoes a rigorous academic programme to enhance his knowledge and skills."

27. The Petitioners were in fact being paid a stipend which included basic pay plus TA plus DA and non practicing allowance till February 2019 for their training at the Respondent No.7 hospital. They now appear to be aggrieved since there is a revision in their stipend which is paid at a reduced amount as per the Maharashtra State Government stipend Policy. This revision in stipend is in accordance with the NBE guidelines for DNB trainees. The NBE guidelines were first introduced on 26th December 2013 and which provided for a stipend to be paid according to the NBE stipend guidelines. The relevant guidelines are as under :-

"3. Stipend guidelines for DNB & FNB Training:

3.1. Paying stipend to the DNB & FNB candidates is compulsory.

3.2. According to the NBE stipend policy, the hospital shall have to pay the DNB/FNB Candidate a basic stipend as follows or basic stipend according to State government policy (whichever is higher):

Post MBBS DNB (Broad Specialty) Programme:

Year of DNB Training

Stipend (in INR) per month.

· First Year

25,000/-

· Second Year

27,000/-

- Third Year

29,000/-

Post Diploma DNB (Broad Specialty) Programme:

Year of DNB Training

Stipend (in INR) per month.

- First Year

27,000/-

- Second Year

29,000/-

DNB (Super Specialty) Programme:

Year of DNB Training

Stipend (in INR) per month.

- First Year

32,000/-

- Second Year

34,000/-

- Third Year

36,000/-

NB: 4th, 5th and 6th year trainees of a Direct 6 year DNB programme shall be paid stipend equal to 1st, 2nd, and 3rd year trainees of a DNB super specialty programme respectively provided that they clear the DNB Part-I Examination."

28. Under the 2013 guidelines the hospital was to pay a DNB trainee a basic stipend as per the NBE stipend policy or according to the State Government policy (whichever is higher). These guidelines were only updated/revised by the impugned decision and this is clear from the NBE email dated 24th June, 2019 which is referred to and annexed in the Reply Affidavit of Respondent No. 1. The only change made is that the stipend prescribed by NBE guidelines i.e. the basic stipend came to be fixed as per the State Government policy which was higher.

29. The impugned decision/letter dated 10th April, 2019 which follows these revised guidelines is as under :

"Western Railway

No.E/MD/764/1 Office of the

Medical Director

Jagjivenram Hospital

Mumbai Central

Dated 10/04/2019

Memorandum

Sub : Revision of Stipend Payable to DNB-Trainees in Railway-Hospital.

Ref : 1. Railway Board's Letter No. 2006/H/2-1/5 dated 1/1/2018.

2. Railway Board's letter No.2018/17/2-1 (policy) Pt-1 dated 21/01/2019.

3. GM(E) CCG's Letter No.E(PS)774/Misc. Dated 16/01/2019.

4. DFM/BCT's Letter No.BCT/FA/Med/2018-19/1552387528390 dated 29/03/2019.

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In terms of Railway Board's letter under reference above, the fresh guidelines for payment of stipend to DNB trainees to be paid as per NBE stipend policy or stipend according to Maharashtra State Government Policy whichever is higher.

Proposal of revision of stipend of DNB Trainees on the basis of Maharashtra State Government Policy vetted by associate account vide reference above (4) details is as under:-

Sr. No.

Post

Basic

D-P 50%

DA (274%)

Allowances

Monthly stipend

P. Tax

Net Stipend

1

DNB I

6600

3300

27,126/-

525+7,000+ 10,000

54,551/-

200

54,351/-

2

DNB II

6700

3350

27,537/-

525+7,000+ 10,000

55,112/-

200

54,912/-

3

DNB III

6800

3400

27,948/-

525+7000+ 10,000

55,637/-

200

55,473/-

It is clarified that regarding deduction of electricity and water charges, institutional policy after consulting other railways will be framed soon. Also it is to mention that an amount of Rs.10,000/-per year (Now 20000/- per year) is already being deposited in railway revenue each year by DNB students towards accommodation charges.

This has approval by competent Authority.

