

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH****WRIT PETITION NO. 5771 OF 2011 WITH WRIT PETITION NO. 682 OF 2012  
AND WRIT PETITION NO. 3277 OF 2012**

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**WRIT PETITION NO. 5771 OF 2011**

(1) Vidarbha Ayurved Mahavidyalaya, having its address at Hanuman Vyayam Nagar, Chhatra Talao Road, Amravati 444 605. (2) Shri Ayurved Mahavidyalaya, having its address at Dhanwantri Marg, Hanuman Nagar, Nagpur 440 009. (3) Shri Gurudeo Ayurved Mahavidyalaya, having its address at Gurukunj Ashram (Mozari), Amravati 444 601. (4) DMM Ayurved Mahavidyalaya, having its address at Aarni Road, Shivaji Nagar, Yavatmal 445 601. ... **PETITIONERS** (1) Tuleshwar Mangalmurti Dhaskat, Assistant Professor at Shri Ayurved College, having its address at Hanuman Nagar, Nagpur 440 009. (2) Ajay Ladleprasad Joshi, Clerk at Shree Ayurved College, having its address at Hanuman Nagar, Nagpur 440 009. ... **INTERVENORS/ APPLICANTS. VERSUS** (1) State of Maharashtra through the Principal Secretary, Medical Education and Drugs Department, Mantralaya, Mumbai 400 032. (2) State of Maharashtra through the Principal Secretary, Education and Employment Department, Mantralaya, Mumbai 400 032. (3) The Directorate of Ayurved, having its address at Khanna Construction House, 2nd Floor, Thadani Marg, Worli, Mumbai 440 010. ... **RESPONDENTS**

Shri K.H. Deshpande, Senior Advocate with Shri R.D. Dhande,

Shri M.D., Lakhey and Ms. Ila Deshpande, Advocates for the petitioners. Mrs. B.H. Dangre, Additional GP for respondents No. 1 to 3. Shri P.D. Meghe with Shri V.V. Waghmare, Advocate for the applicants/ intervenors.

**WRIT PETITION NO. 682 OF 2012**

(1) Action Group for Pensionary Benefits to Social Work Colleges, having its Head office at B11, Shrivardhan Chintaman Nagar, Wardha Road, Nagpur 400 025. (2) Prof. Prabhakar Kashinath Shende. (3) Prof. Anil Wamanrao Dhage. (4) Prof. Vandana Balkrushna Mahatme. (5) Prof. Sunil Vitthalrao Kodape. (6) Prof. Anil Anandrao Sargar. Petitioner Nos. 2 to 6 are all Assistant Professors working at B.P. National Institute of Social Work, having its address at Shri Iswar Deshmukh Campus, Krida Chowk, Hanuman Nagar, Nagpur 440 009. (7) Prof. Minakshi Mukesh Ganvir. (8) Prof. Hemlata David. (9) Prof. Madhukar Warluji Uikey. (10) Prof. Surajmal Surendra Kabiraj. (11) Prof. Parag Gopal Bombatkar. (12) Prof. Maheshkumar Sureshchandra Singh Gautam. (13) Prof. Naresh Rohidas Dhurve. (14) Dr. Hiralal Wasudeo Meshram. Petitioners No. 7 to 14 are all Assistant Professors working at Tirpude College of Social Work, having its address at Civil Lines, Nagpur. (15) Prof. Shrikant Santoshrao. (16) Prof. Nitin Dharmaraj Tagde. (17) Prof. Vilas Vikram Dhabale. (18) Prof. Sumedha

ITEM NO.19

COURT NO.7

SECTION IX

**SUPREME COURT OF INDIA**

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) CC 22399-22401/2013

(From the judgement and order dated 10/06/2013 in WP No.5771/2011, WP No.682/2012 &amp; WP No.3277/2012 of The HIGH COURT OF BOMBAY AT NAGPUR)

STATE OF MAHARASHTRA & ORS. ETC. ETC. Petitioner(s) **VERSUS** VIDARBHA AYURVED MAHAVIDYALAYA & ORS. Respondent(s) With IA 1-3 (c/delay in filing SLP and office report)**DATE: 10/01/2014**

These Petitions were called on for hearing today.

**CORAM****HON'BLE MR. JUSTICE SURINDER SINGH NIJJAR****HON'BLE MR. JUSTICE A K. SIKRI**

**For Petitioner(s)** Mr. L.Nageshwara Rao, Sr. Adv. Mr. Shankar Chillarge, Adv., Mr. Aniruddha P. Mayee, Adv., Ms. Asha Gopalan Nair, Adv. **For Respondent(s)** Mr. Shyam Devan, Sr. Adv. Mr. Satyajit A. Desai, Adv., Mr. Madhav D. Lakhe, Adv. Ms. Anagha S. Desai, Adv.

UPON hearing counsel the Court made the following

**ORDER**Delay condoned. The special leave petitions are **DISMISSED**

(Anira malhotra) (Sr.PA)

(Indu bala Kapur) (Court Master)

Gunvantrao Wankhede. (19) Prof. Seema Gamankumar Lade (20) Dr. Rajesh Pandurang Waigaonkar. (21) Prof. Abhay Raghunath Shende. (22) Prof. Bhimrao Rushiji Meshram. Petitioner Nos. 15 to 22 are Assistant Professors working with Kumbhalkar Social Work Evening College, having its address at Ganeshpeth, Nagpur. (23) Prof. Kishor Suryabhanji Dhoble. (24) Prof. Poonam Yadavrao Yesambare. (25) Prof. Aravind Balkrushna Ghongade. Petitioner Nos. 23 to 25 are Assistant Professors working at Kumbhalkar College of Social Work, Sewagram Road, having its address at Wardha. (26) Prof. Mohanish Bharat Sawai. (27) Prof. Jyoti Krishna Panbude. Petitioner Nos. 26 and 27 are Assistant Professors working at Dr. College of Social Work, Borgaon Naka, having its address at Wardha. (28) Prof. Aravinda Babarao Patil. (29) Prof. Niranjan Bhaskar Brahmane. Petitioner Nos. 29 and 30 are Assistant Professors working at Aniket College of Social Work having its address at Circus Ground, Wardha. (30) Dr. Purushottam Y. Thote. (31) Dr. Sanju Chindhuji Utpure. (32) Prof. R.C. Borban. Petitioner Nos. 30 to 32 are Professors working at P.Y. Thote College of Social Work, having its address at Narsala Road, Nagpur. (33) Prof. Chandan Premisingh Rotele. (34) Prof. Ravindra Hirsingh Chandel. (35) Prof. Sunil Baburao Uikey. Petitioner Nos. 33 to 35 are Professors working at Aathawale College of Social Work, having its address at Bhandara. (36) Prof. Purushottam Gunvantrao Pakhale. (37) Prof. Chandrashekhar Nanaji Mohad. (38) Prof. Vijay Mahadeorao Ghubde. Petitioner Nos. 36 to 38 are Professors working at Mundafale College of Social Work having its address at Narkhed, Nagpur. (39) Prof. Sanjay Hirananji Balbudhe. (40) Prof. Anil Ishwar Thool. Petitioner Nos. 39 and 40 are Assistant Professors working at Aniket College of Social Work, having its address at Wadsa. (41) Dr. Sunil Mahadeorao Sakure. (42) Prof. Krishna Marotrao. (43) Prof. Narendra Shankarrao Tikle. (44) Prof. Purushottam Marotrao Borkar. (45) Dr. Pragati Dinesh Narkhedkar. (46) Prof. Nilesh Shankarraro Dhekre. (47) Prof. Kalpana Mahadeorao Kawade. (48) Prof. Mamta Jadhao. Petitioner Nos. 41 to 48 are all Professors working at Sushilabai Ramchandra Mamidwar College of Social Work, having its address at Padoli, Chandrapur. (49) Prof. Purushottam Wamanrao Dhumne, residing at Sharda Chauk, Subhedar Layout, Nagpur. (50) Dr. Kumudini Govindrao Singam, residing at Jivanchhaya Nagar, Padole Layout, Nagpur. (51) Dr. Promodrao Rameshwar Sharma, residing at 13, Kapse Layout, Dindayal Nagar, Nagpur. Petitioner Nos. 1, 3 to 51 through Petitioner No. 2.) ... **PETITIONERS. VERSUS** (1) The State of Maharashtra, through the Chief Secretary, having its office at Mantralaya, Mumbai 400 032. (2) The State of Maharashtra through the Principal Secretary, Ministry of Social Justice and Special Assistance, having its office at Mantralaya, Mumbai 400 032. (3) The Director, Social Welfare, State of Maharashtra, having its office at 3, Church Road, Pune. (4) The State of Maharashtra, through the Principal Secretary, Department of Education (Higher and Technical Education), having its office at Mantralaya, Mumbai 400 032. (5) Union of India, Ministry of Human Resources Department, New Delhi. (6) University Grants Commission, through its Secretary, Bahadurshah Jafar Marg, New Delhi 110 002. (7) Rashtrasant Tukdoji Maharaj Nagpur University, Nagpur through its Registrar, Nagpur. ... **RESPONDENTS.**

Shri K.H. Deshpande, Senior Advocate with Shri R.D. Dhande and Shri M.D., Lakhey, Advocates for the petitioners., Mrs. B.H. Dangre, Additional GP for respondents No. 1 to 4., Shri S.K. Mishra, ASGI for respondent No. 6., Shri B.G. Kulkarni, Advocate for respondent No. 7.

### WRIT PETITION NO. 3277 OF 2012

(1) Maharashtra Social Work Educators Management and Staff Forum, through its President, Prof. Chandansingh Premisingh Rotele, aged 54 years, occupation – Service, r/o Secretariate 31/4, Priyadarshani Nagar, R.T.O. Nagpur 440 010. (2) Vinod Namdeorao Kshirsagar, aged – Major, occupation – Service and Treasurer of the Maharashtra Social Work Education Management and Staff Forum. (3) Dr. Hemant Mahadeorao Deshmukh, Aged – Major, occupation – Service. (4) Prof. Dhanraj Shraavan Chaukhunde, aged – Major, occupation – Service. (5) Prof. Chandrashekhar Sundarlal Malviya, aged – Major, occ. Service. (6) Prof. Naresh Shalikram Kolte, aged – Major, occupation – Service. (7) Prof. Jyoti G. Nagtode, aged – Major, occupation – Service. (8) Prof. Iliyas Gulambhai Bepari, aged – major, occupation – Service. (9) Prof. Rajkumar Baliram Thaware, aged – major, occupation – Service. (10) Shri Pankaj Dilipsingh Rotele, aged – Major, occ. Service. (11) Shri Anil Kishanlal Mehar, aged – Major, occ. Service. (12) Shri Ganesh Vitthal Pudke, Aged – Major, occ. Service. (13) Shri Dilip Metram Patle, aged – Major, occ. Service. (14) Shri Indrajeet S. Amte, aged – Major, occ. Service. (15) Shri Maheshsingh Indalsingh Shishodiya, aged – Major, occupation – Service. (16) Smt. Chanda Triyambaksingh Hajari, aged – Major, occupation – Service. (17) Shri D.N. Durugkar, Aged – Major, occupation Service. All above petitioner Nos. 1 to 17 are r/o c/o Athawale College of Work, Railway Station Road, Bhandara. (18) Sau. Vidya Surekhanand Pardeshi, aged – Major, occupation – Service, r/o c/o Athawale College of Social Work, Chimur, District – Chandrapur. (19) Shri Mangal Prasad Rahangdale, Aged – Major, occupation – Service. r/o c/o Orange City College of Social Work, Koradi Road, Nagpur. (20) Shri Hardeepsingh Dipaksingh Rotele, aged – Major, occupation – Service, r/o c/o Orange City College of Social Work, Koradi Road, Nagpur. ... **PETITIONERS. VERSUS** (1) The State of Maharashtra, through the Chief Secretary, having its office at Mantralaya, Mumbai 400 032. (2) The State of Maharashtra through the Principal Secretary, Ministry of Social Justice and Special Assistance, having its office at Mantralaya, Mumbai 400 032. (3) The Director, Social Welfare, State of Maharashtra, having its office at 3, Church Road, Pune. (4) The State of Maharashtra, through the Principal Secretary, Department of Education (Higher and Technical Education), having its office at Mantralaya, Mumbai 400 032. (5) Union of India, Ministry of Human Resources Department, New Delhi. (6) University Grants Commission, through its Secretary, Bahadurshah Jafar Marg, New Delhi 110 002. (7) Rashtrasant Tukdoji Maharaj Nagpur University, Nagpur through its Registrar, Nagpur. ... **RESPONDENTS.**

Shri P.S. Khubalkar, Advocate for the petitioners., Mrs. B.H. Dangre, Additional GP for respondents No. 1, 3 and 4., Shri S.K. Mishra, ASGI for respondent No. 6. Ms. A.P. Shinde, Advocate for respondent No. 7.

## CORAM : B.P. DHARMADHIKARI & A.B. CHAUDHARI, JJ.

DATE OF RESERVING JUDGMENT : MAY 06, 2013.

DATE OF PRONOUNCING JUDGMENT : JUNE 10, 2013.

### JUDGMENT

(Per B.P. DHARMADHIKARI, J.)

The grievance and demand in all these writ petitions is in respect of superannuation pension. Writ Petition No. 5771 of 2011 seeks that benefit for the Teachers in NonGovernment aided Ayurvedic Colleges affiliated to NonAgricultural Universities/Maharashtra University of Health Sciences, Nasik. Writ Petition No. 682 of 2012 seeks similar benefit for the Teachers in NonGovernment Aided Social Work Colleges being Education Colleges affiliated to NonAgricultural University viz., Rashtra Sant Tukdoji Maharaj Nagpur University. Writ Petition No. 3277 of 2012 is for similar benefit by the Teaching and Nonteaching staff of Social Work Colleges, who are joined as respondents therein. Writ Petition No. 185 of 2012 was also heard for some time with these matters but then because of need felt by the petitioners therein to produce more documents and to amend it, the same has been separated from this group.

2. Writ Petition No. 5771 of 2011 has been filed in the

background of earlier judgment of this Court in Writ Petition No. 3508 of 1992 and Writ Petition No. 2645 of 1990 delivered at Mumbai on 14.06.1996 and the judgment of the Hon'ble Apex Court in Civil Appeal No. 2878/2879 of 1997 dated 07.04.1997 thereafter. The petitioners there had claimed a direction to the respondents to extend the benefit of Pension and Gratuity Scheme as per Government Resolution dated 21.07.1983 to **Teaching and Nonteaching employees as also the Hospitals of the petitioners 1 to 4 Colleges.** By order dated 23.01.2012, this Court has permitted one Assistant Professor and one Clerk in employment of said Colleges to intervene in the matter. The petitioners state that **Division Bench of this Court in its judgment dated 14.06.1996 found the nonextension of benefit of Pension and Gratuity Scheme to the Teaching and Nonteaching employees NonGovernment aided Ayurvedic and Unani Colleges affiliated to the University of Pune, University**

The monthly pension due to them from 1.1.2014 shall be released regularly along with others. Any default or delay in payment after stipulated period shall attract interest as per prevailing policy of the State Government.

