

AGENDA

**of the General Body Meeting of
NAGPUR UNIVERSITY TEACHERS' ASSOCIATION
to be held at 12.00 noon on SUNDAY, the
15th March, 2015 at
Yeshwant Mahavidyalaya, Seloo
Dist. Wardha**

Agenda of the General Body Meeting of Nagpur University Teachers' Association to be held at 12.00 noon on Sunday, 15th March, 2015 at Yeshwant Mahavidyalaya, Seloo Dist. Wardha is as follows :-

ITEM NO. 644 :

CONFIRMATION OF MINUTES :

TO CONFIRM the minutes of the General Body meeting of Nagpur University Teachers' Association held at 12.00 noon on Sunday, 19th October, 2014 at Smt. Kesharbai Lahoti Mahavidyalaya Amravati, with the following correction :-

(1) Item No. 634 & 635 on page 179 of 2014 NUTA Bulletin be corrected as item No. 642 & 643 respectively.

Notes :- 1) Copy of the minutes was Circulated on pages 177 to 179 of 2014 NUTA Bulletin.

2) Corrections, if any, were invited in the copy of the Minutes of the General Body Meeting of Nagpur University Teachers' Association held at 12.00 noon on Sunday, 19th October, 2014 at Smt. Kesharbai Lahoti Mahavidyalaya Amravati vide No.CIM/38 Dated 1st November, 2014 published on page 183 of 2014 NUTA Bulletin. No correction is received.

ITEM NO. 645 :

APPROVAL TO THE ANNUAL REPORT :

TO CONSIDER AND APPROVE the Annual Report regarding the working of the Association for the calendar year ending on 31st December, 2014.

Notes : (i) As per Article VI (b) (iii) of the Constitution of NUTA, the Annual Report of the working of the Association is prepared by the Executive Committee (vide item No.2 of 2015) and is now placed for the approval of the General Body.

(ii) The Copy of the Annual Report is circulated in this NUTA Bulletin on page 27 to 32

(iii) Dr. A. W. Dhage, Secretary will present the Annual Report on behalf of the Executive Committee.

ITEM NO. 646 :

APPROVAL TO THE ANNUAL BUDGET :

TO APPROVE the Annual Budget of the Association for the Financial year commencing on 1st April, 2015.

Notes : (i) Dr. B. T. Gawande, Treasurer, NUTA, will present the Budget on behalf of the Executive Committee.

(ii) The copy of the Budget is circulated on page No. 29 of 2015 NUTA Bulletin.

(iii) If any honourable member has a query, regarding the Annual Budget, he should make it, within a week from the date

of posting of this Bulletin, to Dr. B.T.Gawande, Treasurer, NUTA, Uday Colony, V.M.V.Road, Amravati 444 604 specifying the exact point on which he seeks information/ clarification. A copy of the query also be sent to Prof. P.B. Raghuwanshi, President NUTA, Buty Plot, Near Mahajan wadi, Rajapeth, Amravati 444 601 .

ITEM NO. 647 :

APPOINTMENT OF THE AUDITORS :

TO CONSIDER AND APPROVE the following resolution for the appointment of Auditors for the Financial year ending on 31st March, 2015 namely :-

**"C.R.Sagdeo & Co. Chartered Accountant
"Prabha Niwas" Nagpur be appointed as auditor for
the Financial year ending on the 31st March 2015"**

NAGPUR UNIVERSITY TEACHERS' ASSOCIATION

MEETING NOTICE : 2

Date : 01.03.2015

From :

Dr. A.W.DHAGE

Secretary, NUTA Sankalp Sahaniwas,
Khare Town, Dharampeth,
Nagpur-444 010

To,

All the members

of the Nagpur University Teachers' Association

Dear members,

I have the honour to inform you that in exercise of the powers conferred on it by Article VIII of the Constitution of NUTA, the Executive Committee has decided to have the meeting of General Body at **12.00 Noon** on the date and at the place mentioned below.

2. Agenda of the General Body meeting is printed in this NUTA Bulletin. If you propose to suggest any amendments to any of the proposals/Resolutions included in the Agenda, you may send it to me within a period of one week from the date of the posting of this Bulletin. It will not be possible for the amendments received after the due date to be included in the additional agenda. Please send one copy of your amendment to Prof. P.B. Raghuwanshi, President NUTA, Buty Plot, Near Mahajan wadi, Rajapeth, Amravati 444 601

3. Rules for proposing amendments to the proposals/resolutions are printed on page 97 of 1977 NUTA Bulletin. You are requested to kindly make it convenient to attend the meeting.

Yours faithfully
Sd/- **Dr.A.W.DHAGE,**
Secretary, NUTA.

**Date and Place of the
meeting**

**at 12.00 Noon on, Sunday, the
15th March, 2015 at**

**Yeshwant Mahavidyalaya, Seloo
Dist. Wardha**

Notes :

(i) As per Article VII of the Constitution of NUTA the "General Body shall appoint auditors annually in the Annual Meeting of the Association."

(ii) The Executive Committee resolved to recommend the above resolution, (Vide item No. 4 of 2015) which is now placed before the General Body for its approval.

(iii) Dr. B. T. Gawande, Treasurer, on behalf of the Executive Committee, will move the resolution.

**ITEM NO. 648 :
SUBMISSION OF STATEMENTS OF AUDITED
ACCOUNTS FOR THE YEAR ENDING
ON 31ST MARCH 2014**

TO NOTE the submission of statements of Audited Accounts of Nagpur University Teachers' Association for the year ending on 31st March, 2014 to The Deputy Charity Commissioner Nagpur region, Nagpur by The Secretary NUTA, Dr. Anil Dhage vide his letter No. NUTA/CC/02/2014 Dated 22/01/2015.

Notes : 1) Copy of the letter No. NUTA/CC/02/2014, Dated 22/01/2015 regarding Submission of Audited Accounts is circulated on page 22 of 2015 NUTA Bulletin .

(2) Statements of Audited Accounts of Nagpur University Teachers' Association for the year ending on 31st March, 2014 were approved by the Executive Committee in its meeting held on 21st September 2014 vide item No. 27, Agenda on page 31, Minutes on page 42, Enclosure on pages 37 to 39 of 2014 Ex-File.

(3) Statements of Audited Accounts of Nagpur University Teachers' Association for the year ending on 31st March, 2014 were approved by General Body in its meeting held on 19th October 2014 vide item No. 637. Agenda on page 169, Minutes on page 177, Enclosures on page 170 & 173 of 2014 NUTA Bulletin.

(4) After the approvals mentioned at notes 2 & 3 above the Statements of Audited Accounts of Nagpur University Teachers' Association for the year ending on 31st March, 2014 were submitted to the Deputy Charity Commissioner, Nagpur region, Nagpur by the Secretary as mentioned at note 1 above.

(5) Reference of previous submission for information :-

Details of the submission of statements of Audited Accounts of Nagpur University Teachers' Association for the year ending on 31st March, 2013 to The Deputy Charity Commissioner Nagpur region, Nagpur by The Secretary NUTA, Dr. Anil Dhage vide his letter No. Nil, Dated 02/04/2014

Notes : 1) Copy of the letter No. Nil, Dated 02/04/2014 regarding Submission of Audited Accounts is circulated on page 98 of 2014 NUTA EX File.

(2) Statements of Audited Accounts of Nagpur University Teachers' Association for the year ending on 31st March, 2013 were approved by the Executive Committee in its meeting held on 15th December 2013 vide item No. 44, Agenda on page 113, Minutes on page 128, Enclosure on pages 102 to 104 of 2013 Ex-File.

(3) Statements of Audited Accounts of Nagpur University Teachers' Association for the year ending on 31st March, 2013 were approved by General Body in its meeting held on 19th January 2013 vide item No. 609. Agenda on page 01, Minutes on page 74, Enclosures on page 02 & 03 of 2014 NUTA Bulletin.

(4) After the approvals mentioned at notes 2 & 3 above the Statements of Audited Accounts of Nagpur University Teachers' Association for the year ending on 31st March, 2013 were submitted to the Deputy Charity Commissioner, Nagpur region, Nagpur by the Secretary as mentioned at note 1 above.

By Registered A/D
NAGPUR UNIVERSITY TEACHERS' ASSOCIATION
(B.P.T.A. Regn. No. F-1564 & Soc. Regn. Act)
[Regn. No. MAH/15/73 (NAG)]

DR. ANIL DHAGE

Secretary, NUTA Sankalp Sahaniwas, Khare Town,
Dharampath, Nagpur-444 010

Ph. No. : (0712) 2539852 Mob. No. : 9158129842

Letter No. NUTA/CC/02/2014 : Date: 22.01.2015

To,

The Deputy Charity Commissioner,
Nagpur Region, Nagpur

Sub: Submission of Statements of Accounts of Nagpur University Teachers' Association, Nagpur for the year ending on 31st March, 2014.