For Medical Director/JRH/BCT"

30. The impugned decision is thus only an interpretation of the stipend guidelines which were first introduced in 2013.

31. It is clear from the Affidavit in Reply of Dr. Hafeezunnisa, Medical Director of Respondent No. 7 hospital that the reduction in amount of stipend was due to the change in policy of the Railway Board from the pay scale of 6th pay commission to the Maharashtra State Government stipend policy and not due to a reduction of allowance of previous pay. It is also clear from the said Affidavit that this stipend to DNB trainees has to be paid as per the NBE guidelines issued from time to time which has been accepted by the Railway Board. The NBE stipend guidelines could change during the duration of ongoing course. The stipend guidelines had previously been changed in 2009 during the DNB course when the stipend was enhanced two fold.

32. The Reply Affidavit on behalf of the Respondent No. 1 also makes it clear that the revised stipend paid by the Respondent No. 7 hospital is in line with the minimum stipend as per NBE norms. It has been stated in the said Reply Affidavit that the Respondent No. 7 hospital had paid a sum over and above minimum required in the earlier years. However, the change in the NBE guidelines is beyond the understanding of the NBE. This change is clarified in the Affidavit in Reply filed on behalf of Respondent Nos. 3 to 7 that the revised stipend was due to a change in policy of Railway Board from pay scale of 6th pay commission to the Maharashtra State Government stipend policy. Thus, this being a matter of the State policy, it is not open for this Court to interfere or make any changes in the policy. In any event, the Petitioners have not challenged the policy, but have only challenged its implementation.

33. The decision of the Single Judge of the Madras High Court dated 9th October 2018 which had disposed of a group of Petitions by holding that the drastic attempt on the part of the Southern Railway to reduce stipend to the Petitioners to the minimum prescribed by the NBE was unreasonable, discriminatory and contrary to public policy has been relied upon by the Petitioners. This followed an earlier decision of that Court. It was noted that the stipend paid to DNB students from the year 2009 in Northern Region had been treated as salary and was paid at much higher rate. Thus, the Court held that the Petitioners therein were discriminated. However, this decision was decided on the facts of that case. In any event we do not adhere to the view taken by the Madras High Court in the above decision that the stipend must be deemed to be a salary and cannot be reduced. In the present case, the stipend paid to the DNB trainees has been reduced, in line with the NBE guidelines and as per its norms. The impugned decision to reduce the stipend paid to the DNB trainees by the Respondent No. 7 Hospital is as per the Maharashtra State Government stipend policy which was higher than that fixed by the NBE. Thus, the Respondent No. 3 in the impugned decision has only adopted the State Government stipend policy which was in line with the NBE stipend guidelines. We do not find any infirmity in the impugned decision dated 10th April 2019. We do not find any discrimination in the impugned decision of Respondent No.3 reducing the stipend to the DNB trainees who are governed by the NBE norms.

34. It appears that the stipend paid to the Petitioners as per the earlier policy for January and February 2019 has been proportionately recovered in the months of March, April 2019. Considering that the Maharashtra State Government stipend policy was implemented from March 2019, it would not be appropriate for the Respondent No.7 hospital to recover stipend paid prior thereto. We also take into account the fact that the Petitioners as DNB trainees undergo residency based training-cum-employment programme wherein the DNB residents discharge the duties of a Junior/Senior Residents and undergo a rigorous academic programme to enhance their knowledge and skills. This has been acknowledged by the NBE in its communication dated 11th /12th June, 2018. Such recoveries would thus be unfair and would cause embarrassment to the DNB trainees apart from such retrospective implementation of the State Government stipend policy being illegal. Accordingly, such recoveries are quashed and set aside.

35. We do not consider granting any other relief by way of mandamus against the Respondents Authorities other than the quashing of the recoveries of the stipend paid as per the earlier policy prior to March 2019. It is made clear that the Respondents Authorities are entitled to implement the revised State Government stipend policy from 1st March 2019. The recoveries made prior thereto shall be refunded by the Respondent No.7 Hospital to the Petitioners within a period of 3 months from the date of this Judgment.

36. The Petition is accordingly, disposed of in the above terms, with no order as to costs.