( See Para 40 of the High Court Judgement Dated 10.6.2013 )

of Nagpur as also to Hospital staff attached thereto **violative of Articles 14 and 16 of the Constitution of India**. Hence, a direction was issued to extend that benefit to said employees with effect from 26.05.1981. This judgment of Division Bench was assailed by the State of Maharashtra in Civil Appeal and **the Hon'ble Apex Court delivered its judgment in said matter on 07.04.1997. The Hon'ble Apex Court did not disturb the finding of High Court on violation of Articles 14 and 16 of the Constitution of India** and only declared that a direction to extend the benefit of Pension and Gratuity Scheme from a particular date could not have been given. **It, therefore, permitted State Government to consider extension of benefit of said Scheme in phased manner.**

3. It is in this background that Shri Deshpande, Senior Advocate with Shri Dhande, Advocate submits that the declaration of entitlement of those benefits already granted needs to be obeyed and **Government Resolution dated 27.06.2001 by which the State Government has not extended said benefit to the employees of Ayurvedic Private and three Unani Private Colleges and Hospitals thereof needs to be set aside.** The benefit as per Government Resolution dated 21.07.1983 needs to be extended and restored. It is pointed out that after High Court direction, a **Contempt Petition No. 346 of 1996** was filed before the Principal Seat of this Court and after judgment of the Hon'ble Apex Court dated 07.04.1997, the said Contempt Petition has been disposed of on 03.04.2006 by placing reliance upon para 1 of the affidavit in reply **where respondents stated that they would follow the order of Court in letter and spirit.** The learned Senior Advocate has invited our attention to Government decision dated 27.06.2001 to show that a demand for Pension and Gratuity was made thereafter and the Government rejected it. After this refusal, Contempt Petition No. 233 of 2002 came to be filed before this Court and on 15.06.2008, **this Court, after some observations in favour of the employees, noted that Government Resolution dated 27.06.2001 was against the mandate of the Court** and then gave Government time to reconsider the issue. Said Contempt Petition was looked into again by **this Court on 04.05.2009** and this Court then found that the Hon'ble Apex Court in its judgment dated 07.04.1997 directed Government to consider the issue and the direction did not **unmistakably restrict the freedom of Government to take appropriate decision; as such, there was no contempt.** This Court then found that in the facts and circumstances, the impugned decision needed to be challenged by filing an **independent writ petition. It is after this judgment that the present petition came to be filed.**

4. Our attention has also been invited to Government Resolution dated **16.11.1996** by which the Pension and Gratuity Scheme has been made applicable to **recognized grantinaid private Arts Colleges.** By Government dated **17.04.2000**, the said benefit has been extended to Teachers in eight private grantinaid **Colleges of Physical Education.** It is urged that this refusal to extend scheme to the petitioners in these facts is nothing but arbitrary and high handed exercise of powers of State Government. Before the Hon'ble Apex Court, the State Government did not assail the findings recorded by the Division

Bench of this Court on merits and only contended that the implementation ought to have been left to State Government because of huge expenditure involved in the process. The Hon'ble Apex Court also noted that the State Government was not denying the benefit of Scheme to only a segment of Teachers. It, therefore, only modified that part of judgment of High Court by which the High Court directed implementation of Scheme with effect from 26.05.1981. **Hence, the State Government was obliged to implement the Scheme for the benefit of the employees of the Petitioners – Colleges and it could not have refused to implement it by overlooking these judgments.**

5. Attention is invited to stand taken by the respondents in reply affidavit in this respect to urge that **defence of financial feasibility** while extending said scheme to Ayurvedic Colleges is not valid as the scheme has already been extended to various other Colleges and Teachers therein even in the face of alleged financial difficulties. The introduction of New Defined Contribution Pension Scheme vide Government Resolution dated 31.10.2005 is urged to be irrelevant for the purposes of adjudication of present challenge.

6. The judgment of the Hon'ble Apex Court in the case of **Budhan Choudhry and ors. vs State Of Bihar, (AIR 1955 SC 191)** and in the case of **Padman Meher vs. State of Orissa, (AIR 1981 SC 457)**, are relied upon to show how a classification can be validly made for the purposes of Article 14 of the Constitution of India and what is the effect of absence of nexus between the intelligible differentia and the object sought to be achieved. The judgment of the Hon'ble Apex Court in the case of **D.S. Nakara vs. Union of India, (AIR 1983 SC 130)** is also relied upon to submit that all teachers constitute one class and distinction made between other Teachers and Teachers/Staff in Ayurvedic Colleges for the purpose of pension is unsustainable. The judgment in the case of **State of Maharashtra vs. Manubhai Pragaji Vashi and Ors., (AIR 1996 SC 1)**, is also pressed into service to show that plea of absence of funds in this situation is no answer. Our attention has been invited to various paragraphs in memo of the writ petition to point out how the challenge has been properly spelt out. The learned counsel submits that in relation to Ayurvedic Colleges, the Hon'ble Apex Court has maintained the mandate of this Court to extend the benefit and hence denial by State Government vide impugned decision dated 27.06.2001 is unsustainable.

7. Coming to Writ Petition No. 682 of 2012, the learned Senior Advocate Shri Deshpande states that the challenge is materially same. Petitioners therein are also Teachers and hence cannot be treated differently. Judgment of the Division Bench of this Court in **Dr. Suresh Shrikrishna Naik vs. Karmveer Hire Rural Institute and others (2000 (2) All M.R. 94)** which finds the petitioners entitled to pension is heavily relied upon. The arguments advanced by him in Writ Petition No. 5771 of 2011, therefore, hold good even for the purposes of present petition. Our attention has been invited to Government Resolution dated 22.09.2011 on the point of revision of payscales of Teachers of Social Welfare Colleges as per UGC Scheme (6th Pay

Refusal of State to remove unjust classification in present facts is unjustified

( See Para 36 of the High Court Judgement Dated 10.6.2013 )



The defence of State of financial problems is not accepted  
by this Court on 14.6.1996 and then on 18.1.2000.  
Hon'ble Apex Court also did not accept  
it on 7.4.1997

( See Para 35 of the High Court Judgement Dated 10.6.2013 )

Commission). It is pointed out that said scheme of Ministry of Human Resources Development dated 31.12.2008 is for revision of pay of Teachers and equivalent cadres in Universities and Colleges. Its clause 8(g) deals with Pension and (h) deals with Family Pension. As per clause (p) it is applicable to Teachers and other equivalent cadres of Library and Physical Education in Central University and Colleges thereunder and to institutes deemed to be Universities. The scheme can be extended to Universities, Colleges and other Higher Educational Institutions coming under the purview of State Legislature, subject to conditions stipulated in subclause (v) of said clause (p). The learned Senior Advocate submits that thus Pension is an integral part of this wage revision and it cannot be severed therefrom. Hence, all employees in Social Work Colleges who are given benefit of 6th Pay Revision, automatically become entitled to pension. Support is being taken from the judgment of the Hon'ble Apex Court in the case of State of Maharashtra vs. Maharashtra Education Service Officers, (1974 (4) SCC 706), for said purpose.

8. The decision of Government incorporated in letter dated 12.07.2010 sent by the Assistant Secretary to Director of Social Welfare, refusing to extend Pension and Gratuity scheme to Social Work Colleges is, therefore, **assailed as violative of Articles 14 and 16 of the Constitution of India**. Our attention has also been drawn to newly drafted Contribution Pension Scheme as contained in Government Resolution dated 31.10.2005, to urge that it is applicable to Government Servants recruited on or after 01.11.2005. The said scheme has also been made applicable to new employees in recognized and aided institutions and affiliated nongovernment colleges. The learned Senior Advocate, therefore, submits that new scheme as contained in this resolution is not for the petitioners. He submits that prior to 1964, the Social Work Colleges and Higher Education Colleges came under the purview of Department of Education and Social Welfare. After 1964, the Department of Education and Social Welfare were bifurcated and Social Work Colleges came under the Department of Social Welfare and the Higher Education Colleges including some Social Work Colleges came under the Department of Higher Education. The benefits applicable to Higher Education Department were also applicable to the Social Welfare Department. The petitioners submit that said benefits were initially denied to them and were made applicable to Social Welfare Department from 2005 vide Government Resolution dated 16.08.2005. The ground (N) in the petition is pressed into service to submit that Social Work Colleges established prior to 1964 got the benefit of Pension and still get that benefit. The judgment of Hon'ble Apex Court dated 07.04.1997 and particularly its earlier judgment in the case of State of Maharashtra vs. Manubhai Pragji Vashi, (1995 (5) SCC 730), about the Teachers in Law Colleges is relied upon to buttress the plea of **hostile discrimination**. The Division Bench judgment of this Court in the case of Dr. Suresh Shrikrishna Naik vs. Karmveer Hire Rural Institute and others (2000 (2) All M.R. 94), about the institutes/ colleges under Social Welfare Department and a direction to Government to consider extension of benefits to Teaching and Nonteaching staff therein in phased

manner issued by said Division Bench judgment, are pressed into service in this background. **The impugned communication dated 12.07.2010 is thus stated to be bad and unsustainable.**

9. Shri Khubalkar, learned counsel for the petitioners in Writ Petition No. 3277 of 2012 states that the petitioners therein are the Teaching and nonTeaching staff working in Social Work Colleges and their grievance is identical as is in Writ Petition No. 682 of 2012. He, therefore, adopts the arguments of the learned Senior Advocate.

10. Mrs. Dangre, **learned Additional Government Pleader** has raised a few objections in Writ Petition No. 5771 of 2011 as the preliminary objections. Her contention is, the petition as filed by four Colleges is not maintainable as Colleges who are Petitioners therein are not a juristic person. It is further urged that there is **huge delay in the matter** and the government decision taken on 27.06.2001 is sought to be assailed by the Colleges after almost 10 years. The learned Additional Government Pleader submits that after the judgment in Special Leave Petition by the Hon'ble Apex Court on **07.04.1997, the controversy stood concluded** and hence all arguments advanced today are not available or open. In the alternative and without prejudice, it is submitted that **there is no discrimination and hence Article 14 of the Constitution of India has not been violated**. The subsequent event of withdrawal of pension scheme itself and its replacement in 2005 by a new scheme is relied upon to urge that this event also militates with the theory of discrimination. Our attention has been invited to charts filed by the petitioners – Colleges as Annexure P1 onwards up to Annexure Q3 to show that it is the liability of Gratuity incurred by these Colleges which has prompted them to file the present petition. The said liability is incurred in terms of Payment of Gratuity Act and Petitioner No. 2 has filed Writ Petition Nos. 875 of 2013, 878/2013, 880/2013 and 881/2013 against the employees who have succeeded before the Competent Authority in Gratuity proceedings. Petitioner No. 3 had filed Writ Petition No. 5699 of 2010 which has been disposed of on 13.07.2011. Thus, in order to avoid the statutory liability to pay gratuity in terms of Payment of Gratuity Act, the Colleges have filed present writ petition. **The said liability cannot constitute a "cause" and the grievance about service matter cannot be looked into as Public Interest Litigation**. The petition, therefore, is not maintainable and deserves to be dismissed.

11. Writ Petition Nos. 3508/1992 and 2645/1990 were filed at Bombay by the Teaching and Nonteaching staff (i.e. directly by the employees). The Government Resolution dated 21.07.1983 was also assailed in those writ petitions. The challenge in present writ petition by the Colleges, after adjudication therein, is **thus grossly belated**. After directions of the Hon'ble Apex Court dated 07.04.1997, an interlocutory application was filed before it for the first time in 2004 and it was dismissed on 05.04.2004. **Thus, the Hon'ble Apex Court did not find decision of State Government dated 27.06.2001 to be Contempt of Court.**

12. Contempt Petition was then filed in High Court vide **Contempt Petition No. 233 of 2007** and that Contempt Petition

This later judgment has not been questioned before the  
Hon'ble Apex Court and findings therein on  
violation of Article 14 have attained  
finality qua petitioners  
in Writ Petition Nos.682 and 3277 of 2012.

( See Para 28 of the High Court

Judgement Dated 10.6.2013 )

When on 14.6.1996 or then on 18.1. 2000, the Division Benches of this Court record a finding of violation of Article 14 of the Constitution of India, it follows that teaching and nonteaching staff of Ayurved / Unani and Social Work Colleges could not have been denied the benefit of pensioncumgratuity scheme

( See Para 35 of the High Court Judgement Dated 10.6.2013 )

was then disposed of on 04.05.2009. The cause of action, therefore, accrued in favour of the employees on 27.06.2001 or thereafter on 05.04.2004 or on 04.05.2009 **but then they have not taken any steps in the matter till date.** The said Contempt Petition before Nagpur Bench i.e. **Contempt Petition No. 233 of 2007** was not by the petitioners before the Bombay Bench but by other employees. **Hence, filing of such a petition by Colleges is nothing but abuse of law.** The Colleges were aware of the Government decision since 21.07.1983 but did not choose to approach High Court at any point of time. Now they are trying to seek benefit of Pension scheme for employees with them from 1982. This conduct of the petitioners, therefore, disentitles them to any relief in extraordinary jurisdiction. According to her, the finding **that there is no contempt shows that judgment dated 14.6.1996 by the Division Bench of this Court does not now hold the field.**

13. Coming to challenge with reference to Article 14, the **learned Additional Government Pleader** submits that the petitioners rely upon Government Resolution dated 21.07.1983 issued by the Education and Employment Department as basis of their entitlement. The said resolution is expressly made not applicable to them and in this situation as the petitioners Colleges are not recognized by the Higher Education Department, their demand for Pension is misconceived. **The Division Bench judgment of this Court at Bombay dated 14.06.1996 has been set aside by the Hon'ble Apex Court on 07.04.1997. Therefore, no support can be taken from it.**

14. Ayurvedic and Unani Colleges have their own Hospitals and therefore, there is a source of income. They collect fees from students and charge the patients. That is not the position in respect of other colleges to whom Pension Scheme was extended by the Government. Pension was never a term of service conditions for the employees in Ayurvedic and Unani Colleges. They were always taking benefit of Contributory Provident Fund. There is no change in their service condition to their disadvantage. Maharashtra Civil Service Condition Rules, 1982, apply only to employees of State Government and its benefit cannot be extended to the employees of the petitioners – Colleges. It is in this light that the learned Additional GP points out how the classification between other Colleges and Ayurvedic/ Unani Colleges is in accordance with law and **not violative of Article 14 of the Constitution of India.** The petitioners are covered under Contributory Provident Fund Rules and as they are not Government servants, the petition as filed is misconceived. Government has to take into account finances and when Government is finding it difficult to extend that benefit to its new employees and **a new policy in that respect has been implemented with effect from 01.11.2005,** present demand and challenge is liable to be rejected.

15. To point out how the argument of invalid classification for the purpose of Article 14 of the Constitution of India need to be appreciated, she relies upon the judgment of the Hon'ble

Apex Court in the case of **Air India vs. Nergesh Meerza, (1981 (4) SCC 335)** and in the case of **Transport and Dock Workers Union vs. Mumbai Port Trust, (2011 (2) SCC 575)**. The limited scope of judicial review in policy matters is pressed into service by drawing support from the judgments of the Hon'ble Apex Court in the case of **Union of India vs. Kannadapara Sanghatanegala Okkuta and Kannadigara, (2002 (10) SCC 226)**, **State of Kerala vs. Naveena Prabhu, (2009 (3) SCC 649)**, **Bajaj Hindustan Ltd. vs. Sir Shadilal Enterprises Ltd., (2011 (1) SCC 640)** and **Dilip Kumar Garg vs. State of Uttar Pradesh, (2009 (4) SCC 753)**. She submits that documents filed by the petitioners on 04.04.2013 about extension of Pension and Gratuity Scheme to their counterparts by Karnataka State Government and Gujarat State Government, are not sufficient to substantiate the challenge made and those documents cannot be looked into in the absence of proper application seeking leave of Court to produce, necessary affidavits and an opportunity to State to oppose production or rebut the same on merit.

16. Coming to Writ Petition No. 682 of 2012, she submits that said writ petition is filed by an Association and its members **working in Social Work Colleges appointed between 01.01.1973 and 21.10.2005.** The Government decision dated 11.07.2001 is sought to be questioned after inordinate delay. The communication dated 12.07.2010 is in the light of earlier decision taken in 2001 and not a new cause of action. **The financial implications involved in the matter are very wide.** The Social Work Colleges fall under Social Justice Department while Arts, Science, Commerce and Education Department are recognized by the Department of Education. The petitioners were aware of this position since 1983 and still did not make any effort to challenge the non extension of Pension and Gratuity Scheme till 2012. She points out that 2008 UGC Scheme is for Pay Revision and it does not deal with Pension. The Social Work Colleges were totally dependent upon the State Government. The Government has with best intentions and due thought to financial position, taken appropriate decision and extended, wherever possible, the benefit thereof to Teachers employed in various disciplines. The said act cannot be viewed as arbitrary and does not legally lead to or result in any discrimination.