R/Sir,

Statements of Audited Accounts of Nagpur University Teachers' Association for the year ending on 31st March, 2014 were approved by the Executive Committee in its meeting held on 21st September 2014 vide item No. 27, Agenda on page 31, Minutes on page 42, Enclosure on pages 37 to 39 of 2014 Ex-File.

(2) Statements of Audited Accounts of Nagpur University Teachers' Association for the year ending on 31st March, 2014 were approved by General Body in its meeting held on 19 October 2014 vide item No. 637. Agenda on page 169, Minutes on page 177, Enclosures on page 170 & 171 of 2014 NUTA Bulletin.

(3) Please find herewith enclosed original audited Statements of Accounts of Nagpur University Teachers' Association, Nagpur for the year ending on 31st March 2014.

(4) Kindly do the needful at your end and oblige.

Yours faithfully,

(Dr. A.W. Dhage)

Copy to: (1) Dr. P. B. Raghuvanshi, President, NUTA, Amravati (2) Dr. B.T.Gawande, Treasurer, NUTA, Amravati (3) Prof. B. T. Deshmukh, Amravati for publication in NUTA Bulletin.

Note: This letter (alongwith enclosure) was sent to the Deputy Charity Commissioner by Registered Post from Hanuman Nagar Post Office, Nagpur 440024 A-RM 419061016 IN Counter No. 1, OP code: VBL Wt 60 grams, Amount 35.00 on 22.01.2015.

**ITEM NO. 649 :
DEVELOPMENT IN THE SUPREME COURT
REGARDING
NET-SET AFFECTED TEACHERS**

To consider Development in the Supreme Court regarding Net-Set affected teachers (on 21/01/2015) in Civil Appeal No(s). 10759/2013 STATE OF MAHARASHTRA & ORS. Appellant(s) VERSUS ASHA RAMDAS BIDKAR & ORS. Respondent(s)

Note : Record of proceedings on 21/01/2015 in the Supreme Court is circulated on Page 25 of 2015 NUTA Bulletin.

विषय क्रमांक ६५० :

नेट-सेट मुक्त शिक्षकांच्या बाबतीत करावयाची कारवाई

नेट-सेट मुक्त शिक्षकांच्या संदर्भात विद्यापीठाच्या किंवा सहसंचालकांच्या स्तरावर मा. उच्च न्यायालयाच्या निर्णयाच्या अंमलबजावणी बाबत होत नसलेली/होत असलेली कारवाई याबाबत महाराष्ट्र प्राध्यापक महासंघाच्या अध्यक्ष व सचिवांच्या पत्रकानुसार आपापल्या विभागात कारवाई करण्याची बाब विचारात घेणे.

Note:- नेट-सेट मुक्त शिक्षकांच्या संदर्भात विद्यापीठाच्या किंवा सहसंचालकांच्या स्तरावर मा. उच्च न्यायालयाच्या निर्णयाच्या अंमलबजावणी बाबत होत नसलेली/होत असलेली कारवाई याबाबत महाराष्ट्र प्राध्यापक महासंघाच्या अध्यक्ष व सचिवांचे दिनांक 9 फेब्रुवारी २०१५ रोजीचे पत्र पृष्ठ २३ वर प्रसृत करण्यात आलेले आहे.

विषय क्रमांक ६५१ :

नेट-सेट मुक्त शिक्षकांच्या बाबतीत सहसंचालक अमरावती व नागपूर विद्यापीठ यांनी केलेली कारवाई

नेट-सेट मुक्त शिक्षकांच्या बाबतीत मा. उच्च न्यायालय व सर्वोच्च न्यायालयाच्या निर्णयानंतर सहसंचालक अमरावती व नागपूर विद्यापीठ यांनी काढलेली पत्रे व केलेली कारवाई विचारात घेणे.

Note:- नेट-सेट मुक्त शिक्षकांच्या बाबतीत मा. उच्च न्यायालय व सर्वोच्च न्यायालयाच्या निर्णयानंतर सहसंचालक अमरावती व नागपूर विद्यापीठ यांनी काढलेली पत्रे (केलेली कारवाई) नुटा बुलेटीनच्या पृष्ठ क्रमांक २८ व ३१ वर प्रसृत केलेली आहे.

**नेट-सेट मुक्त शिक्षकांच्या संदर्भात विद्यापीठाच्या किंवा सहसंचालकांच्या स्तरावर
मा. उच्च न्यायालयाच्या निर्णयाच्या अंमलबजावणी बाबत
होत नसलेली/होत असलेली कारवाई याबाबत
महाराष्ट्र प्राध्यापक महासंघाच्या अध्यक्ष व सचिवांचे पत्रक**

दिनांक : १ फेब्रुवारी २०१५

एक : नेट-सेट मुक्त शिक्षकांच्या संदर्भात मा. सर्वोच्च न्यायालयाने दिनांक १८ नोव्हेंबर २०१३ रोजी दिलेल्या अंतरिम आदेशाला धरून मा. मुंबई उच्च न्यायालयाच्या विविध खंडपीठांनी सहा वर्षे सेवा पूर्ण केलेल्या नेट-सेट मुक्त शिक्षकांना CAS चे लाभ अदा करण्याचे मुदतबंद आदेश पारित केलेले आहेत. दिनांक ११ नोव्हेंबर २०१४ रोजी महाराष्ट्र शासनाने एक आदेश काढून “मा. उच्च न्यायालयाच्या अथवा मा. सर्वोच्च न्यायालयाच्या आदेशास स्थगिती देण्यात आलेली नसेल तर त्यांची विहित मुदतीत अंमलबजावणी करणे अनिवार्य आहे”. असे आदेशीत केलेले आहे. त्याच आदेशात पुढे असेही म्हटले आहे की “मा. सर्वोच्च न्यायालयाने दिलेल्या आदेशाच्या अधीन राहून CAS चे लाभ अनुज्ञेय करण्यात यावेत”.

दोन : मा. सर्वोच्च न्यायालयाच्या व मा. उच्च न्यायालयाच्या निर्णयाची अंमलबजावणी करतांना एखाद्या दुसऱ्या ठिकाणी सहसंचालक अत्यंत पारदर्शक पध्दतीने काम करीत असले तरी बहुतेक सहसंचालक “आयुष्यात भ्रष्टाचारी मार्गाने धन गोळा करण्याची सुवर्णसंधी” अशा दृष्टीने आपल्या कामाकडे पाहत असल्याच्या तक्रारी संघटनेकडे आलेल्या आहेत. मुंबई विद्यापीठ प्राध्यापक संघाने (बुकट्टु) पनवेलच्या सहसंचालकांबाबत वारंवार तक्रारी करून त्याकडे लक्ष देण्यात आले नाही. शेवटी हजारो रुपयांची लाच स्वीकारतांना रंगेहाथ पकडल्या गेलेल्या त्या सहसंचालकांला तुरुंगात जावे लागले. अतएव या परिस्थितीला सामोरे जाण्यासाठी घटक संघटनांनी व घटक संघटनांच्या नेतृत्वाखाली सर्व शिक्षकांनी पुढील सुचनांचे पालन करावे अशी विनंती महाराष्ट्र प्राध्यापक महासंघातर्फे करण्यात येत आहे.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 5261/2013.

Chandraskehkar H. Sawarkar and others. **VERSUS**
State of Maharashtra and others.

CORAM : B.P. DHARMADHIKARI &
A.P.BHANGALE, JJ.

DATED: JANUARY 19, 2015.

Heard Shri K.H. Deshpande, learned Senior Counsel with Shri S.A. Marathe, learned counsel for petitioners and Mrs. K.S. Joshi, learned A.G.P. for respondent nos. 1 to 3.

Learned A.G.P. is having instructions to seek further adjournment because of reference to government resolution dated 11.11.2014 in Court order dated 07.01.2015.

We have heard learned counsel for the parties. We fail to understand any propriety in seeking adjournment because of reference of government resolution dated 11.11.2014 in Court order. In this situation, Rule. Hearing expedited. Learned A.G.P. waives notice for respondent nos. 1 to 3.

By way of interim order we direct the respondents to pay the petitioners the benefit of Career Advancement Scheme (CAS) within a period of three months from today.

Needless to mention, such relief shall be subject to further orders of this Court and orders of Hon'ble Apex Court in pending controversy.