17. To point out the effect of judgment of the Hon'ble Apex Court dated 07.04.1997, she relies upon the judgment of the Hon'ble Apex Court in the case of **Kunha Yammed vs. State of Kerala, (2000 (6) SCC 359)**. Her submission is, after 07.04.1997, the judgment of Division Bench of this Court dated 14.06.1996 is no longer available and the controversy needs to be viewed in the light of judgment of the Supreme Court only. She also draws support for said purpose from the judgment dated 04.05.2009 in Contempt Petition No. 233 of 2007. The recent judgment of the Hon'ble Apex Court in the case of **Commissioner of Central Excise vs. Osnar Chemical (P) Ltd.,**

State Government is already declared to have violated Article 14 by the Division Bench of this Court in **Dr. Suresh Shrikrishna Naik vs. Karmveer Hire Rural Institute and others** on 18.1.2000.

( See Para 35 of the High Court Judgement Dated 10.6.2013 )



(2012 (2) SCC 282), is also pressed into service for said purpose. We may mention here that this last citation appears to be not germane.

18. In reply arguments, Shri Deshpande, learned Senior Advocate urges that doctrine of Merger is not of universal application or unlimited in nature. He relies upon the judgment of the Hon'ble pex court in the case of **Kunha Yammed vs. State of Kerala** (supra) only to urge that the judgment of the Hon'ble Apex Court dated 07.04.1997 **does not totally substitute High Court judgment dated 14.06.1996**. Support is also taken from te judgment of the Hon'ble Apex Court in the case of **Collector of Central Excise vs. Maharashtra Fur Fabrics Ltd.** (AIR 2002 SC 3482).

19. On the preliminary objections raised by the learned Additional Government Pleader, he submits that the College is recognized by University and is also affiliated to it, hence, it cannot be said that writ petition filed by the College for the benefit of its staff or in the interest of itself or the management is not maintainable. He points out that two employees were permitted by this Court to intervene as applicants in Writ Petition No. 5571 of 2011. The judgment in the case of **State of Maharashtra vs. Manubhai Pragaji Vashi and Ors.** (supra), is relied upon to contend that there a letter has been taken cognizance of by High Court and wheels of justice were see in motion. In the light of previous adjudication, this Court should also take suo motu cognizance **as was taken in the matter of Private Law Colleges and this Court granted them grantinaid and pension**. The word "consider" employed by the Hon'ble Apex Court in its judgment dated 07.04.1997, therefore, must be construed to be a positive direction and not certainly as a leave given to the government to take a fresh decision. He insists that in this situation, remitting the matter to the State Government will not be in the interest of justice and it is this Court which has to issue a mandamus for retrospective implementation of Pension and Gratuity Scheme.

20. According to him, the argument of delay and laches is misconceived as cause of action is continuous one and a judgment of High Court has not been implemented till date. The distinguishing feature of income to the petitioners – Colleges from Hospitals attached, is stated to be illusory. There is no such plea in defence by the respondents and hence, there is no data on record. It is further submitted that all these hospitals charge fees at rates prescribed by the State Government and always run in losses. In absence of such a stand in defence, the Colleges did not get opportunity to meet it. Division Bench judgment of this Court in the case of **Retired Employees of Nongovernment Colleges Association, Nagpur vs. The State of Maharashtra and others** (1987 (2) BCR 348) is relied upon by him to point out how a date for implementation of scheme needs to be worked out. From 05.12.2003, 100% salary grants were/are made applicable and that has to be the date from which the pension and Gratuity Scheme must be extended to employees of the petitioners – Colleges. He further submits that as violation of Article 14 is accepted, date on which this scheme has been extended to Pharmacy colleges also can be looked into. He further contends that one Social Work College is getting benefit of Pension and Gratuity from 01.10.1982, however, he adds that all Colleges are receiving grantinaid from the Government. The placement of Social Work Colleges under one or the other department of State Government, for administrative convenience therefore, is not determinative and all Teachers in such Colleges have already been judicially accepted and deserve to be recognized as one homogenous class and must be extended

uniform treatment. He, therefore, prays for allowing all these petitions.

21. To substantiate the defence that after judgment of Hon'ble Apex Court in **State of Maharashtra v. Hari Shankar Vaidhya (Dr)** (1997) 9 SCC 521), the verdict of the Division bench of this Court loses its sanctity, learned Additional G.P. Has relied upon the doctrine of merger and two precedents. In **Kunhayammed v. State of Kerala**, (2000) 6 SCC 359), Hon'ble Apex Court observes :

"44. To sum up, our conclusions are: (i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.

(ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. The first stage is upto the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and the special leave petition is converted into an appeal.

(iii) The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subjectmatter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgmentdecree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

(iv) An order refusing special leave to appeal may be a nonspeaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking\order, i.e., gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

(vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order

If the grievance is accepted, it would result in extending benefit of Pension and Gratuity Scheme to all similarly situated Ayurvedic and Unani College employees in the State of Maharashtra. But then that was the effect when this court delivered its judgment on 14.06.1996 or when the Hon'ble Apex Court directed consideration of implementation of said scheme and judgment in phased manner.

( See Para 35 of the High Court Judgement Dated 10.6.2013 )

passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of High Court to entertain a review petition is lost thereafter as provided by subrule (1) of Rule 1 of Order 47 CPC. 45. Having thus made the law clear, the case at hand poses no problem for solution. The earlier order of the High Court was sought to be subjected to exercise of appellate jurisdiction of the Supreme Court by the State of Kerala wherein it did not succeed. The prayer contained in the petition seeking leave to appeal to this Court was found devoid of any merits and hence dismissed. The order is a nonspeaking and unreasoned order. All that can be spelled out is that the Court was not convinced of the need for exercising its appellate jurisdiction. The order of the High Court dated 17121982 did not merge in the order dated 1871983 passed by this Court. So it is available to be reviewed by the High Court. Moreover such a right of review is now statutorily conferred on the High Court by subsection (2) of Section 8C of the Kerala Act. The legislature has taken care to confer the jurisdiction to review on the High Court as to such appellate orders, also against which though an appeal was carried to the Supreme Court, the same was not admitted by it. An appeal would be said to have been admitted by the Supreme Court if leave to appeal was granted. The constitutional validity of subsection (2) of Section 8C has not been challenged. Though, Shri T.L.V. Iyer, the learned Senior Counsel for the appellant made a feeble attempt at raising such a plea at the time of hearing but unsuccessfully, as such a plea has not so far been raised before the High Court, also not in the petition filed before this Court.”

22. In its later judgment in **S. Shanmugavel Nadar v. State of T.N., (2002) 8 SCC 361**, on same point, the Hon'ble Apex Court observes :

“12. Thirdly, as we have already indicated, in the present round of litigation, the decision in *M. Varadaraja Pillai* case was cited only as a precedent and not as *res judicata*. The issue ought to have been examined by the Full Bench in the light of Article 141 of the Constitution and not by applying the doctrine of merger. Article 141 speaks of declaration of law by the Supreme Court. For a declaration of law there should be a speech i.e. a speaking order. In *Krishena Kumar v. Union of India* this Court has held that the doctrine of precedents, that is being bound by a previous decision, is limited to the decision itself and as to what is necessarily involved in it. In *State of U.P. v. Synthetics and Chemicals Ltd. R.M. Sahai, J.* (vide para 41) dealt with the issue in the light of the rule of *sub silentio*. The question posed was: can the decision of an appellate court be treated as a binding decision of the appellate court on a conclusion of law which was neither raised nor preceded by any consideration or in other words can such conclusions be considered as declaration of law? His Lordship held that the rule of *sub silentio* is an exception to the rule of precedents. “A decision passes *sub silentio*, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind.” A court is not bound by an earlier decision if it was rendered “without any argument, without reference to the crucial words of the rule and without any citation of the authority”. A decision which is not express and is not founded on reasons, nor which proceeds on consideration of the issues, cannot be deemed to be a law declared, to have a binding effect as is contemplated by Article 141. His Lordship quoted the observation from *B.*

*Shama Rao v. Union Territory of Pondicherry* “it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein”. His Lordship tendered an advice of wisdom — “Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law.” (SCC p. 163, para 41)

13. *Rup Diamonds v. Union of India* is an authority for the proposition that apart altogether from the merits of the grounds for rejection, the mere rejection by a superior forum, resulting in refusal of exercise of its jurisdiction which was invoked, could not by itself be construed as the imprimatur of the superior forum on the correctness of the decisions sought to be appealed against. In *Supreme Court Employees' Welfare Assn. v. Union of India* this Court observed that a summary dismissal, without laying down any law, is not a declaration of law envisaged by Article 141 of the Constitution. When reasons are given, the decision of the Supreme Court becomes one which attracts Article 141 of the Constitution which provides that the law declared by the Supreme Court shall be binding on all the courts within the territory of India. When no reasons are given, a dismissal simpliciter is not a declaration of law by the Supreme Court under Article 141 of the Constitution. In *Indian Oil Corpn. Ltd. v. State of Bihar* this Court observed that the questions which can be said to have been decided by this Court expressly, implicitly or even constructively, cannot be reopened in subsequent proceedings; but neither on the principle of *res judicata* nor on any principle of public policy analogous thereto, would the order of this Court bar the trial of identical issue in separate proceedings merely on the basis of an uncertain assumption that the issues must have been decided by this Court at least by implication.

14. It follows from a review of several decisions of this Court that it is the speech, express or necessarily implied, which only is the declaration of law by this Court within the meaning of Article 141 of the Constitution.

15. A situation, near similar to the one posed before us, has been dealt in *Salmond's Jurisprudence* (12th Edn., at pp. 14950) under the caption — “Circumstances destroying or weakening the binding force of precedent: (perhaps) affirmation or reversal on a different ground.” It sometimes happens that a decision is affirmed or reversed on appeal on a different point. As an example, suppose that a case is decided in the Court of Appeal on ground A, and then goes on appeal to the House of Lords, which decides it on ground B, nothing being said upon A. What, in such circumstances, is the authority of the decision on ground A in the Court of Appeal? Is the decision binding on the High Court, and on the Court of Appeal itself in subsequent cases? The learned author notes the difficulty in the question being positively answered and then states: (i) The High Court may, for example, shift the ground of its decision because it thinks that this is the easiest way to decide the case, the point decided in the court below being of some complexity. It is certainly possible to find cases in the reports where judgments affirmed on a different point have been regarded as authoritative for what they decided.

(ii) The true view is that a decision either affirmed or reversed on another point is deprived of any absolute binding force it might otherwise have had; but it remains an authority which may be followed by a court that thinks that particular point to have been rightly decided.

16. In the present case, the statement of law contained in the decision of the High Court.

In the result, it follows that the Government decision dated 27.6.2001 refusing to extend the pensioncumgratuity scheme to Ayurvedic and Unani Colleges impugned in Writ Petition No.5771 of 2011 and similar decision dated 12.7.2010 about Social Work Colleges impugned in other two writ petitions are, therefore, **UNSUSTAINABLE.**

( See Para 37 of the High Court Judgement Dated 10.6.2013 )



*17. We are clearly of the opinion that in spite of the dismissal of the appeals on 1091986 by this Court on the ground of nonjoinder of necessary party, though the operative part of the order of the Division Bench stood merged in the decision of this Court, the remaining part of the order of the Division Bench of the High Court cannot be said to have merged in the order of this Court dated 1091986 nor did the order of this Court make any declaration of law within the meaning of Article 141 of the Constitution either expressly or by necessary implication. The statement of law as contained in the Division Bench decision of the High Court in M. Varadaraja Pillai case would therefore continue to remain the decision of the High Court, binding as a precedent on subsequent Benches of coordinate or lesser strength but open to reconsideration by any Bench of the same High Court with a coram of Judges more than two.*

*18. The Full Bench was not dealing a question is not arising before us.*

*19. Under Article 141 of the Constitution, it is the law declared by the Supreme Court, which is binding on all courts within the territory of India. Inasmuch as no law was declared by this Court, the Full Bench was not precluded from going into the question of law arising for decision before it and in that context entering into and examining the correctness or otherwise of the law stated by the Division Bench in M. Varadaraja Pillai case and either affirming or overruling the view of law taken therein leaving the operative part untouched so as to remain binding on parties thereto."*

**We have underlined the relevant observations of the Hon'ble Apex Court which to us show that findings of the Division Bench of this Court dated 14.6.1996 on unjust classification and hostile discrimination are not set aside by the Hon'ble Apex Court.** Need to make amends by taking positive steps to extend the pensioncumgratuity scheme to petitioners in Writ Petition Nos.3508/1992, 2645/1990 and 3508/1993 recognized by said Bench and a direction to secure doing away of unjust classification is not disturbed by the Hon'ble Apex Court. It has only substituted the operative part in the High Court judgment. Hence, to that extent, there is no scope for or an occasion to invoke the doctrine of merger.

**23.** The Division Bench of this Court in **W.P. 3508 of 1992 Dr. Shrihari Shankar Vaidhya vs. State of Maharashtra** decided with **W.P. 2645 of 1990 and 3508 of 1993** on 14th June, 1996 has considered the challenge to discriminatory treatment meted out to teaching and nonteaching employees of nongovernment aided Ayurvedic and Unani Colleges affiliated to University of Pune and Nagpur and in Hospitals attached thereto by not extending to them the scheme of pension and death cum retirement gratuity and other retirement benefits. The Division Bench has noted that on 26.05.1981, Urban Development and Public Health Department of Government of Maharashtra issued Government Resolution whereby Ayurvedic Lecturers, Deans, Professors, Readers etc. of Government Ayurvedic Colleges were given **UGC scales with effect from 01.04.1981**. Stipends etc. of Housemen and Registrars were revised. These benefits were also made applicable to nonGovernment Ayurvedic grantinaid institutions. The petitioners in that matter were put at par with their counterparts in allopathic medicine so far as their payscale, stipends etc. are concerned. But then they were not made eligible for Pension and Gratuity after their retirement though the Teaching and nonteaching staff of allopathic Colleges received that benefit. **On 21.07.1983**, State Government directed that Pension, Gratuity and other retirement benefits available as per Maharashtra Civil Services (Pension) Rules, 1982, including the Family Pension Scheme 1964, applied to Full Time approved Teaching and nonteaching staff in

recognized aided nonGovernment Arts, Science, Commerce and Educational Colleges and the nonAgricultural Universities in the State in respect of their employees who retired or retire on or after 01.10.1982. The fixation of date 01.10.1982 was challenged in Writ Petition No. 2632 of 1985 filed before this Bench on the ground that it **violated Article 14 of the Constitution of India. On 25.02.1987, said writ petition was allowed and a writ of mandamus directing the respondents therein to extend the said benefit to employees who retired on or after 01.01.1973, came to be issued.**

**24.** The State Government then issued another resolution dated **20.02.1985** whereby all above benefits except voluntary retirement were extended mutatis mutandis to Full Time approved Teaching and nonteaching employees in recognized nongovernment aided Engineering, Technical and / or Technological Colleges, Polytechnics and Pharmacists Colleges with retrospective effect from 01.10.1982. However, the benefit of Pension and DCRG was not made applicable to Teaching and nonteaching employees of nongovernment aided Ayurvedic and Unani Colleges. Division Bench considered the controversy in this background.

**25.** The State Government contended that the scheme has not been extended to Ayurvedic staff as they are not government employees but employees of private management. The Division Bench did not find any substance in it. The said staff was made eligible and thus found eligible to get UGC benefits. They were put at par with their counterparts in allopathic disciplines and this, according to this Court, left no room of doubt that Ayurvedic staff was also made eligible for Pension and Gratuity. Its denial was in violation of right of equality and right to have equal opportunity. It noted that said staff was singled out for hostile discriminatory treatment and the resulting disparity in service conditions, was thus held unsustainable. Said Division Bench found that Maharashtra Pension Rules and Family Pension Scheme were applied to approved Teaching and Nonteaching staff in recognized nongovernment Arts, Science, Commerce and Educational Colleges and the nonagricultural Universities in the State, and later on, to the Teaching and nonteaching employees of nongovernment aided Engineering Technical and Technological Colleges, Polytechnic and Pharmacist institutes. Thus its non extension to the petitioners before it was found discriminatory. **The State Government was directed to implement the Pension and Gratuity Scheme for the petitioners in respect of employees in Colleges and Hospitals in any event with effect from 25.05.1981 upon such staff exercising their option in writing within four weeks from Government declaration to extend scheme to such employees.** Twelve weeks time was given to Government to extend the scheme. It is this order which was then questioned before the Hon'ble Apex Court.

**26.** In said challenge in **State of Maharashtra v. Hari Shankar Vaidhya (Dr.)**, (supra), the Hon'ble Apex Court has held:"

*3. The admitted position is that the respondents are teachers working in Ayurvedic, Unani and Homeopathic privateaided educational institutions. One of the questions which requires examination is whether they are eligible for pension and gratuity scheme on par with State Government Civil Servants under the Maharashtra State Government Civil Service (Pension) Rules, 1982 (for short "the Rules"). Admittedly, per se, the Rules do not apply to them. Pursuant to the recommendations made by the UGC, the Government of Maharashtra by its Resolution dated 2651981 have adopted the uniform pay scales being paid to the nonteaching staff and teachers working in aided educational institutions, i.e., Ayurvedic, Unani and Homeopathic colleges. By another Resolution dated 2971983, they extended the benefit to the*

**We find that date from which College started receiving 100% salary grants i.e. 05.12.2003 could have been normally accepted as a date for asking the respondents to implement the Pension and Gratuity Scheme.**

( See Para 38 of the High Court

Judgement Dated 10.6.2013 )



*nongovernment organisations on par with the government organizations. Since the Government have not extended the benefit of pension and gratuity scheme, a writ petition was filed in the High Court in that behalf. The High Court has disposed it of in the impugned order. Thus, these appeals by special leave.*

4. As regards the grantinaid, this is not in controversy and, therefore, we need not go into the question. The only question is whether the respondents are entitled to the pension and gratuity on a par with government servants. Shri Mohta, learned Senior Counsel appearing for the State, has contended that in view of the huge financial outlay, the Government has been, in a phased manner, extending the benefits from time to time and, therefore, the direction cannot be given to tie down the hands of the Government to extend all the benefits to all of them at a stretch. Shri D.A. Dave, learned Senior Counsel for the respondents, on the other hand, has contended that when the grantinaid and the pension were not being extended to the teachers working in the private law colleges, the High Court has given direction to extend the benefit which was affirmed by this Court in *State of Maharashtra v. Manubhai Pragaji Vashi*. Therefore, the same benefit may be extended to them. He also cited *State of H.P. v. H.P. State Recognized and Aided Schools' Managing Committees* wherein this Court has directed to extend grantsinaid to the private educational institutions, middle class and lower middle class aided schools.

5. In view of the respective contentions, the only question that arises for consideration is whether the High Court would be justified to grant the pension and gratuity scheme to the teachers working in the Ayurvedic, Unani and Homeopathic aided institutions. It is seen that pursuant to the direction issued by this Court, the pension and gratuity scheme were extended to the Law Colleges from 1995. Whether the scheme could be extended or not is a question of an executive policy and the Court would not take the responsibility of directing the Government to extend the policy. The Court requires examination as to how the policy laid down is being worked out. It is stated that since huge financial outlay is involved in extending the benefits and the Government is not intending to deny the benefit to the segment of the teachers, we appreciate the stand taken by the Government. The Government is, therefore, directed to consider extension of the benefit of pension and gratuity scheme to the teachers working in the Ayurvedic, Unani and Homeopathic aided educational institutions in a phased manner, as was done with respect to the other aided institutions."

27. This precedent and application of mind by the Hon'ble Apex Court is utilized by the Division Bench judgment of this Court in case of **Dr. Suresh Shrikrishna Naik vs. Karmveer Hire Rural Institute and others** (2000 (2) All M.R. 94). Claim of Petitioners in Writ Petition Nos. 682 of 2011 and 3277 of 2012 springs from this division bench judgment. This Court takes notes that Petitioner Dr. Suresh retired from service on 30th April, 1994 after serving as Lecturer in Social Work in Karmveer Hire Rural Institute, Gargoti, Dist. Kolhapur in institutes not only recognized by the Social Welfare Department of the Government of Maharashtra, but also receiving grantinaid. Dr. Suresh's grievance was that though he had worked for 32 years in the said Institutes and eligible for pension scheme, yet retirement benefits such as gratuity, pension, etc. were denied to him and it was discriminatory treatment. He challenged denial of pensioncumgratuity to him as discriminatory and claimed parity in terms of other teachers as per government resolution dated 21.7.1983, but the said benefits were not extended to teaching and nonteaching staff of the Social Work Institutions/Colleges. In said matter, the State of Maharashtra in defence

relied upon a policy decision on 8.7.1998 reached by it after considering the financial implications and position of the State exchequer to justify denial of such benefits to teaching/nonteaching staff of Social Work Colleges. It submitted that the State was unable to meet huge financial burden on account of limited financial resources. The provisions of the Maharashtra Civil Service (Pension) Rules are not applicable to the case of that petitioner and that even in the case of employees of aided nonGovernment Institutes/Colleges working under the Public Health Department, the Government had taken a policy decision that no pension and gratuity scheme would be made applicable to them. **The said policy was challenged before this Court and this Court had granted relief in favour of the petitioners therein, but in the Special Leave Petition filed by the State Government before the Apex Court,** it has been held that whether the scheme could be extended or not is a question of an executive policy and the Court would not take the responsibility of directing the Government to extend the policy. Thus, the earlier judgment of the Division Bench of this Court and of the Hon'ble Apex Court in Ayurvedic and Unani staff matter in **State of Maharashtra v. Hari Shankar Vaidhya (Dr)**, (supra) was pressed before said Bench also. We find the following conclusion of said Bench relevant in all three writ petitions before us :“

6. *The petitioner claims retirement benefits on parity with the teaching and nonteaching staff of nonGovernment aided Arts, Science, Commerce and Education Colleges and nonAgricultural Universities in the State to whom pensioncumgratuity\ scheme and other retirement benefits have been extended by the State Government side Resolution dated 21.7.1983. His grievance is that when such benefits are granted to teaching and nonteaching staff of the Colleges under the Department of Education and Cultural Affairs, there is no reason or justification to deny such benefits to the teaching and nonteaching staff of the Institutes/Colleges under the Social Welfare Department. The Institutes/Colleges under the Social Welfare Department as well as the Colleges under the Department of Education and Cultural Affairs are affiliated to the same Universities, viz., Shivaji University and Pune University and all norms of the University Grants Commission are equally applicable to the Colleges under the Department of Education and Cultural Affairs as well as Social Welfare Department. In the facts and circumstances, there is considerable merit in the grievances of the petitioner. The only difference is the Department of the Government under which the Institutes fall in which the petitioner and others are working. In a welfare State, the Government is bound to look after the interest of all the employees similarly situated alike without any discrimination whatsoever.*

7. *The ground on which the State Government had taken the policy decision to deny benefit of pension scheme to the teaching and nonteaching staff of Social Welfare Department is financial burden/crunch. The State Government had earlier denied such benefits to the teachers working in Ayurvedic, Unani and Homeopathic private aided educational institutions on the ground of huge financial outlay which was the subjectmatter of litigation before this Court as well as the Apex Court in State of Maharashtra and others v. Dr. Shri Hart Shankar Vaidhya and others (supra). In that case, the learned Senior Counsel appearing on behalf of the State had contended that in view of huge financial outlay, the Government has been, in a phased manner, extending the benefits from time to time, but directions cannot be given to tie down the hands of the Government to extend all the benefits to all of them at a stretch. It was pointed out before the Apex Court in the said case that in State of Maharashtra v. Manubhai Pragaji Vashi, 1995 (5) S.C.C. 730, directions were given to extend similar benefits to te teachers working in private Law*

By employing the word “consider”, Hon'ble Apex Court has not given any propitious choice to the State Government to continue with the unjust classification already condemned by this Court.

( See Para 28 of the High Court

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*Colleges. In this view of the matter, the Apex Court had observed that whether the scheme could be extended or not is a question of executive policy and the Court will not take, he responsibility of directing the Government to extend the policy. The Apex Court appreciated the stand taken by the Government that in view of huge financial outlay, the policy of extending benefits could be implemented only in a phased manner. Accordingly, the Government was directed to consider the extension of benefit of pension and gratuity scheme to the teachers working in Ayurvedic, Unani and Homeopathic aided educational institutions in a phased manner as was done in respect of other aided institutions."*

28. The judgment of Hon'ble Apex Court therefore finds that the Court of Law would not normally direct the State to extend the scheme to the teachers working in the Ayurvedic, Unani and Homeopathic aided institutions from a particular date as determination of such date essentially depends upon various factors including finance, budgetary provisions and therefore belongs to the province of policy decision. Other obligations of Executive to public at large and hence, need of its conscious assessment about impact of such a grant on public revenue is held to be one such relevant aspect. But then the Hon'ble Court does not set aside the High Court judgment and its finding on breach of Article 14 as that was not the challenge placed before it. On the contrary, Hon'ble Apex Court takes note of the desire of State not to deny the pension to the segment of teachers i.e. for doing away with the discrimination. It therefore directs State to consider implementation of the pension and gratuity scheme in phases in mode and manner as was done in relation to other aided educational institutions. The challenge to finding of High Court in judgment dated 14.6.1996 invalidating the hostile treatment to teachers and resultant discrimination is not even presented to the Hon'ble Apex Court and was thus given up by the State. **The words employed by Apex Court like "to the segment of the teachers" and "as was done with respect to the other aided institutions" confirm the correctness of finding of hostile discrimination between the Ayurvedic teachers/staff and other set of teachers (in other aided institutions) due to partial implementation of the scheme by State and corresponding violation of Article 14 of the Constitution of India recorded by this Court. Judgment of Hon'ble Apex Court is on the foundation of this finding** and due to financial repercussions flowing from High Court's directions, the Hon'ble Apex Court gave liberty to the executive to "consider" the implementation of the scheme in phased manner obviously contingent upon the availability of funds. Thus, the unjust discrimination by the executive and therefore, the direction to extend or implement the scheme issued by this Court was not set aside and was only modified by Hon'ble Apex Court. Positive mandate by High Court is substituted with a direction to consider the extension of the benefit of pension and gratuity scheme to the teachers working in the Ayurvedic, Unani and Homeopathic aided educational institutions in a phased manner, as was done with respect to the other aided institutions. Primacy was thus given to the constraints upon the executive in the process to be undertaken to make amends by removing the injustice and hence, **State was directed to "consider" in phased manner and mandate to extend the pensioncumgratuity scheme issued by this Court was thus altered.** Judgment of this Court dated 14.6.1996, elaborate reasons and application of mind therein has not been even touched by the Hon'ble Apex Court which only modifies the operative part looking to administrative difficulties. We therefore can not accept that Hon'ble Apex Court has even impliedly wiped out the effect of the High Court judgment dated 14.6.1996 completely. Reliance by the State upon the doctrine of merger for said purpose appears to be unsustainable. Later Division Bench judgment of this Court delivered on 18.1.2000 in case of **Dr. Suresh Shrikrishna Naik vs. Karmveer Hire Rural Institute and others** (supra) also

supports this position. **This later judgment has not been questioned before the Hon'ble Apex Court and findings therein on violation of Article 14 have attained finality qua petitioners in Writ Petition Nos.682 and 3277 of 2012. Effort of learned additional G.P. to submit that Hon'ble Apex Court has permitted the State to deny the benefit of the scheme altogether to Ayurvedic and Unani staff therefore must fail. By employing the word "consider", Hon'ble Apex Court has not given any propitious choice to the State Government to continue with the unjust classification already condemned by this Court.** A writ Court is competent to grant relief to the sufferers due to the violation of the fundamental rights. However, in the peculiar facts, only due to "huge financial outlay", the Hon'ble Apex Court noted the need of a studied policy decision by the State Executive on remedial measures to be adopted by the State. It therefore allows State to undertake the said steps or implementation in phased manner. We find that in absence of any such fundcrunch, the Hon'ble Apex Court may not have asked for extending the said benefit in phased manner. Various orders passed by this Court or then by the Hon'ble Apex Court in contempt matters also can not and do not eclipse the findings of High Court on merits in its judgment dated 14.6.1996 in W.P. 3508 of 1992. Hon'ble Apex Court has dismissed the I.A.s summarily while this Court (learned Single Judge) **found the import of the word "consider" in judgment dated 7.4.1997 of Hon'ble Apex Court sufficient to negate any wilfull disobedience by the State Government.**

29. Discussion on Judgment dated 14.6.1996 in W.P. 3508 of 1992 Dr. Shrihari Shankar Vaidhya vs. State of Maharashtra (supra) and of the Division Benches of this Court on present demand of staff of Ayurvedic colleges or Social Work Colleges leaves no manner of doubt that **the fresh scrutiny of the controversy and that too with reference to Article 14 is not only uncalled for but also not open.** The State Government having failed earlier to justify the different treatment to said staff in abovementioned matter and having acquiesced in the finding of this Court, can not now attempt to reopen that finding. Only ground now pressed into service to justify the said treatment is availability of an income source with the ayurvedic colleges i.e., hospitals in which patients are treated for consideration. This plea necessitates delving into factual matrix and hence, in any case, it was obligatory for respondents to plead and prove it emphatically in reply on affidavit. The Colleges have pointed out absence of such plea in defence and claim that hospitals are attached to them to enable students to gain practical experience and they are required to charge fees to patients only at the government rates. **All hospitals are therefore in losses. The State Government has neither pleaded such a factor to distinguish between teachers nor produced any material to show its deliberate use before hand to carve out a "segment of teachers" as a separate class to deny pension and gratuity to them.** Such a norm/factor must be applied and shown to be evolved as measure to resolve the mischief sought to be remedied during the process of consideration thereof. In any case, rival contentions itself establish a need of proper assertion by the State so as to provide an effective opportunity to the petitioners to counter it. In absence of such a plea by the State, this ground of an income source with employer of petitioners can not be adjudicated upon. Law laid down by Hon'ble Apex Court in **D.S. Nakara vs. Union of India (1983) 1 SCC 305 : 1983 SCC (L&S) 145** about further subdividing the otherwise homogeneous class of Pensioners for conferring the benefit of the liberalization, and its further elaboration by it, therefore is not decisive here. In **Government of Andhra Pradesh v. N. Subbarayudu, (2008) 14 SCC 702**, at page 704, Hon'ble Apex Court observes:

*"4. Aggrieved thereby, the respondents preferred writ petition before the High Court. The Division Bench of the High Court, after hearing the parties, was of the view that the cutoff*

**In a welfare State, the Government is bound to look after the interest of all the employees similarly situated alike without any discrimination**

( See Para 27(6) of the High Court

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date 1111992 fixed by the Government was arbitrary and discriminatory.

5. In a catena of decisions of this Court it has been held that the cutoff date is fixed by the executive authority keeping in view the economic conditions, financial constraints and many other administrative and other attending circumstances. This Court is also of the view that fixing cutoff dates is within the domain of the executive authority and the court should not normally interfere with the fixation of cutoff date by the executive authority unless such order appears to be on the face of it blatantly discriminatory and arbitrary. (See State of Punjab v. Amar Nath Goyal.)

6. No doubt in *D.S. Nakara v. Union of India* this Court had struck down the cutoff date in connection with the demand of pension. However, in subsequent decisions this Court has considerably watered down the rigid view taken in *Nakara* case as observed in para 29 of the decision of this Court in *State of Punjab v. Amar Nath Goyal*.

7. There may be various considerations in the mind of the executive authorities due to which a particular cutoff date has been fixed. These considerations can be financial, administrative or other considerations. The court must exercise judicial restraint and must ordinarily leave it to the executive authorities to fix the cutoff date. The Government must be left with some leeway and free play at the joints in this connection.