JUDGE

JUDGE

(PR: (1-7) P121 B14 (8-16) P121 B14 (17) P151 B14 (18) P184 B14 (19) P190 B14 (20) P2 B15(21) P5 B15 (22) P14 B15 (23) P23 B15) (24) P24B15 (25) P27 B15 (26) P40 B15)

तीन : प्रत्येक सहसंचालकांच्या कार्यालयात संघटनेच्या वतीने शिष्टमंडळाने सहसंचालकांची भेट घ्यावी व पुढील बाबींची त्यांना जाणीव करून द्यावी.

(१) त्या सहसंचालकांनी सर्वोच्च न्यायालयाच्या निर्णयावर आधारित मा. उच्च न्यायालयाच्या आदेशाची मुदतीच्या आत अंमलबजावणी करावी. अवमान याचिकेची नोटीस देण्याची वेळ शिक्षकांवर येऊ नये. तशी वेळ येणे हा सहसंचालकांच्या गलथान कारभाराचा पुरावा समजला जाईल.

(२) मा. उच्च न्यायालयाच्या एका निर्णयातील काही निवडक प्रकरणे बाजूला घेऊन निकाली काढणे व इतर बाजूला ठेवणे असे भेदभावपूर्ण वर्तन हे भ्रष्टाचार पूरक वर्तन समजले जाईल.

(३) त्या त्या विषयाचे तज्ञ शासकीय प्राध्यापक स्थाननिश्चिती समितीवर न पाठवित प्रत्येक शिक्षकाच्या स्थाननिश्चिती समितीवर जाण्याचे सहसंचालकांनी ठरविले तर या कामाला काही वर्षे लागतील हे सहसंचालकांनी लक्षात ठेवावे व त्यांनी हेही लक्षात ठेवावे की असे करण्यामागे भ्रष्टाचाराशिवाय दुसरा कोणताही हेतू असू शकत नाही. नागपूरच्या एका सहसंचालकाचा असा भ्रष्टाचार उघड झाल्यावर “कोणत्याही सहसंचालकांनी यापुढे शिक्षकाच्या स्थाननिश्चिती समितीवर जावू नये” असे आदेश एकदा उच्च शिक्षण संचालकांना काढावे लागले होते.

(४) ही सर्व प्रकरणे शेवटी सहसंचालक यांच्या कार्यालयात येणारच असल्यामुळे प्रत्येक महाविद्यालयात जाण्याचा सहसंचालकांचा मनोदय हा भ्रष्टाचाराला खतपाणी घालण्यासाठीच आहे असे समजले जाईल.

(५) मा. उच्च न्यायालयात प्रत्येक प्रकरणामध्ये सहसंचालक हे प्रतिवादी होते. प्रत्येक याचिकेसोबत जोडलेल्या सहपत्रामध्ये समाविष्ट असलेली व त्यामुळे त्यांच्या कार्यालयात उपलब्ध असलेली कागदपत्रे पुन्हा पुन्हा मागण्यामागे त्या शिक्षकाला, त्या प्राचार्याला, त्या महाविद्यालयाला भ्रष्ट हेतूने त्रास देण्याशिवाय दुसरा कोणताही हेतू असू शकत नाही. त्यामुळेच सहसंचालकांच्या कार्यालयात यापूर्वीच कोणत्याही वेळी दाखल करण्यात आलेली कागदपत्रे किंवा याचिकेसोबत जोडण्यात आलेली कागदपत्रे पुन्हा पुन्हा मागण्याचा प्रयत्न हा निर्णयाला अकारण विलंब लावण्याचा प्रकार असल्याने न्यायालयाचा अवमान करणारा आहे याची स्पष्ट जाणीव त्यांना करून देण्यात यावी.

(६) मा. उच्च न्यायालयाच्या निर्णयाची अंमलबजावणी करण्यासाठी त्यांनी कोणते वेळापत्रक व पारदर्शक कार्यक्रम आयोजित केला आहे त्याची मागणी करण्यात यावी. असे वेळापत्रक व दिनांकनिहाय कार्यक्रम ते देत नसतील तर त्यांचे ते कृत्य मा. न्यायालयाच्या निर्णयाची अंमलबजावणी करण्यात कुचरार्थ करण्याचे व परिणामी न्यायालयाचा अवमान करणारे कृत्य समजले जाईल.

(७) विशेषतः पुढच्या दोन-चार-सहा महिन्यात सेवानिवृत्त होणारा एखादा सहसंचालक या प्रयोजनासाठी प्रत्येक महाविद्यालयाला निवडक भेटी देण्याचा धडक कार्यक्रम आखत असेल तर त्याच्यावर विशेष लक्ष ठेवण्यात यावे व त्यांना “पनवेलच्या सहसंचालकांच्या मार्गाने जाऊन मुलाबाळांना व कुटुंबाला दुर्दैवाच्या खाईत लोटू नका” अशी सक्त सूचना द्यावी.

(८) न्यायालयीन प्रकरणपरत्वे सहसंचालकांनी त्यांच्या कार्यालयामध्ये शिविरांचे आयोजन करून पारदर्शक पध्दतीने सर्वासमक्ष प्रकरणे निकाली काढावी अशी विनंती करून त्या शिविरांच्या वेळापत्रकांची मागणी करावी.

चार : परिनियमांनी, नियमांनी व शासननिर्णयांनी स्थाननिश्चिती व त्यानंतर वेतन निश्चितीचे अंतिम अधिकार विद्यापीठाला दिलेले आहे. सुदैवाने आज कोणतेही विद्यापीठ याबाबत भ्रष्टाचाराच्या मार्गाने वाटचाल करीत आहे अशी तक्रार संघटनेकडे अजून तरी आलेली नाही. नागपूर विद्यापीठाने अत्यंत पारदर्शक पध्दतीने दिनांक ६ जानेवारी २०१५ रोजी ४९ महाविद्यालयांना पत्र पाठवून “विगर नेट-सेट शिक्षकांचे स्थाननिश्चिती करिता प्रस्ताव सादर करण्याबाबत” कळविले आहे. या पत्राच्या संदर्भामध्ये निर्णय झालेल्या मा. उच्च न्यायालयाच्या सर्व याचिका नमूद करण्यात आलेल्या आहेत व याच पत्रामध्ये नागपूर विद्यापीठाने “जी महाविद्यालये मा. उच्च न्यायालयाचे निर्देशानुसार याचिकाकर्त्या शिक्षकांचे स्थान निश्चिती साठी प्रस्ताव सादर करणार नाहीत व त्यामुळे मा. उच्च

न्यायालयाच्या आदेशाची अवमानना झाल्यास सर्वस्वी जबाबदारी महाविद्यालयाच्या प्राचार्याची राहिल. याची नोंद घ्यावी." अशा स्पष्ट सूचना नागपूर विद्यापीठाने त्या त्या महाविद्यालयांना दिल्या आहेत. विशेष बाब म्हणजे या पत्राची प्रत संघटनेच्या ('नुटा'च्या) सचिवांना त्यांनी अग्रेषित केली आहे.

(१) सर्व घटक संघटनांनी आपापल्या विद्यापीठाच्या कुलगुरुंकडे शिष्टमंडळे पाठवून नागपूर विद्यापीठाच्या या पध्दतीचा अवलंब करावा अशी त्यांना विनंती करावी. पारदर्शक पध्दतीने केले जाणारे काम विद्यापीठाची प्रतिष्ठा वाढविणारे असते व एका-एका शिक्षकाला, प्राचार्याला, महाविद्यालयाला गुपचूप बोलाविण्याचा प्रकार हा भ्रष्टाचारी मार्गाने जाणारा प्रकार मानला जातो असे विद्यापीठाला कळवावे.

(२) नागपूर विद्यापीठाच्या धर्तीवर पत्र पाठवून विद्यापीठांनी स्वस्थ बसता कामा नये, तर असे पत्र पाठविल्यानंतर १५ दिवसांनी पहिला टप्पा संपला असे समजावे. या टप्प्यामध्ये ज्यांनी प्रस्ताव सादर केलेले नाहीत अशा महाविद्यालयांचे विद्यापीठ स्तरावर शिविरांचे वेळापत्रक जाहीर करावे व त्या शिविरामध्ये प्रस्ताव सादर करण्यास सांगावे. या वेळापत्रकाची प्रत, घटक संघटनेला द्यावी. या दुसऱ्या टप्प्यामध्ये सुध्दा जी महाविद्यालये सहकार्य करणार नाहीत "त्यांना न्यायालयाच्या अवमानाची जबाबदारी त्यांची असेल" असे जाहीर जापन विद्यापीठांनी प्रकाशित करावे अशी विद्यापीठांना विनंती करण्यात यावी.