8. In fact several decisions of this Court have gone to the extent of saying that the choice of a cutoff date cannot be dubbed as arbitrary even if no particular reason is given for the same in the counteraffidavit filed by the Government (unless it is shown to be totally capricious or whimsical), vide *State of Bihar v. Ramjee Prasad, Union of India v. Sudhir Kumar Jaiswal* (vide SCC para 5), *Ramrao*

v. *All India Backward Class Bank Employees Welfare Assn.* (vide SCC para 31), *University Grants Commission v. Sadhana Chaudhary, etc.* It follows, therefore, that even if no reason has been given in the counteraffidavit of the Government or the executive authority as to why a particular cutoff date has been chosen, the court must still not declare that date to be arbitrary and violative of Article 14 unless the said cutoff date leads to some blatantly capricious or outrageous result.

9. As has been held by this Court in *Aravali Golf Club v. Chandher Hass* and in *Govt. of A.P. v. P. Laxmi Devi* the court must maintain judicial restraint in matters relating to the legislative or executive domain.

10. For the reasons aforesaid, the impugned order of the High Court is set aside. The appeals are allowed.”

In ***All India Reserve Bank Retired Officers Assn. v. Union of India***, (1992 Supp (1) SCC 664), (at page 678), Hon’ble Apex Court declares :

“10. *Nakara* judgment has itself drawn a distinction between an existing scheme and a new scheme. Where an existing scheme is revised or liberalized all those who are governed by the said scheme must ordinarily receive the benefit of such revision or liberalization and if the State desires to deny it to a group thereof, it must justify its action on the touchstone of Article 14 and must show that a certain group is denied the benefit of revision/liberalization on sound reason and not entirely on the whim and caprice of the State. The underlying principle is that when the State decides to revise and liberalize an existing pension scheme with a view to augmenting the social security cover granted to pensioners, it cannot ordinarily grant the benefit to a section of the pensioners and deny the same to others by drawing an artificial cutoff line which cannot be justified on rational grounds and is wholly unconnected with the object intended to be achieved. But when

an employer introduces an entirely new scheme which has no connection with the existing scheme, different considerations enter the decision making process. One such consideration may be the financial implications of the scheme and the extent of capacity of the employer to bear the burden. Keeping in view its capacity to absorb the financial burden that the scheme would throw, the employer would have to decide upon the extent of applicability of the scheme. That is why in *Nakara* case this Court drew a distinction between continuance of an existing scheme in its liberalized form and introduction of a wholly new scheme; in the case of the former all the pensioners had a right to pension on uniform basis and any division which classified them into two groups by introducing a cutoff date would ordinarily violate the principle of equality in treatment unless there is a strong rationale discernible for so doing and the same can be supported on the ground that it will sub serve the object sought to be achieved. But in the case of a new scheme, in respect whereof the retired employees have no vested right, the employer can restrict the same to certain class of retirees, having regard to the factsituation in which it came to be introduced, the extent of additional financial burden that it will throw, the capacity of the employer to bear the same, the feasibility of extending the scheme to all retirees regardless of the dates of their retirement, the availability of records of every retiree, etc. It must be realized that in the case of an employee governed by the CPF scheme his relations with the employer come to an end on his retirement and receipt of the CPF amount but in the case of an employee governed under the pension scheme his relations with the employer merely undergo a change but do not snap altogether. That is the reason why this Court in *Nakara* case drew a distinction between liberalization of an existing benefit and introduction of a totally new scheme. In the case of pensioners it is necessary to revise the pension periodically as the continuous fall in the rupee value and the rise in prices of essential commodities necessitates an adjustment of the pension amount but that is not the case of employees governed under the CPF scheme, since they had received the lump sum payment which they were at liberty to invest in a manner that would yield optimum return which would take care of the inflationary trends. This distinction between those belonging to the pension scheme and those belonging to the CPF scheme has been rightly emphasized by this Court in *Krishena* case.”

Earlier judgments of the Division Benches of this Court have held that the Ayurvedic/Unani staff and the staff of Social Work Colleges could not have been treated differently in the matter of pensioncumgratuity benefits. They constituted a homogeneous class with other teachers and needed same treatment. **Thus, their exclusion was declared a hostile and an unjust discrimination. Directions were issued by Courts to “consider” their restoration back to the same class from which they were removed unconstitutionally.** The finding that these petitioners form a homogeneous group with others to whom the benefit of pensioncumgratuity scheme is already extended by the State Government and law in that respect does not undergo any change in later judgments of Hon’ble Apex Court where *D.S. Nakara* has been again looked into. Correctness of that finding is now not open and in any case, the State has not pleaded and substantiated any thing in justification of such different treatment. It is therefore not necessary to consider the precedents on Article 14 or then on scope of power of judicial review of this Court under Article 226 of the Constitution of India. **It is sufficient to note here that the petitioners are already found to be part of same class and present controversy is not about cutoff date. It is about highhanded pushing of the petitioners out of the class of which they are members without any justification.**

30. The objection raised by learned Addl. G.P. that the College is not a juristic entity and hence Writ Petition No. 5177 of 2011 as filed is not tenable now needs scrutiny. The other

State was directed to “consider” in phased manner and mandate to extend the pensioncumgratuity scheme issued by this Court was thus altered.

( See Para 28 of the High Court

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two petitions are by individual teaching and nonteaching staff members as also their association jointly and hence this issue does not arise there. Colleges have not attempted to demonstrate that they are juristic persons. They remain content with stance that it is the College which receives recognition and grant in aid from State, and College only conducts courses which are affiliated to the Universities. Respondent State has not disputed any of these facts. None of the parties have invited our attention to any statutory provisions or to the precedents. We find that in **Chief Conservator of Forests, Govt. of A.P. v. Collector, (2003) 3 SCC 472**, (at page 480), Hon'ble Apex Court while dismissing the appeal not presented by the State Government observes :

“10. A plain reading of Section 79 shows that in a suit by or against the Government, which is suing or is being sued.

11. Rule 1 of Order 27, as mentioned be verified by any person whom the Government may so appoint.

12. It needs to be noted here that a legal entity — a natural person or an artificial person — can sue or be sued in his/its own name in a court of law or a tribunal. It is not merely a procedural formality but is essentially a matter of substance and considerable significance. That is why there are special provisions in the Constitution and the Code of Civil Procedure as to how the Central Government or the Government of a State may sue or be sued. So also there are special provisions in regard to other juristic persons specifying as to how they can sue or be sued. In giving description of a party it will be useful to remember the distinction between misdescription or misnomer of a party and misjoinder or nonjoinder of a party suing or being sued. In the case of misdescription of a party, the court may at any stage of the suit/proceedings permit correction of the cause title so that the party before the court is correctly described; however, a misdescription of a party will not be fatal to the maintainability of the suit/proceedings. Though Rule 9 of Order 1 CPC mandates that no suit shall be defeated by reason of the misjoinder or nonjoinder of parties, it is important to notice that the proviso thereto clarifies that nothing in that Rule shall apply to nonjoinder of a necessary party. Therefore, care must be taken to ensure that the necessary party is before the court, be it a plaintiff or a defendant, otherwise, the suit or the proceedings will have to fail. Rule 10 of Order 1 CPC provides remedy when a suit is filed in the name of the wrong plaintiff and empowers the court to strike out any party improperly joined or to implead a necessary party at any stage of the proceedings.

13. The question that needs to be addressed is, whether the Chief Conservator of Forests as the appellant/petitioner in the writ petition/appeal is a mere misdescription for the State of Andhra Pradesh or whether it is a case of nonjoinder of the State of Andhra Pradesh — a necessary party. In a lis dealing with the property of a State, there can be no dispute that the State is the necessary party and should be impleaded as provided in Article 300 of the Constitution and Section 79 CPC viz. in the name of the State/Union of India, as the case may be, lest the suit will be bad for nonjoinder of the necessary party. Every post in the hierarchy of the posts in the government setup, from the lowest to the highest, is not recognized as a juristic person nor can the State be treated as represented when a suit/proceeding is in the name of such offices/posts or the officers holding such posts, therefore, in the absence of the State in the array of parties, the cause will be defeated for nonjoinder of a necessary party to the lis, in any court or tribunal. We make it clear that this principle does not apply to a case where an official of the Government acts as a statutory authority and sues or pursues further proceeding in its name because in that event, it will not be a suit or proceeding for or

on behalf of a State/Union of India but by the statutory authority as such.

16. Now, reverting to the facts of the case on hand, we are of the view that Petition (C) No. 3414 of 1982. The Chief Conservator of Forests as the petitioner can neither be treated as the State of Andhra Pradesh nor can it be a case of misdescription of the State of Andhra Pradesh. The fact is that the State of Andhra Pradesh was not the petitioner. Therefore, the writ petition was not maintainable in law. The High Court, had it deemed fit so to do, would have added the State of Andhra Pradesh as a party; however, it proceeded, in our view erroneously, as if the State of Andhra Pradesh was the petitioner which, as a matter of fact, was not the case and could not have been treated as such. As the writ petition itself was not maintainable, it follows as a corollary that the appeal by the Chief Conservator of Forests is also not maintainable. We are unable to accept the contention in accordance with the provisions of the Constitution and CPC. We may also record that in spite of the pattedars taking objection to that effect at the earliest, no steps were taken to substitute or implead the State of Andhra Pradesh in the writ petition in the High Court or in the appeal in this Court.”

**In Illachi Devi v. Jain Society, Protection of Orphans India, (2003) 8 SCC 413**, (at page 422), Hon'ble Apex Court states :“

21. A society registered under the Societies Registration Act is not a body corporate as is the case in respect of a company registered under the Companies Act. In that view of the matter, a society registered under the Societies Registration Act is not a juristic person. The law for the purpose of grant of a probate or Letter of Administration recognizes only a juristic person and not a mere conglomeration of persons or a body which does not have any statutory recognition as a juristic person.

22. It is well known that there exist certain salient differences nor is it capable of ownership of any property or of suing or being sued in its own name.

23. Although admittedly, a registered society is endowed with an existence separate from that of its members for certain purposes, that is not to say that it is a legal person for the purposes of Sections 223 and 236 of the Act. Whereas a company can be regarded as having a complete legal personality, the same is not possible for a society, whose existence is closely connected, and even contingent, upon the persons who originally formed it. Inasmuch as a company enjoys an identity distinct from its original shareholders, whereas the society is undistinguishable, in some aspects, from its own members, that would qualify as a material distinction, which prevents societies from obtaining Letters of Administration.

24. The Patna High Court in K.C. Thomas v. R.L. Gadeockof suing or being sued. The said decision is not correct.

26. Vesting of property, therefore, does not take place in the society. Similarly, the society cannot sue or be sued. It must sue or be sued through a person nominated in that behalf.”

**In Bal Niketan Nursery School v. Kesari Prasad, (1987) 3 SCC 587**, (at page 593), Hon'ble Apex Court holds:

“9. Having given our careful consideration to the arguments of the learned counsel and the view taken by the High Court we are of the opinion that the High Court was in error in sustaining the belated objection taken by the tenants regarding the competence of the appellant to file the suits and quashing the decrees for eviction passed against the tenants

It is sufficient to note here that the petitioners are already found to be part of same class and present controversy is not about cutoff date. It is about highhanded pushing of the petitioners out of the class of which they are members without any justification.



*and remanding the suits to the Small Cause Court for fresh disposal after first considering whether the suits had been instituted in the name of the wrong plaintiff due to a bona fide mistake and whether the mistake calls for rectification by allowing the petition filed under Order I Rule 10 CPC. The reasons which has prompted us to come to this conclusion are manifold and may be enunciated in the following paras.*

*10. Under the U.P. Basic Education Act, the appellant school has been granted recognition as a recognized institution and by reason of such recognition the school is conferred certain rights and obliged to perform certain duties. One of the rights flowing from the recognition granted to the school is an exemption from the provisions of the Rent Act. Consequently, the appellant School has acquired rights by reason of the statutory recognition given to it under the U.P. Basic Education Act and to that extent the appellant school stands clothed with legal status. It is not, therefore, a nonentity in the eye of law. Viewed from that perspective the appellant is entitled to file the suits through its manager to seek the eviction of the tenants occupying the superstructures. Of course, the learned counsel for the respondent tried to contend that certain proceedings have been initiated for impugning the recognition granted to the appellant school under the U.P. Basic Education Act and as such the appellant's status as a recognized institution cannot be taken for granted. We cannot countenance this argument because any proceedings instituted to impugn the recognition of the school subsequent to the filing of the suits cannot affect the status of the school at the time the suits were filed. Furthermore, the respondent has not produced any material to show that the recognition granted to the school has been subsequently withdrawn.*

*11. Secondly, apart from the legal status acquired by the school as a recognized institution, it is admittedly the registered owner of the suit property even though the purchase price may have been provided by the society. It is not in dispute that the sale deed pertaining to the land and the superstructures has been obtained in the name of the school. Even as a benami owner of the property, the appellant is entitled in law to preserve and protect it and to institute actions in that behalf so long as they do not conflict with the rights of the society. As a corollary to this proposition it follows that the appellant constitutes the landlord of the tenants after the property was purchased in its name and rents from the tenant came to be collected. Once a jural relationship of landlord and tenants was formed between the appellant and the tenants by operation of law the appellant's right to initiate actions against the tenants for recovery of arrears of rent or recovery of possession of the leased property cannot be questioned or disputed."*

**31.** College is the only basic unit which imparts higher education at all levels. A Society or a Trust is also formed or created with the aim of running such college. Various activities in college are closely supervised and monitored by the State Government by making provisions therefor in Maharashtra Universities Act, 1994. Universities established thereunder in fact assist the State Government in proper discharge of its constitutional duty. Brief perusal of this 1994 Act is essential to understand the importance given by the Legislature as also the State to this institution known as college. A University which evaluates need of a new college, maintains academic standards, conducts all examinations of College students and grants degree is incorporated under S. 3(1) of the Maharashtra Universities Act, 1994; referred to as 1994 Act hereafter, and its subsection (4) enables it to acquire and hold or dispose of the property. Section 24 points out various authorities under the University and the Management Council is most important one out of them.