पात्र : ज्या विभागाचे सहसंचालक किंवा जे विद्यापीठ मा. उच्च न्यायालयाच्या निर्णयाची अंमलबजावणी करण्यात सहकार्य देत नसतील किंवा समाधानकारक वेळापत्रक जाहीर करित नसतील त्या ठिकाणी त्या त्या विद्यापीठावर किंवा संचालकाच्या कार्यालयावर दर सोमवारी सायंकाळी चार वाजता "एक तास आंदोलनाचा कार्यक्रम" आयोजित करण्याचा निर्णय त्या त्या संघटनांनी तेथे तेथे घ्यावा. याबाबतच्या सूचना पुढील प्रमाणे :-

(१) प्रकरणपरत्वे त्या त्या सहसंचालकांच्या किंवा विद्यापीठाच्या कार्यालयावर पहिल्या सोमवारी जो एक तास आंदोलनाचा कार्यक्रम केला जाईल, त्यावेळी त्या सहसंचालकांना किंवा कुलगुरुंना माहितीच्या अधिकारामध्ये एक अर्ज

सादर करावा. त्या अर्जामध्ये (अ) मा. उच्च न्यायालयातील या प्रकरणात आपण प्रतिवादी होता. या प्रकरणामध्ये मा. उच्च न्यायालयाचा निर्णय झाल्यानंतर तर आजपावेतो त्या निर्णयाच्या अंमलबजावणीसाठी आपण कोणकोणती कार्ये पार पाडली. (ब) मा. उच्च न्यायालयाच्या निर्णयाच्या अंमलबजावणी पेक्षा जास्त महत्त्वाची अशी कोणते कामे आपल्या कार्यालयाने या काळात पार पाडली याची माहिती मागवावी. (क) मा. उच्च न्यायालयाच्या निर्णयाच्या अंमलबजावणीसाठी जे वेळापत्रक, कार्यक्रम किंवा शिविराचे आयोजन केले असेल त्याच्या प्रतीची मागणी करावी.

(२) त्यानंतर सोमवारी व त्यानंतरच्या प्रत्येक सोमवारी प्रकरणपरत्वे त्या त्या सहसंचालकांच्या किंवा विद्यापीठाच्या कार्यालयावर सोमवारी जो एक तास आंदोलनाचा कार्यक्रम केला जाईल त्यावेळी त्या सहसंचालकांना किंवा कुलगुरुंना माहितीच्या अधिकारामध्ये पुन्हा अर्ज सादर करावा. त्या अर्जामध्ये (अ) मा. उच्च न्यायालयातील या प्रकरणात आपण प्रतिवादी होता. या प्रकरणामध्ये मा. उच्च न्यायालयाचा निर्णय झाल्यानंतर तर गेल्या सोमवार पासून तर आजपावेतो त्या निर्णयाच्या अंमलबजावणीसाठी आपण कोणकोणती कार्ये पार पाडली. (ब) मा. उच्च न्यायालयाच्या निर्णयाच्या अंमलबजावणी पेक्षा जास्त महत्त्वाची अशी कोणते कामे आपल्या कार्यालयाने या काळात पार पाडली याची माहिती मागवावी. (क) मा. उच्च न्यायालयाच्या निर्णयाच्या अंमलबजावणीसाठी जे वेळापत्रक, कार्यक्रम किंवा शिविराचे आयोजन केले असेल त्याच्या प्रतीची मागणी करावी.

सहा : केलेल्या कारवाईचा अहवाल घटक संघटनांनी महासंघाच्या केंद्रीय कार्यालयाकडे पाठवावा.

(प्रा. ए. टी. सानप) (डॉ. तापती मुखोपाध्याय)
अध्यक्ष सचिव

MAHARASHTRA FEDERATION OF UNIVERSITY &
COLLEGE TEACHERS' ORGANISATIONS
(MFUCTO)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION : WRIT PETITION NO. 9619 OF 2014

Hanmant Balasaheb Patil ... Petitioner VS. The State of Maharashtra through the Principal Secretary & Ors. ... Respondents **WRIT PETITION (St.) NO. 23856 OF 2014** Sanjay Jayendra Pabari & Ors ... Petitioners VS. The State of Maharashtra through the Principal Secretary & Ors. ... Respondents **WRIT PETITION (St.) NO. 27637 OF 2014** Chandrakant Ramdas Patil & Ors. ... Petitioners VS. The State of Maharashtra through the Principal Secretary & Ors. ... Respondents **WRIT PETITION (St.) NO. 28264 OF 2014** Shinde Dnyanoba Gorakh ... Petitioner VS. The State of Maharashtra through the Principal Secretary & Ors. ... Respondents Mr. Yashodeep Deshmukh i/b. Ramdas Shelke, Advocate for the petitioners. Mr. Vikas Mali, AGP for the respondents/State.

CORAM : SMT. VASANTI A. NAIK & C.V. BHADANG, JJ.
DATE : 14th January, 2015.

P.C. :- Heard.

The learned counsel for the parties state that the issue involved in these cases stand answered in favour of the petitioners herein by the judgment rendered by the Aurangabad Bench of the Bombay High Court. The learned Assistant Government Pleader for the State does not dispute this position but states that the Special Leave Petition is filed against the judgment rendered by the Aurangabad Bench and the same is pending. The learned counsel for the parties, however, state that the Hon'ble Supreme Court has passed an interim order in the Special Leave Petition and the Aurangabad Bench of this Court has, in Writ Petition No. 9470 of 2013, passed an order similar to the order passed by the Hon'ble Supreme Court. In view of the aforesaid, we intend to pass a similar order in these cases also.

Hence, Rule.

The learned Assistant Government Pleader waives notice on behalf of the respondent nos. 1 to 3.

In view of the UGC Notification /letter dated 4th November, 2008, though the **petitioners have not passed the NET/SET examination, they would be entitled to the benefits of career advancement scheme** only for the purpose of pay scale, if they have completed 6 years of the service as on that date, within a period of six months.

The parties are at liberty to move this Court for an early disposal of the Writ Petitions after the Hon'ble Supreme Court decides the Special Leave Petition.

(C.V. BHADANG, J.)

(VASANTI A. NAIK, J.)

Item no.101

Court no.12

Section IX

SUPREME COURT OF INDIA

(Record of proceedings)

Civil Appeal No(s). 10759/2013

DATE : 21/01/2015

These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE VIKRAMAJIT SEN

HON'BLE MR. JUSTICE C. NAGAPPAN

STATE OF MAHARASHTRA & ORS. Appellant(s)
VERSUS

ASHA RAMDAS BIDKAR & ORS. Respondent(s)

(with appln. (s) for permission to file additional documents and clarification of court's order and intervention and exemption from filing O.T. and impleadment and intervention and exemption from filing O.T. and directions and exemption from filing O.T. and impleadment and stay)

WITH C.A. NO. 10760/2013

(With appln.(s) for permission to file additional documents and Office Report) SLP(C) No. 13598-13599/2014 (With appln.(s) for de-tagging and appln.(s) for de-tagging and Office Report) SLP(C) No. 13610-13611/2014 (With Office Report) SLP(C) No. 13616-13617/2014 (With Office Report) SLP(C) No. 13618-13626/2014 (With Office Report)

**मा. न्यायालयाच्या अवमान याचिका
प्रक्रियेचा प्रभाव : ५**

(१) आयुर्वेद महाविद्यालयातील "शिक्षकांना पेन्शन योजना लागू न करण्याचा निर्णय" मंत्रिमंडळाने घेतला होता. डॉ.श्रीहरी शंकर वैद्य विरूद्ध महाराष्ट्र सरकार या प्रकरणात (सन १९९२ ची याचिका क्रमांक ३५०८) मा. उच्च न्यायालयाच्या मुंबई खंडपीठाने दिनांक १४ जून १९९६ रोजी राज्यशासनाचा हा निर्णय घटनेच्या कलम १४ व १६ चा भंग करणारा आहे म्हणून रद्द (SET ASIDE) ठरविला होता.