Section 27 makes said Council the principal executive authority to formulate statute and forward the same to Senate for approval and make Ordinances for administer the affairs of the university and perform such other duties not assigned to any other authority. It consists of quite a large number of representatives. Section 28 (b) gives the duties and functions of the Management Council. Its clause "b" empowers it to establish departments, colleges, schools, institutions of higher learning, research and specialized studies, hostels and provide housing for staff, on the recommendation of the Academic Council. Permission to establish/open new college is given by the State as per S. 82 of the 1994 Act. As per S. 82 (1) the university has to prepare a perspective plan for educational development fixing the location of institutions of higher learning in a manner ensuring equitable distribution of facilities for Higher Education having due regard, in particular, to the needs of nonserved and underdeveloped areas within its jurisdiction. Such a plan is to be prepared by its Academic Council and then placed before the Senate through the Management Council. It is to be revised every 5 years. Its subsection (2) mandates that no application for opening a new college or institution of higher learning, which is not in conformity with such plan can be considered by the university. The management seeking permission to open a new college has to apply in the prescribed form to the Registrar of the university before the last day of October of the year preceding the year from which the college is sought. All such applications received within the aforesaid prescribed timelimit, need to be scrutinized by the Board of College and University Development, and then forwarded to the State Government with the approval of the Management Council on or before the last day of December of the year, with such recommendations supported by relevant reasons, as are deemed appropriate by the Management Council. Thus the role of Management Council in preparation of perspective plan, its revision and power to recommend changes even in proposals received, all prove importance given to it in the formulation of policy matters by the Legislature. Subsection (5) confers absolute discretion on State to grant permission to such institutions taking into account the Government's budgetary resources, the suitability of the managements seeking permission to open new institutions and the State level priorities with regard to location of institutions of higher learning. In exceptional cases and for the reasons to be recorded in writing, any application not recommended by the university may also be approved by the State Government for starting a new college or institution of higher learning. Chapter III of 1994 Act deals with officers of the University. S. 9 in its part "A" stipulates the Hon'ble Governor of the State as the Chancellor of University and his powers. Its Part "B" begins with S. 10 and it prescribes other officers of the university. Those include the vicechancellor, the provic Chancellor, the dean of faculties, the registrar, the controller of examinations, the director of subcampuses of the university, directorboard of college and university development, librarian of university library, the finance and accounts officer, the director of students welfare and such other officer in services of university as may be prescribed by the Statutes framed by Senate of university. Under S. 11 and 14, the vicechancellor is the principal executive and academic officer of university. Amongst other positions, he is also ex officio chairman of the Management Council. Section 14(6) enables him to defer implementation of any decision taken or the resolution passed by any authority if he is of opinion that the same is not consistent with the Act, Statutes, Ordinances, Regulations. Under S. 17 (5), the registrar acts as secretary of the Management council, under s/s(6) he is appointing and disciplinary authority of university employees. S/s (7), empowers him to enter into agreements, sign documents and authenticate records on behalf of the University. Under S/s (8), he is the custodian of records,

**In democratic set up, no State can refuse to remove such  
discrimination. Since the injustice of hostile  
discrimination continues even today  
and judgments holding  
the field have not been implementd in letter and spirit**

( See Para 35 of the High Court Judgement Dated 10.6.2013 )

the common seal and properties of the university. Section 23 of 1994 Act constitutes all salaried officers, members of authorities, committees or bodies, teachers and other employees of University deemed public servants under S. 21 of the IPC. 12. In this background Section 27 providing the formation of Management Council needs a look. It provides for different personnel who constitute the Management Council. The Management Council consists of eminent persons and educationists. This section is placed in Chapter IV dealing with the authorities of the University. Section 24 prescribes 11 such authorities as the Senate, the Management Council, the Academic Council, the Faculty, the Board of College and University development, the Board of University teaching and research, the Board of studies, the Board of interdisciplinary studies, the Board of Examinations, the Board of adult and continuing education and extension services, the Students council and such other bodies as are designated by the Statute. Section 27 makes the Management Council principal executive authority to formulate Statutes and forward the same to the Senate for approval and to make ordinances, to administer the affairs of the University and to carry out all such other duties as are not specifically assigned to any other authority. Section 28 deals with its power and duties. We notice few of the important ones as Clause "b" enabling it to establish departments, colleges, schools, institutions of higher learning, research and specialized studies, hostels and provide housing for staff, on the recommendation of the Academic Council. Next clause permits it to make, amend or repeal Ordinances and prepare draft Statutes and make recommendation thereon to Senate. Its clause "d" empowers it to hold, control and arrange for administration of assets and properties of University. It lays down policy for administration of funds at disposal of university, enter in to contracts on behalf of university, provide buildings, furniture, premises, apparatus and other means needed to carry work of the university. It can institute and confer such degrees, diplomas etc. as recommended by Academic Council, create posts of university teachers and nonvacation staff upon recommendation of Academic Council, lay down their workload, service conditions, manner of appointment, prescribe fees and other charges, prepare academic calendar of the university, confer autonomous status on university departments, affiliated colleges, consider perspective plan for academic development and cause an enquiry to be made into matter concerning proper conduct, working and finance of college or department of university. Proposal to start a new college anywhere in university area is also to be considered by it. Section 30(1) makes the Academic Council the principal academic authority to regulate and maintain the standards of teaching, research and examinations while its subsection 2(e) enables it to make a proposal for establishment of conducted college etc. The composition of the body prescribed in S. 27 which has been given a pivotal role assumes importance. The Vicechancellor is its chairman, Provice chancellor, one Dean elected by Senate, one person appointed by Chancellor, Secretary higher education or his nominee, Director of Technical education or his nominee, Director of higher education or his nominee, one head or director nominated by Senate, Directorboard of college and university development, two principals elected by Senate, one teacher from university department or institute, two teachers from amongst the teachers in affiliated colleges, one person not holding any of the above posts elected by Senate from its members, three persons elected by Academic Council from its members, two representatives of the management elected by Senate. The law also provides reservation for backward classes and woman in above categories. Finance and Accounts officer and Controller of examinations are the permanent invitees with no right to vote. The Management Council thus consists of the representatives drawn from Colleges also. Section 65 in Chapter VIII deals with Admissions in affiliated colleges, Examinations and Other matter related to students. Chapter X then speaks of permission to open the college, affiliation to it and recognition. Thus after a College is permitted to come up, affiliated

permanently and courses taught therein are recognized; it is college which mostly remains relevant and in focus and not its parent management. College and its activities assume the primary concern for the University as also the State Government independent of or to the exclusion of its management. The provisions of S. 85 envisage a distinct local managing committee or an advisory committee for such an affiliated college. Thus, though the Society or the Public Trust opening the College are not juristic persons, the 1994 Act statutorily mandates an independent distinct Committee for monitoring the administration and managing the college activities. S. 91 then enables withdrawal of affiliation or recognition of a college. S. 92 prohibits the Society or Trust establishing the College from closing it without prior permission of the State Government. Thus, for the purposes of the University as also for the State Government, the College is an elementary unit of primary concern. Entire paraphernalia and system is aimed at its effective utilization.

32. As already noted by us above, the fact that it is the College which receives recognition and affiliation from the University. State Government permits the management, mostly a Society registered under the Societies Registration Act and a public trust under the Bombay Public Trust Act to open the new College. Said College then becomes entitled to salary grants and other assistance out of public revenue. Petitioners before us are neither the Societies nor the Trusts but the Colleges which they have established. Though technically the College is not the juristic personality, because of recognition, permission, affiliation, right to receive grant in aid from the State and use of public funds to run itself and statutory regulation of all its activities, the aided Colleges become the primary establishments and around them, revolves the entire State administrative set up aimed at fulfilling the constitutional obligation of providing the education. All decisions of State Government on the subject matter of pension cum gratuity scheme speak of Colleges and not of their managements. Thus, the State Government has already accepted petitioner Colleges as entities independent of the so called parent Society or Trust. Ratio in judgment of Hon'ble Apex Court in **Bal Niketan Nursery School v. Kesari Prasad** (supra), can be safely utilized here. We, therefore find this objection to maintainability of Writ Petition No. 5771 of 2011, erroneous. As of today, the amount for payment of gratuity is to be arranged by the Petitioner Colleges and if discrimination already adjudicated to be bad is removed; these Colleges are not required to bother about it as its staff then becomes entitled to the same directly from the State Government. Thus the Petitioners have a vital subsisting and continuing interest in procuring the execution or implementation of the earlier judgments. They possess sufficient interest in the subject matter and can not be labeled as Meddlesome interlopers or busybodies. Hence, writ petition as filed by them can not be said to be not maintainable. Reliance by the Petitioners upon or effort of State to distinguish the judgment of the Hon'ble Apex Court reported at **AIR 1996 SC 1 State of Maharashtra vs. Manubhai Pragji Vashi** which extends grant in aid and pension to private law colleges need no fresh appreciation as it is already noted by the Hon'ble Apex Court in **State of Maharashtra v. Hari Shankar Vaidhya (Dr)** (supra).

33. The learned Additional Government Pleader has raised objection on delay and laches. The petition as filed is not by any employee but by the Colleges. Two employees have been permitted to only intervene in this petition on 23.01.2012. The basic Government Resolution which is alleged to be violative of Article 14 of the Constitution of India is dated 21.07.1983. The employees had assailed it in writ petitions filed at Bombay either in 1990 or in 1992. They succeeded in their challenge on 14.06.1996. The Hon'ble Apex Court partially modified only the operative part of that judgment of High Court on 07.04.1997. The impugned decision of the State refusing extension of Pension Scheme to employees of the petitioners – Colleges is

In its judgment dated 07.04.1997, the Hon'ble Apex Court  
never envisaged total denial of Pension and  
Gratuity to the employees

( See Para 34 of the High Court

Judgement Dated 10.6.2013 )



dated 27.06.2001. That decision was not questioned by any of the petitioners before High Court or any other employee immediately. In the month of February 2004, Interim Application No. 12 and 34 came to be filed in Civil Application No. 2878/2879 of 1997 before the Hon'ble Apex Court by an employee Dr. Madhav Rajpathak, who happens to be Respondent No. 3 in Civil Appeals. He questioned said decision and sought intervention of the Hon'ble Apex Court by directing the State Government to implement and grant benefit of Pension and Gratuity Scheme. He urged in his application that the Resolution dated 27.06.2001 was arbitrary and illegal and also willful disobedience of the order of the Hon'ble Apex Court constituting its contempt. In the body of application Dr. Rajpathak pointed out that employees like him and he himself were waiting for orders in Contempt Petition No. 318 of 1999 which was pending disposal before Nagpur Bench of Bombay High Court. That Contempt Petition was disposed of by this Court on 15.02.2003 by this Court by observing that as implementation of direction of the Hon'ble Apex Court was sought, applicants should move the Hon'ble Apex Court in the matter. He further pleaded that on 06.11.2003, Ayurvedic and Unani Medical Colleges were given full grants. The Hon'ble Apex Court dismissed said applications on 05.04.2004.

**34. Contempt Petition No. 233 of 2007** was then filed before this Court by some of the employees who had urged that Government Resolution dated 27.06.2001 was nothing but Contempt of court. One of us (B.P. Dharmadhikari, J.) on 15.09.2008 considered said contempt and observed that **in its judgment dated 07.04.1997, the Hon'ble Apex Court never envisaged total denial of Pension and Gratuity to the employees.** The basis entitlement thereto recorded by Division Bench of this Court on 14.06.1996 was maintained by the Hon'ble Apex Court. The Hon'ble Apex Court, however, found that whether to extend such scheme or not was within the domain of executive and the Court would not interfere in the matter. **This Court (learned Single Judge) then observed that Government Resolution dated 27.06.2001 was against the mandate of the Court, & still at that stage, declined to hold the same as constituting contempt.** Time was given to Government to reconsider the issue. The matter was then looked into on 04.05.2009 by another learned Single Judge of this Court. On 04.05.2009, this Court did note all these developments and found that the Hon'ble Apex Court has concluded that extension of said Scheme lay exclusively in the policy domain of the executive. It was found that the Apex Court, therefore, had not restricted freedom of Government to decide only to or upon phases of implementation and, therefore, extension of scheme was not implicit in it. In para 23, the Court (learned Single Judge) found that the judgment of this Court dated 14.06.1996 was set aside by the Hon'ble Apex Court and the decision of the Hon'ble Apex Court did not unmistakably restrict the freedom to only decide the phase of implementation. High Court could not have taken responsibility of directing government to extend the policy and order earlier passed on 15.09.2008 in Contempt proceedings could not constitute a direction to the authorities to do so. **Court then held that remedy of party aggrieved by decision dated 27.06.2001 was to challenge that decision by filing appropriate writ petition.** After this order, the employees have not taken any steps. Their Colleges have filed present writ petition on 21.11.2011. **The issue of delay and laches needs to be looked into in this background.** But then it can not be inferred that the Colleges were never aggrieved by exclusion of their employees from benefit of Pension and Gratuity in basic Resolution dated 21.07.1983 and their effort in Writ Petition No.5771 of 2011 to seek recovery of Pension and Gratuity for their employees from 1982 is erroneous

**35.** As already pointed out by the learned Additional Government Pleader, if the grievance is accepted, it would result

in extending benefit of Pension and Gratuity Scheme to all similarly situated Ayurvedic and Unani College employees in the State of Maharashtra. **But then that was the effect when this court delivered its judgment on 14.06.1996 or when the Hon'ble Apex Court directed consideration of implementation of said scheme and judgment in phased manner.** The efforts earlier made were by the employees/ staff of these Colleges. Had they succeeded, they would have received Pension and Gratuity from the State Government i.e. through Government grants only. The present petition is by the Colleges. The maintainability of petition at the instance of College is a different issue. However, if employer of such employees is required to shoulder the liability of Contributory Provident Fund Scheme or then of Gratuity through its own resources, such employer/ management can very well have a cause of action to point out to this Court omission or arbitrary refusal of the State Government to abide by the Court directions and that its staff is entitled to gratuity in terms of the judgment of the Hon'ble Apex Court dated 07.04.1997. **Various dates noted by us above show that continuously efforts were going on to secure that benefit. After last adjudication in contempt on 04.05.2009 and observations therein that decision of State Government dated 27.06.2001 needed to be challenged independently in a writ petition,** the employees did not take any step to do so within the reasonable time or till date. Two of them are now added as intervenors as per orders dated 23.1.2012. Though the employees are intervenors, it shows their subsisting interest. **The Colleges which were/are facing the proceedings for recovery of gratuity amount payable to the employees then chose to file present writ petition on 21.11.2011.** When violation of Articles 14 and 16 is the bone of contention and for Ayurvedic / Unani College employees that violation has already been adjudicated and condemned on 14.06.1996, the continuation of that hostile discrimination even thereafter till date is definitely a continuous cause of action. The decision dated 27.06.2001 does not put to an end to that cause as the discrimination continues even thereafter. These reasons recorded by us also clinch the aspect of delay and laches in Writ Petition Nos.682 and 3277 of 2012, as for Social Work College Staff, **State Government is already declared to have violated Article 14 by the Division Bench of this Court in Dr. Suresh Shrikrishna Naik vs. Karmveer Hire Rural Institute and others (supra), on 18.1.2000.** Though in reply affidavit in Writ Petition No. 682 of 2012, Respondents plead and point out cabinet meeting dated 11.7.2001 and decision therein not to extend the pensioncumgratuity scheme to social work colleges, the consequential letter informing the concerned parties about it is neither pleaded nor pointed out. **Hence, impugned communication dated 12.7.2010 can be safely accepted as a cause of action in social work college staff petitions. When on 14.6.1996 or then on 18.1. 2000, the Division Benches of this Court record a finding of violation of Article 14 of the Constitution of India, it follows that teaching and nonteaching staff of Ayurved / Unani and Social Work Colleges could not have been denied the benefit of pensioncumgratuity scheme.** Thus, such staff was found victimized and others were held favoured at the cost of such staff by State by extending to them the said benefit. If there were financial constraints, State could not and should not have conferred that benefit upon only few members out of group of similarly situated teachers and staff members. State Government, in that contingency, ought to have acted fairly and extended some lesser benefit on uniform or proportionate basis to all and if it finds itself unable to do so, it should not have allowed favoured few to continue to enjoy the benefit in full. Atleast after adjudication against it, State ought to have made some provision to stop the discriminatory treatment to petitioners before extending the scheme atleast to others. In **State of Maharashtra vs. Manubhai Pragji Washi – (AIR 1996**

Thus the financial impact which surfaced while  
considering the implementation of  
pensioncumgratuity scheme  
in favour of petitioners before us, vanished  
soon thereafter

( See Para 35 of the High Court

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S 1), the Hon'ble Apex Court has already discarded "paucity of funds" as a norm to classify similarly situated employees. Said verdict holds good even in present matters. Paucity does not enable State to deny such benefits only to one segment permanently and to extend it to others who are similarly placed. Placement under different department of State Government is also not treated as valid defence by the Division Bench in **Dr. Suresh Shrikrishna Naik vs. Karmveer Hire Rural Institute and others**, (supra). Such conduct of State can not be sought to be protected by claiming it to be a "policy decision". Policy decision does not permit any executive to enable one to gain at the peril of another. It is in this situation that the direction to "consider" issued by Hon'ble Apex Court on 07.04.1997 (Writ Petition No.5177/2011) or by the Division Bench of this Court on 18.1.2000 (Writ Petition Nos.682 and 3277/2012) needs to be understood. These directions do not enable State Government to perpetrate the discrimination and illegality for all times to come and to permit a group of staff members to gain and enjoy at the cost of others. Courts of law expected the State to make amends and to resort to necessary remedial measures as per its resources at the earliest. To us, most probably, it is this financial angle which prompted Hon'ble Apex Court to substitute High Court direction dated 14.6.1996 after noticing the limited request and bonafides of the State Government. **In democratic set up, no State can refuse to remove such discrimination. Since the injustice of hostile discrimination continues even today and judgments holding the field have not been implemented in letter and spirit**, present three writ petitions as filed cannot be said to be belated or suffering from vice of delay or laches. There is one more factor of vital importance here. **The defence of State of financial problems is not accepted by this Court on 14.6.1996 and then on 18.1.2000. Hon'ble Apex Court also did not accept it on 7.4.1997** as sufficient to sustain the outright rejection of demand of Ayurvedic/Unani staff. State itself has extended said benefit to staff in recognized **aided nongovernment Arts colleges** on 16.11.1996 i.e., after first High Court verdict. This benefit is conferred upon the employees of Arts colleges with effect from 1.4.1995. Full time teachers in **8 aided nongovernment Colleges**

**of Physical Education** retiring on or after 24.3.1998 are also extended this benefit as per GR dated 15.12.1998. By another decision dated 17.4.2000, State has extended this service condition to the teachers who had retired prior to 24.3.1989 and were working in said 8 aided nongovernment Colleges of Physical Education. **Thus the financial impact which surfaced while considering the implementation of pensioncumgratuity scheme in favour of petitioners before us, vanished soon thereafter.** Admittedly, there are 16 Ayurvedic and 3 Unani Colleges in Maharashtra. These facts show that the defense of financial difficulties is not open and in any case, only an eyewash.