(२) त्या निर्णयावर महाराष्ट्र शासनाने सर्वोच्च न्यायालयात अपील दाखल केले. या अपिलाची सुनावणी होत असतांना राज्य शासनाच्या वतीने सर्वोच्च न्यायालयात असे सांगण्यात आले की "राज्य शासनाची आर्थिक परिस्थिती ठीक नसल्यामुळे आम्ही टप्प्याटप्प्याने ही योजना लागू करित आहोत." पण त्याप्रमाणे शासनाने केले मात्र काहीच नाही. दिनांक ९ जानेवारी १९८६ पासून तर २६ जूलै २००१ पर्यंतच्या काळात २७ वेळा हा प्रश्न विधानपरिषदेत चर्चेला आला. त्यातील ९ प्रसंगी पूर्णपणे सकारात्मक, काटेकोर व मुदतबंद आश्वासने शासनातर्फे देण्यात आली पण शासनाने केले मात्र काहीच नाही. त्यामुळे प्रकरण पुन्हा न्यायालयात गेले.

(३) मा. उच्च न्यायालयाने त्यावर दिनांक १० जून २०१३ रोजी दिलेल्या निर्णयात पुढील प्रमाणे आदेश दिले. :- "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." शासनाने लागेच सर्वोच्च न्यायालयात विशेष अपिलाची परवानगी मागण्यासाठी याचिका दाखल केली. मा. सर्वोच्च न्यायालयाने ती याचिका दिनांक १० जानेवारी २०१४ रोजी 'डिसमिस' केली.

(४) तरीही शासननिर्णय निघाला नाही. शेवटी याचिकाकर्त्यांना मा. नागपूर खंडपीठासमोर सन २०१४ ची अवमान याचिका क्रमांक १०२ दाखल करावी लागली. सुरुवातीच्या तारखांमध्ये काहीही प्रगती झाली नाही. शेवटी मा. उच्च न्यायालयाने २० जानेवारी २०१५ ही शेवटची तारीख म्हणून दिली. त्या दिवशीच्या मा. उच्च न्यायालयाच्या कामकाजातील पहिला परिच्छेद पुढीलप्रमाणे :-

"Learned Assistant Government Pleader has produced before this Court Government Resolution dated 17.1.2015 extending pension and DCRG Scheme to the teaching and nonteaching staff of aided Private Ayurvedic and Unani Colleges and Hospitals. It is taken on record and marked as Exh.X for its identification." (P28 NB15)

(५) मुळात मा. न्यायालयाच्या निर्णयामुळे व त्यानंतर अवमान याचिकेच्या सपाट्यामुळे आता आयुर्वेद महाविद्यालयापुरता शासननिर्णय १७ जानेवारी २०१५ रोजी निर्गमित झाला आहे. - संपादक

PR :- (1) P200 B2014 (2) P202 B2014 (3-4) P203 B2014 (5) P37 B2015

For the parties: Mr. B.H. Marlapalle, Sr. Adv.* Ms. Asha Gopalan Nair, Adv.* Mr. Aniruddha P. Mayee, Adv.2* Mr. Vinay N., Adv.* Mr. Satyajeet Kumar, Adv.* Ms. Given KB, Adv.* Ms. Abha R. Sharma, Adv.* Mr. V. Giri, Sr. Adv.* Mr. Manish Pitale, Adv.* Mr. Nitin Kadam, Adv.* Mr. Amol Nirmalkumar Suryawanshi, Adv.* Mr. Manish Pitale, Adv.* Mr. Wasi Haider, Adv.* Mr. Arjun Harkauli, Adv.* Mr. Chander Shekhar Ashri, Adv.* Mr. Nishant Ramakantrao Katneshwarkar, Adv.* Mr. Uday B. Dube, Adv.* Mr. Venkateswara Rao Anumolu, Adv.* Mr. R.P. Bhat, Sr. Adv.* Dr. R. R. Deshpande, Adv.* Mr. Shashibhushan P. Adgaonkar, Adv.* Mr. Shivaji M. Jadhav, Adv.* Mr. Brij Kishore Sah, Adv.* Mr. Gurukrishna Kr., Sr. Adv.* Mr. Hireen Dasan, Adv.* Mr. Harish Dasan, Adv.* Mr. Avinash Singh, Adv.* Mr. Sarla D., Adv.* **For RR. No. 23** Mr. Manoj R. Sinha, Adv.* UGC Mr. T. Mahipal, Adv.* Mr. Arjun H., Adv.* Mr. Sudhanshu S. C., Adv.* Mr. Vatsalya V., Adv.* Mr. S.S. Chandra, Adv.* Mr. Satyajit A. Desai, Adv.* Ms. Anagha S. Desai, Adv.* Mr. Avijit Bhushan, Adv.*

UPON hearing the counsel the Court made the following

ORDER

Despite an opportunity being granted to the UGC and the other Respondents to file Counter/Reply within four weeks, necessary action has not been taken by them. Counsel for the UGC submits that he has been recently engaged and therefore an adjournment may be granted to him. Even if he had been engaged only yesterday, i.e. no sufficient ground or reason for condoning the failure of the UGC to file its Counter. Even today the counsel for the Counsel is not in a position to state whether or not he would rely on the Counter filed by it in the High Court.

Learned Senior Counsel appearing for the State of Maharashtra submits that clarification and elucidation on the following five issues is required by the UGC:

"1. Whether the exemption in acquiring NET/SET qualifications granted by the UGC in October/November 2008, was withdrawn by it, after the Government of India- HRD disapproved the same?

2. If it was not withdrawn, whether it would operate prospectively?

3. Whether the said exemption granted in 2011, has been objected to or approved by the Government of India, at any time thereafter?

4. If the said exemption has not been recalled, whether it operates prospectively?

5. When the CAS announced from 1991 onwards specifically states, as one of the conditions of eligibility that the lecturer must have the prescribed qualifications namely PG degree with 55% marks plus Ph.D or M.Phil or NET/SET, whether the NET/SET exempted teachers who do not hold a Ph.D or M.Phil Degree, will be entitled for the CAS benefit and if yes, from what date?"

Learned Senior Counsel appearing for the Respondent-Teachers, submits that, in order to curtail time, an opportunity may be granted to the UGC to give a further response including to the five points now clarified by learned Senior Counsel on behalf of the State. However, this should be without prejudice to the rights of the said Respondents to challenge, what they have perceived as may on that case, in these proceedings.

Since the proceedings for today are being adjourned at the instance of the UGC, in order to enable them to file Counter within two weeks from today, failure on its part to take necessary steps will require the Secretary, UGC to be personally present on the next date of hearing.

List on 18th March, 2015.

(Neelam Gulati) Court master

(Saroj Saini) Court master

नेट-सेट मुक्त शिक्षकांच्या बाबतीत मा. उच्च न्यायालयाच्या विविध खंडपीठांनी दिलेल्या न्यायनिर्णयांची तिसरी सूची

(१) पहिली सूची : मा. सर्वोच्च न्यायालयाचा १८ नोव्हेंबर २०१३ रोजीचा निर्णय होण्यापूर्वीचे मा. उच्च न्यायालयाचे निर्णय :- मा. उच्च न्यायालयांमध्ये याबाबतची सर्व कागदपत्रे व युक्तिवादांच्या मूल्यमापनानंतर जे निर्णय झाले. त्यामध्ये याचिकाकर्त्यातर्फे करण्यात आलेला युक्तिवाद, याचिकाकर्त्याच्या तर्फे सादर करण्यात आलेली कागदपत्रे न्यायालयाने लक्षात घेतली व त्याचबरोबर शासनाच्या वतीने उत्तरादाखल सादर करण्यात आलेली प्रतिज्ञापत्रे, सोबतची कागदपत्रे व युक्तीवाद ह्या सर्व गोष्टी विचारात घेऊन गुणवत्तेवर मा. उच्च न्यायालयाने हे निर्णय दिलेले असून त्यांची संख्या सात आहे. ते निर्णय कोणत्या खंडपीठांनी दिलेले आहेत, कोणत्या प्रकरणात दिलेले आहेत व कोणत्या तारखेला दिलेले आहेत याची पहिली सूची यापूर्वीच सन २०१४ च्या बुलेटीनमध्ये पृष्ठ १०६ व १२१ वर प्रसृत करण्यात आली आहे.

(२) दुसरी सूची : मा. सर्वोच्च न्यायालयाचा १८ नोव्हेंबर २०१३ रोजीचा निर्णय झाल्यानंतरचे मा. उच्च न्यायालयाचे निर्णय :- एकदा मा. सर्वोच्च न्यायालयाचा दिनांक १८ नोव्हेंबर २०१३ रोजीचा अंतरिम आदेश (Interim order) झाल्यानंतरच्या काळात मा. उच्च न्यायालयाच्या विविध खंडपीठांचे जेवढे निर्णय झाले ते सारे सर्वोच्च न्यायालयाच्या निर्णयावर आधारित आहेत. मा. उच्च न्यायालयाच्या विविध खंडपीठांनी दिलेल्या अशा निर्णयांची संख्या नऊ आहे. दुसरी सूची यापूर्वीच सन २०१४ च्या बुलेटीनमध्ये पृष्ठ १०७ व १२३ वर प्रसृत करण्यात आली आहे.