36. Effect of absence of express assertion of any malafides or subsequent GR dated 31.10.2005 paying way for defined CPF scheme also warrants appreciation. Employees of petitioner Colleges in Writ Petition No.5771 of 2011 have given up their fight and the existing employees (not retired employees) have not approached any Court or the Respondent for implementation or enforcement of the earlier verdict. In these three writ petitions, petitioners have also not assailed withdrawal of pension scheme after 31.10.2005 and introduction of a New Defined Contributory Pension Scheme for Government servants recruited thereafter. In absence of specific challenge to this new policy in any of the petitions, we are not in position to hold that said new policy is bad. The affected class or then even the petitioners do not allege any malafides or victimization. State Government itself finds it expedient to shift to new scheme by discontinuing the old pension scheme for all. Whether in changed situation, the delay in demand by Colleges or then by Social Work staff, becomes significant is the moot question. "No pension" and "new defined CPF scheme" is now the new standard or touchstone to be applied to demands for pensioncumgratuity while earlier judgments of this Court proceed on the premise that receipt of pension was an accepted uniform service condition and denial thereof was an arbitrary exception constituting breach of Article 14. Thus, challenge posed, if fresh, needs to be viewed today from a new perspective. Present

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
NAGPUR BENCH, NAGPUR  
WRIT PETITION NO.6257 OF 2012**

(1) Dr. Shirish s/o. Punjabrao Deshmukh, Aged about 54 years, Occ. Associate Professor. (2) Dr. Mohammad Musaddiq s/o. Mohd. Salik, Aged about 53 yrs., Occ. Associate Professor. (3) Dr. Shrikrishna s/o. Narayan Raut, Aged about 57 yrs., Occ. Associate Professor. (4) Dr. Sanjay s/o. Tryambak Khadakkar, Aged about 51 yrs., Occ. Associate Professor, (5) Dr. Miss Jyoti d/o. Punjabrao Mankar, Aged about 52 yrs., Occ. Associate Professor, (6) Dr. Miss Rekha d/o. Ajabrao Lande, Aged about 55 yrs., Occ. Associate Professor. (7) Dr. Sahadeo s/o. Pandurang Rothe, Aged about 55 yrs., Occ. Associate Professor. (8) Dr. Dyaneshwar s/o. Gulabrao Bhadange, Aged about 60 yrs., Occ. Associate Professor. (9) Milind s/o. Uttamrao Kulat, Aged about 56 yrs., Occ. Associate Professor. 10. Dr. Ziaul Hasan Khan, Aged about 58 yrs, Occ. Associate Professor. All are working at Shri Shivaji College, Akola. .... **PETITIONERS // VERSUS // (1)** The State of Maharashtra, through its Principal Secretary, Department of Higher Education, Mantralaya, Mumbai - 32. **(2)** Director of Higher Education, Administrative Building, Shivaji Nagar, Pune. **(3)** Joint Director of Higher Education, Amravati. **(4)** Senior Auditor (Higher Education Grants), Amravati Region, Amravati. .... **RESPONDENTS**

Mr. Firdos Mirza, Adv. for the Petitioner., Mr. N.W. Sambre, G.P. for Respondent Nos. 1 to 4.

**CORAM : B. R. GAVAI & Z. A. HAQ, JJ.**

**DATE : 19/10/2013. : ORAL JUDGMENT (Per B. R. Gavai, J) :**

1. Rule made returnable forthwith. Heard by consent.

2. The petitioners have approached this Court challenging the order dt. 18.6.2012 passed by respondent no.3, vide which the petitioners are held to be not entitled to the pay scale of Rs.14,940/and recovery of excess payments made to the petitioners is ordered. The impugned order refers to the Government Resolution dt. 3.3.2000.

3. The two Division Benches of this Court, to which one of us was a party, in the Judgment and Order passed in Writ Petition No.9054 of 2010, dt.22.8.2011 decided at the Aurangabad Bench and the Judgment and Order passed in Writ Petition No.853 of 2012, dt.29.11.2012 decided at this Bench have considered the similar facts and directed the respondents to fix the petitioners therein in the higher pay scale upon their completion of five year's service as Readers/ Selection Grade Lecturers. The aforementioned judgment delivered at this Bench was sought to be reviewed by the State by filing Misc. Civil Application St. No.11599 of 2013.

The Division Bench of this Court (aforestated),

relying on the judgment of the Apex Court in the case of **Syed Abdul Qadir vs. State of Bihar and Others** reported in 2009 (3) SCC 475 found that there was no merit in the review petition and as such, dismissed the same.

4. In that view of the matter, when it is not disputed that the facts in the present case are identical to the facts in the aforesaid two cases, we are inclined to allow this petition. Hence, the petition is allowed.

The respondents are directed to fix the petitioners herein in the higher pay scale upon their completion of five year's service as Associate Professors.

Needless to state that the petitioners would be entitled to consequential benefits upon fixation of higher pay scale.

In the facts and circumstances of the case, no order as to costs.

JUDGE

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petitioners have not even attempted to assail this change. Petitioners in Writ Petition Nos.682 and 3277 of 2012 on the contrary, pray for extending the benefits of basic GR dated 21.7.1983 and new defined contribution pension scheme as per GR dated 31.10.2005. Petitioner Colleges in Writ Petition No.5177 of 2011 refer to GR dated 31.10.2005, they amended their petition on 6/12.1.2012 to raise additional grounds but still make no grievance about new scheme. These circumstances and passage of time do not permit us to mechanically enforce the earlier concluded judgments ignoring the change in policy in favour of staff members recruited after 31.10.2005. When the State Government finds it difficult to retain pension as a condition of service and as a matter of policy, in public interest discontinues it; this Court can not, atleast in present circumstances, interfere with said policy decision. It can not cast upon the State a burden which it has already found impossible to bear. However, it can not permit the State to continue to favour few and persecute/exploit others by refusing to take corrective measures. **Refusal of State to remove unjust classification in present facts is unjustified.**

**37. In the result, it follows that the Government decision dated 27.6.2001 refusing to extend the pensioncumgratuity scheme to Ayurvedic and Unani Colleges impugned in Writ Petition No.5771 of 2011 and similar decision dated 12.7.2010 about Social Work Colleges impugned in other two writ petitions are, therefore, unsustainable.** Submission that communication dated 12.7. 2010 is only reiteration of basic decision of the State dated 11.7.2001 not to extend said benefit to Social Work staff and has been questioned after huge delay, also does not hold any water. There is nothing on record to show that this cabinet decision was communicated to any of the concerned parties. **These decisions dated 27.6.2001, 11.7.2001 and 12.7.2010 are quashed and set aside.**

**38.** The petitioners have urged that one **Social Work College got benefit** of Pension and Gratuity Scheme from 01.10.1982, hence, they seek similar benefit from that date only. The perusal of judgment in the case of **Retired Employees of Nongovernment Colleges Association, Nagpur vs. The State of Maharashtra and others** (supra) reveals that selection of date for such purpose is also dependent upon the facts and circumstances of each matter. The petitioners have in alternative pointed out that the date from which Colleges started receiving 100% salary grant i.e. 05.12.2003 has to be the said date in any case. **The judgment of the Hon'ble Apex Court dated 07.04.1997 resulted into a decision dated 27.06.2001.** We have already noted that the some Colleges were extended benefit of Pension and Gratuity Scheme after its demand by the staff of Ayurvedic/Unani Colleges or Social Work Colleges. Arts, Commerce and Science Colleges were also given said benefit from 16.07.1996. **The Colleges of Physical Education got said benefit from 17.04.2000.** These benefits flow from basic Government Resolution dated 21.07.1983. The petitioners got full salary grants from **05.12.2003** in terms of that policy decision. In this situation, **we find that date from which College started receiving 100% salary grants i.e. 05.12.2003 could have been normally accepted as a date for asking the respondents to implement the Pension and Gratuity Scheme.** The Government Resolution dated 22.09.2011 issued by Social Justice and Special Assistance Department is about Revision of Payscale of Teachers of Social Welfare Colleges as per UGC Scheme (6th Pay Commission). It is applicable to Colleges affiliated to Universities.

**39.** Government of Maharashtra has **on 31.10.2005 introduced a New Contributory Pension Scheme for Government servants** who are recruited on or after 01.11.2005. This scheme is also applicable to employees recruited after the said date in services of recognized and aided educational institutions, NonGovernmental Universities and affiliated

NonGovernment Colleges and Agricultural Universities etc. **The petitioners have pointed out in their petition that all Social Work Colleges were under Higher Education Department of State of Maharashtra till 1964** and thereafter only there was bifurcation between the said department and Department of Social Welfare and staff of Colleges established prior to 1964, therefore, got / get pension. The perusal of Government Resolution dated 22.09.2011 issued by Social Justice and Special Assistance Department in this respect reveals that it has extended benefit of 6th Wage Revision to the Teachers in Social Welfare Colleges. As per appendix dated 31.12.2008 accompanying the Government Resolution dated 31.10.2005, it becomes clear that Teachers and other cadres in UGC maintained institutions, in receipt of pension, continue to get benefit thereof. The family pension facilities are also extended to other cadres in Central Universities and other UGC maintained institutions. The Scheme is made applicable to Teachers and other equivalent cadres of Library and Physical Education in all Central Universities and Colleges thereunder. State Legislature/ State Government can take a decision to extend said scheme to Universities, Colleges and other higher educational institutions subject to State Government shouldering 20% of the additional expenditure for first five years and 100% thereafter. The scheme is composite scheme for revision of pay scales and for pension/ family pension. It, therefore, cannot be severed. The staff of Social Work Colleges have also pointed out **how teachers in Law Colleges have been conferred with said benefit.** Though the writ petitions can not be dismissed on the ground of delay or laches, while selecting the date for grant of the relief and extension of the benefit, said factors and developments have a material bearing. **The direction by this Court will definitely have impact on public revenue. Hence, the fact that this Court is not approached within reasonable time can not be ignored.** More over, omission of State to utilize the chance granted by the Hon'ble Apex Court and refusal to implement pensioncumgratuity scheme in phased manner only in case of petitioners while extending it to others **also can not be condoned.** The staff members before us had been covered under contributory provident fund scheme and must have received its benefit.

**40.** In this situation, we feel that pension and gratuity from State exchequere for the past needs to be denied to all and **said benefits can be directed to be extended to the respective petitioners/staff members only from the date of filing of these three petitions before this High Court.** Thus we hold that Staff of Petitioner Colleges and Hospital staff in Writ Petition No.5571 of 2011 is entitled to pension and gratuity in terms of GR dated 21.7.1983 from 21.11.2011 ie the date of filing of Writ Petition No.5771 of 2011. Similarly, the staff of Social Work Colleges is entitled to it from 27.1.2012 being the date on which first of writpetitions ie Writ Petition No.682 of 2012 has been filed. This direction is applicable only to those who are not subject to new defined CPF scheme dated 31.10.2005. Those who are covered under later GR dated 31.10.2005 shall be extended its benefit in terms thereof also from the respective dates of filing already indicated above. Payments towards gratuity and of monthly pension as per these directions should be worked out as per law after requisite compliances by 31.12.2013 and shall be paid to the respective employees within next 6 months thereafter. **The monthly pension due to them from 1.1.2014 shall be released regularly along with others. Any default or delay in payment after stipulated period shall attract interest as per prevailing policy of the State Government.**

**41.** We accordingly allow these three writ petitions and make Rule absolute in terms of directions contained in paragraphs 37 and 40 above. However, there shall be no order as to costs.

JUDGE

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The words employed by Apex Court like “to the segment of the teachers” and “as was done with respect to the other aided institutions” confirm the correctness of finding of hostile discrimination between the Ayurvedic teachers/staff and other set of teachers (in other aided institutions)

( See Para 28 of the High Court Judgement Dated 10.6.2013 )

## IN THE HIGH COURT OF JUDICATURE AT BOMBAY CIVIL APPELLATE JURISDICTION

### WRIT PETITION NO.4802 OF 2010

(1) Vishal Ramchandra Karuna (2) Arun Shamraoji Wasankar ...*Petitioners* VS. (1) State of Maharashtra (2) Secretary, Social Welfare Department, Government of Maharashtra (3) Director, Social Welfare Department, Government of Maharashtra (4) Karve Institute of Social Service, Pune ...*Respondents*

### ALONG WITH WRIT PETITION NO.7951 OF 2011

(1) Dr. Deepak Madhukar Walokar (2) Ms Anjali Sudhakar Maydeo (3) Ms Farida Lambay (4) Mr. Dilip Ramagi Barhate (5) Maharashtra Association of Social Work Educators ...*Petitioners* VS. (1) State of Maharashtra (2) The Principal Secretary Social Welfare Department (3) The Director Social Welfare Department (4) University Grant Commission ...*Respondents*

Mr. Venkatesh Shastry for the petitioners in W.P.No.4802 of 2010, Mr. Mihir Desai i/b Mr. Avinash Fatangare for the petitioners in W.P.No.7951 of 2011, Ms S.S. Bhende, AGP for respondent Nos.2 and 3 in W.P.No.4802/2010 and for respondent Nos.1 to 3 in W.P.No.7951/2011

**CORAM : A.S.OKA, & REVATI MOHITE DERE, JJ.**

DATE ON WHICH JUDGMENT IS RESERVED: OCTOBER 23, 2013

DATE ON WHICH JUDGMENT IS PRONOUNCED: JANUARY 17, 2014

**JUDGMENT: (PER A.S.OKA, J)**

**1.** These petitions can be disposed of by a common judgment as the reliefs claimed therein are more or less identical. **The Parties were put to notice earlier that the Petitions will be heard finally at admission stage.**

**2.** In Writ Petition No. 4802 of 2010, both the petitioners are employed with the 4th respondent which is an Institute recognised by the **Social Welfare** Department of State of Maharashtra. The 4th Respondent receives grant-in-aid from the State of Maharashtra. The 4th Respondent imparts Social Work Education in the form of Graduate and Postgraduate Degree courses which are affiliated to the **University of Pune**. It is stated that the recruitment, pay scales and other allowances payable to the teaching as well as the nonteaching staff of the 4th respondent institution is governed by the norms laid down by the University Grants Commission and the Rules framed by the University of Pune as well as the state of Maharashtra. It is the case made out in the petition that the employees of the 4th respondent are on par with the aided colleges under the Education Department of the state of Maharashtra. As in case of employees of the said colleges, the employees of the 4th respondent are liable to pay a contribution towards the Provident fund. It is alleged that though in every sense, in the respect of service conditions, qualifications, teaching programme and workload, the employees of the 4th respondent institution **are on equal footing with the employees of the colleges under the Education Department of the state of Maharashtra, they are being denied retirement benefits.**

**3.** On 21st July 1983, the state of Maharashtra issued a Government Resolution by which the retirement benefits such as pension, gratuity etc admissible to the government servants under the Maharashtra Civil Services (Pension) Rules, 1982 were extended to the fulltime approved teaching and nonteaching staff in the recognized government aided nongovernment commerce, science and education colleges affiliated to nonagricultural universities under the Education Department of the state of Maharashtra. **However, the teaching and nonteaching staff of the colleges/institutions working under the Social Welfare Department was excluded. On 15th December 1998, the Government of Maharashtra issued a circular by which the retirement benefits such as pension, gratuity etc admissible to the government servants under the**

Maharashtra Civil Services (Pension) Rules, 1982 including family pension were extended to the fulltime approved teaching and nonteaching staff in **8 recognised aided nongovernment colleges of Physical Education in the state.** It is stated that the said eight colleges used to receive the grant-in-aid from the Social Welfare Department of the State of Maharashtra. Some other instances of alleged discrimination have been pointed out in the petition. It is alleged that the **teaching and nonteaching staff of the Matru Seva Sangh Institute of Social Work, Nagpur as well as the Department of Social Work of the Swami Ramanand Tirth University, Nanded** are receiving benefits of the gratuity and pension as they come under the Higher Education Department of the State of Maharashtra. It is alleged that the service conditions, courses, nature of work, work load pattern, the nature of grant-in-aid and the status of the said institutions is identical in all respects to the colleges/institutions which are aided by the Department of Social Welfare. It is pointed out that by a Government Resolution dated **19th October 2005**, the State Government extended the retirement benefits to the teaching and nonteaching staff of the **Yeshwantrao Chavan Maharashtra Open University** which is not aided by the State Government.