(३) तिसरी सूची :- पहिली सूची व दुसरी सूची प्रकाशित केल्यानंतरच्या काळात लागलेल्या व संघटनेच्या कार्यालयात उपलब्ध झालेल्या निर्णयांची तिसरी सूची पुढीलप्रमाणे :-

(17) W.P. NO. 5224 OF 2013 :- IN THE HIGH COURT OF JUDICATURE AT BOMBAY, BENCH AT AURANGABAD. WRIT PETITION NO. 5224 OF 2013 Dr. Vishwanath Murlidharrao Ratnalikar age 51 years, occup. service, VERSUS The State of Maharashtra, through its Secretary, Higher Education Department, Mantralaya, Mumbai CORAM : R. M. BORDE, AND SUNIL P. DESHMUKH, JJ. SEPTEMBER 26, 2013 : Oral Judgment (Per: Sunil P. Deshmukh, J.) Judgment circulated on page 151 of 2014 NUTA Bulletin.

(18) W.P. NO. 11392 OF 2013 :- IN THE HIGH COURT OF JUDICATURE AT BOMBAY CIVIL APPELLATE JURISDICTION WRIT PETITION NO. 11392 OF 2013 Dr. Avinash B. Shendre & ors. ...Petitioners vs University Grants Commission and ors : CORAM : ANOOP V. MOHTA AND F. M. REIS, JJ. DATE : September 24, 2014 Judgment circulated on page 184 of 2014 NUTA Bulletin.

(19) W. P. NO. 2216 OF 2014 :- IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR BENCH : NAGPUR WRIT PETITION NO. 2216 OF 2014 Dr. Abhay Bhausaheb Solunke vs. State of Maharashtra thr. Principal, Secretary, Higher & Technical Education Department & Ors CORAM : B.P. DHARMADHIKARI & P.R. BORA, JJ. NOVEMBER 07, 2014. Judgment circulated on page 190 of 2014 NUTA Bulletin

(20) W. P. NO. 1534 OF 2014 :- IN THE HIGH COURT OF JUDICATURE OF BOMBAY BENCH AT AURANGABAD WRIT PETITION NO. 1534 OF 2014 BHUMREDDY VITHALREDDY PULLAGOR AND OTHERS VERSUS THE STATE OF MAHARASHTRA AND OTHERS CORAM : S.S. SHINDE & V.K. JADHAV, JJ. Dated: May 07, 2014. Judgment circulated on page 2 of 2015 NUTA Bulletin.

(21) W. P. NO. 3448 OF 2014 :- IN THE HIGH COURT OF JUDICATURE OF BOMBAY BENCH AT AURANGABAD WRIT PETITION NO. 3448 OF 2014 SUNIL RAOSAHEB RAUT VERSUS THE UNION OF INDIA AND OTHERS CORAM : S.S. SHINDE & V.K. JADHAV, JJ. Dated: April 11, 2014. Judgment circulated on page 5 of 2015 NUTA Bulletin.

(22) W.P. NO. 2236/2014 :- IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR BENCH, NAGPUR. WRIT PETITION NO. 2236/2014. Vijay Dalpatrao Kapse and others VERSUS State of Maharashtra and others. CORAM : B.P. DHARMADHIKARI & A.P. BHANGALE, JJ. DATED : JANUARY 07, 2015. Judgment circulated on page 14 of 2015 NUTA Bulletin.

(23) W.P. NO. 5261 / 2013 :- IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR BENCH, NAGPUR. WRIT PETITION NO. 5261 / 2013. Chandraskehar H. Sawarkar and others. VERSUS State of Maharashtra and others. CORAM: B.P. DHARMADHIKARI & A.P. BHANGALE, JJ. DATED: JANUARY 19, 2015. Judgment circulated on page 23 of 2015 NUTA Bulletin.

(24) W.P. NO. 9619 / 2014 :- IN THE HIGH COURT OF JUDICATURE AT BOMBAY CIVIL APPELLATE JURISDICTION. WRIT PETITION NO. 9619 / 2014. Hanmant Balasaheb Patil Petitioner VS. The State of Maharashtra through the Principal Secretary & Ors. CORAM : SMT. VASANTI A. NAIK & C.V. BHADANG, JJ. DATE : 14th January, 2015. Judgment circulated on page 24 of 2015 NUTA Bulletin.

(25) W.P. NO. 2632 / 2013 :- IN THE HIGH COURT OF JUDICATURE AT BOMBAY ORDINARY ORIGINAL CIVIL JURISDICTION. WRIT PETITION NO. 2632 / 2013. Ms. Lata S. Bhosale Petitioner VS. The State of Maharashtra & Ors. CORAM : SMT. VASANTI A. NAIK & C.V. BHADANG, JJ. DATE : 14th January, 2015. Judgment circulated on page 27 of 2015 NUTA Bulletin.

(26) W.P. NO. 1371 / 2015 :- IN THE HIGH COURT OF JUDICATURE AT BOMBAY CIVIL APPELLATE JURISDICTION. WRIT PETITION NO. 1371 / 2015. Prof. Deepak Rajaram Yeole & Ors. ...Petitioners VS. University Grants Commission & Ors. ...Respondents. CORAM : SMT. VASANTI A. NAIK & SHRI C.V. BHADANG, JJ. DATE : 10th FEBRUARY, 2015. Judgment circulated on page 40 of 2015 NUTA Bulletin.

नेट-सेट नाही म्हणून पेन्शन नाकारण्याचा प्रयत्न मा. उच्च न्यायालयाने फेटाळून लावला

१. नेट-सेट मुक्त शिक्षकांच्या संदर्भात अंतिम निकाल लागण्यापूर्वी निवृत्त होणाऱ्या नेट-सेट मुक्त शिक्षकांना न्यायालयात संघर्ष करावा लागेल असे दिसते. या शिक्षकांनी याबाबत मा. उच्च न्यायालयाचे दोन निर्णय समोर ठेवून आपल्या न्यायालयीन संघर्षाची बांधणी केली पाहिजे.

२. यातील पहिल्या निर्णयाची तपशीलवार माहिती “नेट-सेट मुक्त शिक्षकांबाबत शासनाच्या आकसपूर्ण भूमिकेला मा. उच्च न्यायालयाचा सहावा तडाखा” या मथळ्याखाली सन २०१३ च्या बुलेटीन मध्ये पृष्ठ २२९ वर (परिच्छेद २५) नमूद केलेली आहे. सन १९९९ ते २००० या कालखंडात महाराष्ट्रात सेवेत भरती झालेल्या नेटसेटग्रस्त प्राध्यापकांच्या बाबतीत “तो प्राध्यापक नेट सेट पात्रता धारण करीत नाही म्हणून त्याची सेवा अॅडव्हॉक म्हणता येणार नाही. त्याची सेवा कायम स्वरुपीच समजावी लागेल व त्याला जुनी पेन्शन योजना नाकारता येणार नाही” असा सुस्पष्ट निर्णय मा. उच्च न्यायालयाने सन २०१३ च्या त्या याचिका क्रमांक ३१२२ मध्ये दिनांक २६ सप्टेंबर २०१३ रोजी दिला. मुळात हा निकाल २४ ऑक्टोबर २००० रोजी महाविद्यालयीन न्यायाधिकरणाने दिलेला होता, तो मा. मुंबई खंडपीठाने ठाम शब्दात कायम केला आहे. (Full text of the judgement is circulated on page 218 of 2013 NUTA Bulletin)

३. यातील मा. उच्च न्यायालयाचा दुसरा निर्णय सन २०१३ च्या याचिका क्रमांक ५०८७ मध्ये दिनांक २५ ऑक्टोबर २०१३ रोजी झाला असून तो याच अंकात (पृष्ठ ३७ वर) प्रसृत करण्यात आला आहे. हा निर्णय २३ ऑक्टोबर १९९२ पूर्वी निवृत्त झालेल्या शिक्षकांच्या बाबतीत आहे. असे असले तरी “सप्टेंबर १९९९ ते २३ ऑक्टोबर १९९२” या काळातील नेट-सेट मुक्त शिक्षक व “२३ ऑक्टोबर १९९२ ते ३ एप्रिल २०००” या काळातील नेट-सेट मुक्त शिक्षक यांच्या वैधानिक स्थितीमध्ये कोणताही फरक नाही. ही बाब न्यायालयाच्या लक्षात आणून घ्यावी लागेल. सर्वांच्या माहितीसाठी म्हणून प्रकाशित करण्यात येत आहे.

- डॉ. प्रवीण रघुवंशी, अध्यक्ष ‘नुटा’

SECRETARY'S REPORT ON THE WORKING OF THE ASSOCIATION FOR THE YEAR ENDING ON 31st DECEMBER, 2014

*Prepared by the Executive Committee of NUTA under article (VI)(b)(ii) of the Constitution of NUTA
and presented by Secretary on behalf of the NUTA Executive Committee*

Dear Friends,

(1) It gives me immense pleasure to extend very warm welcome to you on behalf of the Executive Committee of NUTA and my own behalf. It is indeed a proud privilege for me to place before this august body a brief account of our activities and achievements during the year 2014.

(2) Right from its inception, NUTA has been committed to the cause of welfare of the teaching community and teachers' professional betterment. In keeping with this commitment, the Association took up several issues concerning teaching community during the period of this report which witnessed a protracted battle and had major achievements. This particular year was again the year of continuous struggle for major issues.

COURT CASES:

Net-Set affected teachers:

(3) The issue of net-set affected teachers continued to remain foremost on the agenda of the Association. The govt. however, remained callous. It appeared to be unmindful of the fact that the matter was already adjudicated by the Supreme Court and the Benches of Bombay High Court and instead of implementing the orders of the Courts which were binding on it as per Article 129 and 215 of the Constitution of India, the Minister for

Higher and Technical Education had addressed a communication to one of the members of the Legislative Council on 28-11-2013 that it was under the consideration of the government whether such benefits under CAS by notionally computing the service of these teachers from the date of appointment could be granted. The Association therefore immediately served a contempt notice dated 17-02-2014 stating that this was prima facie derogatory and in deliberate and willful breach of the directives of the Hon'ble Courts.

(4) As per the decision of the MFUCTO, the Association on 1-4-2014 facilitated the submission of intervention application representing the case of NET-SET affected teachers in the area of Nagpur Division Bench in the Supreme Court of India in civil appeal no. 10759 of 2013 in the matter of State of Maharashtra and ors. Vs. Asha Ramdas Bidkar. Similar intervention application was also filed by MFUCTO on 04-04-2014 representing the case of NET-SET affected teachers in the State in general and under the area of Bombay Division Bench in particular. A meeting of NET-SET affected teachers was also held at Amravati on 29 June, 2014 to take into consideration the MFUCTO's resolution of 7 April 2014, the decisions given by different Benches of the Court and the measures to be taken to strengthen the ongoing legal battle in the

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2632 OF 2013

Ms. Lata S. Bhosale ... Petitioner **VS.** The State of Maharashtra & Ors. ... Respondents **WRIT PETITION NO. 2133 OF 2014** Archana S. Thakur & Ors. ... Petitioners vs. University Grants Commission & Ors. ... Respondents Mr. Yashodeep Deshmukh i/b. Pratil Sonawane, Advocate for the petitioner in WP No. 2632/2013. Mr. Mihir Desai, Advocate for the petitioner in W.P. No. 2133/2014. Mr. Milind More, Addl. G.P. for respondent nos. 1 to 3. Mr. Rui Rodrigues, Advocate for respondent nos. 4 and 5 in W.P. No. 2632/2013 and respondent nos. 1 and 6 in W.P. No. 2133/2014. Ms. Anjali Helekar, AGP for respondent nos. 2 to 5 in WP No. 2133/2014.

CORAM : SMT. VASANTI A. NAIK & C.V. BHADANG, JJ.

DATE : 14th January, 2015.

P.C :- Heard.

The learned counsel for the parties state that the issue involved in these cases stand answered in favour of the petitioners herein by the judgment rendered by the Aurangabad Bench of the Bombay High Court. The learned Assistant Government Pleader for the State does not dispute this position but states that the Special Leave Petition is filed against the judgment rendered by the Aurangabad Bench and the same is pending. The learned counsel for the parties, however, state that the Hon'ble Supreme Court has passed an interim order in the Special Leave Petition and the Aurangabad Bench of this Court has, in Writ Petition No. 9470 of 2013, passed an order similar to the order passed by the Hon'ble Supreme Court. In view of the aforesaid, we intend to pass a similar order in these cases also.

Hence, Rule.

The learned Assistant Government Pleader Ms. Helekar waives notice on behalf of the respondent nos. 2 to 5. Mr. Rodrigues, the learned counsel waives notice on behalf of respondent nos 4 and 5 in WP/2632/2013 and respondent nos. 1 and 6 in WP/2133/2014. The learned Additional Government Pleader waives notice on behalf of respondent nos. 1 to 3.

In view of the UGC Notification /letter dated 4th November, 2008, though the **petitioners have not passed the NET/SET examination, they would be entitled to the benefits of career advancement scheme** only for the purpose of pay scale, if they have completed 6 years of the service as on that date. This exercise should be completed within a period of six months.

The parties are at liberty to move this Court for an early disposal of the Writ Petitions after the Hon'ble Supreme Court decides the Special Leave Petition.

(C.V. BHADANG, J.)

(VASANTI A. NAIK, J.)

Supreme Court. On coming to know about the filing of an Application for Directions in the Supreme Court by the original petitioners on 4-7-2014, it was decided to facilitate the submission of some of the vital documents in Supreme Court like Apex Court decision in Civil Appeal No. 1819 of 1994 decided on 8-9-1994 to strengthen the prayer in fresh application.

Gratuity Difference

(5) As per the decision of the Association, three petitions no.5807, 5811 & 6471 of 2013 representing 125 teachers in Nagpur and Amravati region were filed which came to be collectively decided by the court on 11 July, 2014 in favour of these teachers. The Government was directed to pay the amount towards difference of Gratuity to the petitioners within a period of three months from the date of receipt of the order. Around the same time, the matter of the contempt petition no. 307 of 2013 came up for hearing in Supreme Court and Higher and Technical Education Secretary was required to tender an unconditional apology on 4 July 2014 for not complying with the orders dated 30 January, 2013 issued in the original petition and consequently the Govt. had to agree to deposit the amount limited to the petitioners before 16th August, 2014. As a matter of fact the Supreme Court had ordered to pay the difference to other similarly situated employees as well. The State Govt. has subsequently issued a G. R. dated 31 July, 2014 approving to deposit an amount of Rs. 3964.93 lacs in the Supreme Court for the payment of difference of Gratuity to the teachers superannuated between 1 January, 2006 and 31 August, 2009. However,

the petitioners in the petitions in Nagpur Bench and other similarly placed teachers have yet to receive the benefit.

Benefit of fixation in Rs. 14940

(6) Several petitions in respect of the benefit of fixation in Rs. 14940/- of those who had moved to selection grade after 1-1-1996 and had completed 5 years of service were filed in the Nagpur Bench of Bombay High Court and were decided in favour of the petitioners and orders were passed. However, the benefit was extended only in respect of those petitioners who had filed contempt petition and the Government order about policy decision regarding implementation of the court orders has not been issued.

Recovery of the benefit of stagnation increments

(7) After the decisions given by the Nagpur Bench of Bombay High Court in W. P. no.5892 (2012) and 6472 (2013) in respect of the recovery of the benefit of stagnation increments, another W. P. no. 2215 of 2014 was required to be filed in the court followed by a couple of more cases.

Benefit of stepping up of salary

(8) Following the favourable decisions given in W. P. nos. 10283 of 2012 and 953 of 2014 in respect of the stepping up of salary of those teachers who acquired Ph. D. before 2006 and were getting less salary than their juniors, a meeting of the similarly placed teachers was held at Amravati on 23rd February, 2014. After that 20 petitions from Amravati and Nagpur division have been filed at Nagpur Bench of Bombay High Court.