**4.** By referring to the reply filed by the State Government in the Writ Petitions filed earlier by the similarly placed employees, it was contended that the only stand taken is that grant of such benefits will impose **additional financial burden** on the Social Welfare Department of the Government of Maharashtra. It is contended that the said stand is fallacious. It is pointed out that various representations were made to the State of Maharashtra by the Association of Social Work Educators requesting to make available all the retirement benefits to the teaching and nonteaching staff of institutions and colleges imparting education in social work which are under the Social Welfare Department. **By a communication dated 12th July 2010, the representations were rejected** by pointing out that the State Government has taken a policy decision that pension and gratuity shall not be made applicable to the existing aided institutions and colleges. It was pointed out that the State Government has applied "**Defined Contributory Pension Scheme**" (for short "New Pension Scheme") with effect from 1st November 2005.

The arrears up to 31st May 2014 shall be paid to all concerned on or before 15th July 2014. Pension shall be released regularly with effect from 1st June 2014

( See Para 11 of the High Court

Judgement Dated 17.01.2014)



5. A writ of mandamus is prayed for in the Petition directing the State Government to extend the retirement benefits under the Government Circular dated 15th December 1998 such as pension, gratuity etc to the employees of the institutions working under the Social Welfare Department of the State Government.

6. Writ petition No. 7951 of 2011 has been preferred by the Maharashtra Association of Social Work Educators, which is a registered Association. The said Association is the 4th petitioner and the first three petitioners are its members. The 4th petitioner Association is an Association of teaching and nonteaching employees of the colleges of social work controlled by the Social Welfare Department of the State Government. **It is contended that the Petitioners also represent 59 such employees listed in Exhibit N who have already retired.** The reliefs claimed in this petition are similar to the reliefs claimed in the other petition. In addition, a prayer is made for quashing and setting aside the communication dated 12th July 2010 which is referred to above. A prayer is also made for issuing a writ of mandamus directing the Government of Maharashtra to extend the pension scheme under the Government Resolution dated

21th July 1983 applicable to the employees of the colleges under the Higher and Technical education Department to the employees of aided social work colleges **including those who have retired after 2nd September 1999.**

7. The stand of the State Government is reflected from the reply filed to the writ Petition no. 4802 of 2010 by the Special District Social Welfare Officer Mumbai. A reliance has been placed in the said reply **on the decision of the State Cabinet in a meeting held on 11th July 2001 by which it was decided not to extend the pension scheme to the teaching and nonteaching staff of the colleges aided by the Social Work Department.** While dealing with the case made out by the Petitioners that the benefit of pension and gratuity was extended to the teaching and nonteaching staff of 8 recognised aided nongovernment colleges of Physical Education, it was contended that **the same were under the Sports and Cultural Affairs Department in the 1998 which was at that time attached to the Social Welfare Department. It is stated that subsequently the said departments are separated and now the benefits have been extended to the said 8 colleges by the Department of sports.** It is contended that the policy decision of the State Government of not extending the retirement benefits to the colleges under the Social Work Department is based on financial capacity of the Government and therefore, the same cannot be interfered with. Reliance was placed on an order passed in earlier writ petition.

8. We have heard the learned counsel representing the petitioners and the learned AGP representing the State Government. The learned counsel appearing for the petitioners have relied upon various decisions including a **decision dated 10th June 2013 by a Division Bench of this Court at Nagpur** in three separate Writ Petitions including Writ Petition No. 682 of 2012 filed by the Action Group for the Pensionary Benefits to Social Work Colleges and the other petitioners who were members of the teaching staff of various Social Work colleges aided by the Social Welfare Department of the Government of Maharashtra. In the said petition, similar reliefs which are claimed in these petitions including a prayer for setting aside the aforesaid communication dated 12th July 2010 were claimed. The Division Bench considered the similar defence taken by the Government of Maharashtra that the decision not to grant pensionary benefits to the teaching and nonteaching staff of such colleges **was a policy decision based on financial constraints which cannot be interfered with by this Court.** In addition, in the said Writ Petition, a defence of delay was raised by the State Government. **The Division Bench rejected the argument based on financial constraint and delay.**

9. It will be necessary to make a reference to what is held by the Division Bench in paragraphs 37 to 41 which read thus:

*“37 In the result, it follows that the Government decision dated 27.6.2001 refusing to extend the pensioncumgratuity scheme to Ayurvedic and Unani Colleges impugned in Writ Petition No.5771 of 2011 and similar decision dated 12.7.2010 about Social Work Colleges impugned in other two writ petitions are, therefore, unsustainable. Submission that communication dated 12.7.2010 is only reiteration of basic decision, of the State dated 11.7.2001 not to extend said benefit to Social Work staff and has been questioned after huge delay, also does not hold any water. There is nothing on record to show that this cabinet decision was communicated to any of the concerned parties. These decisions dated 27.6.2001, 11.7.2001 and 12.7.2010 are quashed and set aside.*

*38 The petitioners have urged that one Social Work College got benefit of Pension and Gratuity Scheme from 01.10.1982, hence they seek similar benefit from that date only. The perusal of judgment in the case of Retired Employees of Nongovernment Colleges Association, Nagpur Vs. The State of Maharashtra and others (supra) reveals that selection of date for such purpose is also dependent upon the facts and circumstances of each matter. The petitioners have in alternative pointed out that the date from which Colleges started receiving 100% salary grant i.e 5.12.2003 has to be the said date in any case. The judgment of the Hon’ble Apex Court dated 7.4.1997 resulted into a decision dated 27.6.2001. We have already noted that the some Colleges were extended benefit of Pension and Gratuity Scheme after its demand by the staff of Ayurvedic/ Unani Colleges or Social Work Colleges. Arts, Commerce and Science Colleges were also given said benefit from 16.7.1996. The Colleges of Physical Education got said benefit from 17.4.2000. These benefits flow from basic Government*

**IN THE HIGH COURT OF JUDICATURE  
AT BOMBAY  
NAGPUR BENCH AT NAGPUR**

**WRIT PETITION NO.3401/2008**

**PETITIONERS :** (1) Dhananjay s/o Gajananrao Gudadhe Aged about 59 years, Occ. Service. (2) Smt. Jaishree w/o Babanrao Tote Aged about 59 years, Occ. Service. Both r/o Social Work College Vidyapeeth Road, Camp, Amravati. **...VERSUS... RESPONDENTS :** (1) State of Maharashtra, Through Hon’ble Cabinet Minister Social Welfare Department Government of Maharashtra, Mantralaya, Mumbai 400 032. (2) The Secretary, Social Welfare Department Government of Maharashtra, Mantralaya, Mumbai 400 032. (3) Director, Social Welfare Department Government of Maharashtra – 1, Director of Social Welfare Building, Near Photo Zinc 3 Church Road, Pune 1. (4) Hon’ble Cabinet Minister Higher Education Department Government of Maharashtra, Mantralaya, Mumbai 400 032. (5) Chief Secretary Government of Maharashtra, Mantralaya Mumbai 400 032. (6) Principal, Social Work College Amravati Vidyapeeth Road, Camp, Amravati.

Shri S.P. Kshirsagar, Adv. for petitioners  
Mrs. M.N. Hiwase, AGP for R 1 to 5

**CORAM : B.P. DHARMADHIKARI  
ANDA.S. CHANDURKAR, JJ.**

**DATE : 13.12.2013**

**ORAL JUDGMENT**

**(PER : B.P. DHARMADHIKARI, J.)**

1. Respective Counsel were heard on 6.12.2013 and in view of the reliance placed by Advocate Shri Kshirsagar on the **judgment dated 10.06.2013 in Writ Petition Nos.5771/2011, 682/2012 and 3277/2012**, the matter was adjourned to today to enable the parties to further assist the Court.

2. Learned Assistant Government Pleader states that no further proceedings are taken against the judgment dated 10.06.2013. The petitioners have rendered their services with respondent no.6 – Government College under Social Welfare Department from 1984 onwards till their superannuation in 2008. **The case of similar employees of Social Welfare Department has been looked into by us in Writ Petition No.3277/2012 as also Writ Petition No.682/2012. One of us (B.P. Dharmadhikari, J.) is a party to that judgment dated 10.6.2013.**

3. In this situation, in the light of the reasons recorded in the said judgment and in terms of paragraph no.40 thereof with similar directions to the respondents, **we allow this petition.**

4. Rule is made absolute accordingly. No order as to costs

**JUDGE**

**JUDGE**

Resolution dated 21.7.1983. The petitioners got full salary grants from 5.12.2003 in terms of that policy decision. In this situation, we find that the date from which College started receiving 100% salary grants i.e 5.12.2003 could have been normally accepted as a date for asking the respondents to implement the Pension and Gratuity Scheme. The Government Resolution dated 22.9.2011 issued by Social Justice and Special Assistance Department is about Revision of Pay scales of Teachers of Social Welfare Colleges as per UGC Scheme (6th Pay Commission). It is applicable to Colleges affiliated to Universities. 39 Government of Maharashtra has on 31.10.2005 introduced a New Contributory Pension Scheme for Government servants who are recruited on or after 1.11.2005. This scheme is also applicable to employees recruited after the said date in services of recognized and aided educational institutions, NonGovernmental Universities and affiliated NonGovernment Colleges and Agricultural Universities etc. The petitioners have pointed out in their petition that all Social Work Colleges were under Higher Education Department of State of Maharashtra till 1964 and thereafter only there was bifurcation between the said department and Department of Social Welfare and staff of Colleges established prior to 1964, therefore, got/get pension. The perusal of Government Resolution dated 22.9.2011 issued by Social Justice and Special Assistance Department in this respect reveals that it has extended benefit of 6th Wage Revision to the Teachers in Social Welfare Colleges. As per appendix dated 31.12.2008 accompanying the Government Resolution dated 31.10.2005, it becomes clear that Teachers and other cadres in UGC maintained institutions, in receipt of pension, continue to get benefit thereof. The family pension facilities are also extended to other cadres in Central Universities and other UGC maintained institutions. The Scheme is made applicable to Teachers and other equivalent cadres of Library and Physical Education in all Central Universities and Colleges thereunder. State Legislature/State Government can take a decision to extend said scheme to Universities, Colleges and other higher educational institutions subject to State Government shouldering 20% of the additional expenditure for first five years and 100% thereafter. The scheme is composite scheme for revision of pay scales and for pension/family pension. It, therefore, cannot be severed. The staff of Social Work Colleges have also pointed out how teachers in Law Colleges have been conferred with said benefit. Though the writ petitions cannot be dismissed on the ground of delay or laches, while selecting the date for grant of the relief and extension of the benefit, said factors and developments have a material bearing. **The direction by this Court will definitely have impact on public revenue. Hence, the fact that this Court is not approached within reasonable time cannot be ignored.** Moreover, omission of State to utilize the chance granted by the Hon'ble Apex Court and refusal to implement pensioncumgratuity scheme in phased manner only in case of petitioners while extending it to others also cannot be condoned. The staff members before us had been covered under contributory provident fund scheme and must have been received its benefit. **40 In this situation, we feel that pension and gratuity from State exchequer for the past needs to be denied to all and said benefit can be directed to be extended to the respective petitioners/staff members only from the date of filing of these three petitions before this High Court. Thus, we hold that the Staff of Petitioner Colleges and Hospital staff**

in Writ Petition No.5571 of 2011 is entitled to pension and gratuity in terms of GR dated 21.7.1983 from 21.11.2011 i.e the date of filing of Writ Petition No.5771 of 2011. **Similarly, the staff of Social Work Colleges is entitled to it from 27.1.2012 being the date on which first of writ petitions i.e Writ Petition No.682 of 2012 has been filed.** This direction is applicable only to those who are not subject to new defined CPF scheme dated 31.10.2005. Those who are covered under later GR dated 31.10.2005 shall be extended its benefit in terms thereof also from the respective dates of filing already indicated above. Payments towards gratuity and of monthly pension as per these directions should be worked out as per law after requisite compliances by 31.12.2013 and shall be paid to the respective employees within next 6 months thereafter. The monthly pension due to them from 1.1.2014 shall be released regularly along with others. Any default or delay in payment after stipulated period shall attract interest as per prevailing policy of the State Government.

**41 We accordingly allow these three writ petitions and make Rule absolute in terms of directions contained in paragraphs 37 and 40 above. However, there shall be no order as to costs.**" (emphasis added)

**10. The present cases will be governed by the aforesaid case of similarly situated employees.** Hence, the reliefs granted as above will have to be extended to the Petitioners in Writ Petition No. 4802 of 2010 from the date of filing the said Petition. Writ Petition No.7951 of 2011 was filed on 26th September 2011. The Petitioners therein had filed earlier Writ Petition No. **4229 of 1999** on 2nd September 1999 for the same relief which was disposed of in view of order passed in Writ Petition No. **5467 of 1999** by which a direction was issued to consider the case of such employees for extension of retirement benefits in a phase wise manner. It is pointed out that out of the 59 retired employees listed in Exhibit N, only 4 have retired prior to the date of filing the earlier Writ Petition No. 4229 of 1999. **Hence, benefit deserves to be extended to the employees who have retired after filing of the earlier Writ Petition No. 4229 of 1999.**

**11.** Hence, the Petitions are disposed of by passing the following order:

(i) **The individual Petitioners in the Petitions shall be entitled to the reliefs in terms of the paragraph Nos. 37 and 40 of the Judgment and Order dated 10th June 2013** in Writ Petition No.682 of 2012 (Action Group for Pensionary Benefits to Social Work Colleges and others vs the State of Maharashtra and others) and other connected Petitions decided by Nagpur Bench which we have quoted above;

(ii) Though the individual Petitioners will be entitled to the benefits from the date of filing of the respective Petitions, **only those Employees listed in Exhibit N to the Writ Petition No.7951 of 2011 who have retired after 2nd September 1999 shall be entitled to the reliefs in aforesaid terms;**

(iii) **The arrears up to 31st May 2014 shall be paid to all concerned on or before 15th July 2014. Pension shall be released regularly with effect from 1st June 2014;**

(iv) The Petitions are disposed of on the above terms with no orders as to costs.

(REVATI MOHITE DERE,J.) (A.S.OKA,J.)

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