Payment of arrears

(9) Following the record of the undertaking given by the state government regarding the release of arrears on account of sixth pay revision in the judgement given by Bombay High court on 10 May 2013 in W. P. (Lodging) No. 1326/2012, the arrears were released to most of the teachers under the Dept. of Higher Education by the end of 2013. However, the teachers of Sant Gadge Baba Amravati University did not receive the arrears till next

सहसंचालक कार्यालय, उच्च शिक्षण,

अमरावती विभाग, अमरावती-४४४ ६०४

दूरध्वनी क्रमांक ०७२१-२५३१२३५

email-jdheamt@yahoo.co : website-www.jdheamravati.org.in

क्रमांक-सस/उशि/न्या.प्र./१५/३४८

दिनांक - १५.०१.२०१५

प्रति :- (१) श्री रमेश शेषराव सोनटक्के (२) श्री मनोज बन्सीजी गाठे (३) श्री संजय विनायकराव जगताप (४) सिमा धर्मा मेश्राम (५) श्री अनिल जगन्नाथ गौर (६) विद्या नारायणराव महल्ले (७) स्व. बापूरावजी हिवसे, बॅरि.आर.डि.आय.के.कला वाणिज्य विज्ञान महाविद्यालय, बडनेरा, जि. अमरावती. (८) डॉ. पंडीत गोवरा राठोड (९) श्री रोहणप्रकाश श्रीरामचंद्रराव पोटुकुची (१०) श्री रविंद्र जगदेवराव तायडे, तक्षशिला महाविद्यालय, कॉंग्रेस नगर रोड, श्याम नगर, अमरावती (११) श्री अजय जानराव सोळंके (१२) श्री अरुण नथ्युजी दासोडे (१३) प्रदीप बाबाराव झिलपीलवार, शिवरामजी मोघे कला, वाणिज्य आणि विज्ञान महाविद्यालय, केळापूर, जि. यवतमाळ. (१४) अल्का अनंतराव भिसे (१५) अनिता सोऊळे (मेश्राम) (१६) श्री गजाननराव शंकरराव काळे, इंंदीराबाई मेघे महिला महाविद्यालय, मोर्शी रोड, अमरावती. (१७) सुजाता बलवंत सवाने (१८) श्री कुलदिपसिंघ कोमलसिंघ मोहाडिकर (१९) श्री ज्ञानेश्वर सितजूरा नमुते, श्री शिवाजी कला आणि वाणिज्य महाविद्यालय, मोर्शी रोड, अमरावती.

विषय : याचिका क्रमांक ५०७३/२०१३ श्री रमेश शेषराव सोनटक्के विरुद्ध महाराष्ट्र शासन व इतर.

संदर्भ : १. मा. सर्वोच्च न्यायालय, नवी दिल्ली यांचे आदेश दि. १८.११.२०१३ व दि. २७.११.२०१३

२. मा. उच्च न्यायालय, मुंबई खंडपीठ, नागपूर यांचे इंटेरिम आदेश दिनांक २३.०१.२०१४.

उपरोक्त विषयाच्या अनुषंगाने कळविण्यात येते की, मा. उच्च न्यायालयाने दिनांक २३.०१.२०१४ च्या आदेशामध्ये मा. सर्वोच्च न्यायालय, नवी दिल्ली यांचे आदेश दिनांक १८.११.२०१३ च्या अनुषंगाने इंटेरिम आदेश दिलेले आहे. मा. सर्वोच्च न्यायालयाचे दि. १८.११.२०१३ व दि. २७.११.२०१३ च्या निर्णयाच्या अधिन राहून वेतननिश्चिती करण्यात आली आहे.

सहसंचालक, उच्च शिक्षण
अमरावती विभाग, अमरावती

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

CONTEMPT PETITION NO.102 OF 2014 IN
WRIT PETITION NO.5771 OF 2011 (D)

Vidarbha Ayurved Mahavidyalaya, Amravati and ors ..VS..
Manisha Mhaiskar, Principal Secretary, Medical Education and
Drugs Deptt and ors (Shri A.M. Sudame, counsel for the
petitioner. Shri A.S. Fulzele, AGP for R-3.)

CORAM:

B.PDHARMADHIKARI & A.PBHANGALE, JJ.

DATE : JANUARY 20, 2015.

Heard.

Learned Assistant Government Pleader has produced before this Court Government Resolution dated 17.1.2015 extending pension and DCRG Scheme to the teaching and nonteaching staff of aided Private Ayurvedic and Unani Colleges and Hospitals. It is taken on record and marked as Exh. "X" for its identification.

Shri Sudame, learned counsel, submits that in view of the said Government Resolution the grievance of the petitioner does not survive.

As the State Government has extended the benefits, looking to the nature of decision required to be taken by the State Government, we find that time taken for the same cannot be said to be wholly unjustified. As such, we are not inclined to proceed further in the matter.

The contempt petition is disposed of with no order as to costs.

JUDGE

JUDGE

Note:- See para 20 (B) of the Secretary's report on the working of the association for The year ending on 31st december, 2014 on page 31 of 2015 Bulletin

March. And hence a contempt notice dated 14-03-2014 was served upon the concerned following which the Office of the Joint Director Amravati issued orders regarding the payment of arrears on 5-4-2014.

PARTICIPATION IN ACTION PROGRAMME:

(10) Because the Government was neither holding talks with the Association nor was taking decisions, the teachers in the state of Maharashtra were required to seek legal remedy in the Courts of Law. Several Writ Petitions not only relating to Net-Set affected teachers but also about Gratuity benefit, the benefit of 14940, the benefit of stagnation increments, the benefit of pension cum gratuity scheme to Social Work and Ayurved teachers, the benefit of stepping up of salary etc. were filed at Bombay High Court and its Benches and were decided in favour of the teachers. However, the Government was not implementing the decisions. Contempt proceedings were undertaken but when the dozens of High Court and Supreme Court orders were not implemented, it amounted to the collapse of constitutional machinery in the state. When the Chief Minister and members of the Council assume office, they are bound by the oath that they will function in accordance with the Constitution and without ill-will and affection towards any section of the society.

(11) The Supreme Court and the High Courts have been conferred with the status of Court of Record by the Constitution of India under article 129 and 215 respectively and the orders of these courts are binding on the State government. When that was not done for months together, it was an evidence of the fact that the constitutional mechanism had broken down. And hence MFUCTO in its meeting held at Mumbai on 1 June 2014 adopted a resolution seeking dismissal of the then state government headed by Shri Prithwiraj Chavhan by the President of

India in exercise of the powers vested in him by article 356 of the Constitution of India. The detailed memorandum incorporating the demand was submitted to the Hon'ble Governor of Maharashtra by the delegation of MFUCTO on 6th June 2014 and to the Hon'ble President of India and Hon'ble Union Home Minister on 20 June, 2014 by way of an advance copy.

(12) To press for this demand, an action programme was chalked out as per which a state-level 'jail Bharo' was held at Azad Maidan Mumbai on 21st July, 2014. The demonstrations were to be held before the Minister of Higher Education and other ministers visiting the district place in the state for public function. Accordingly, strong demonstrations were held before the Deputy Chief Minister Shri Ajit Pawar at Amravati, Yeotmal and Wardha. The demonstrators at Amravati had also to face police action. On 4th August, 2014 Dharna and demonstrations were organized at Jantar Mantar, New Delhi and the leadership called upon the Union Home Minister and Shri Nitinji Gadkari, Union Minister and submitted a copy of the Resolution.

(13) On 20 June, 2014 the office of the Governor of Maharashtra acknowledged the receipt of the memorandum of demands and informed the MFUCTO secretary that the same was referred to the Principal Secretary to Government, Higher and Technical education Department and the Chief Minister's Secretariat. Taking note of the MFUCTO's submissions, The President's Secretariat wrote to the Joint Secretary II to the Govt. of India "Enclosed please find for appropriate action a petition Dt.: 20th June, 2014 addressed to the President of India, which is self explanatory. Action taken on the petition may please be communicated to the petitioner directly under intimation to this Secretariat"

BUDGET FOR THE FINANCIAL YEAR - 2015-2016

OFFICIAL ACCOUNTING YEAR OF THE TRUST : 2014-2015 (AS PER SCHEDULE VII-A OF THE B.P.T.A. 1950)

Name of the Trust : NAGPUR UNIVERSITY TEACHERS' ASSOCIATION.

Regn. of the Trust : B.P.T.A. Regn. No. F-1564 & Soc. Regn. Act. Regn. No. MAH-15-73(NGP)

ESTIMATED RECEIPTS	RS. P.	ESTIMATED DISBURSEMENTS	Rs. P
I. OPENING BALANCE :		A)NON-RECURRING :	
i) Cash in hand ... ..	... ..	i) Major Repairs or rebuilding of the assets etc. ... ..	... ..
ii) Cash in Bank	70,000.00	ii) Net purchase of immovable property ... ..	... ..
II. ESTIMATED RECEIPTS :		B)RECURRING :	
(A) NON RECURRING		i) Rents, rates taxes etc.	10,000.00
i) Ordinary Donations to be received for specific earmarked objects (permanent subscription to NUTA Bulletin) ... ..	... ..	ii) Administrative Expenses ... ..	... ..
ii) Ordinary Donations... ..	... ..	a) Stationery, Typing , Cyclostyling & Printing	5,00,000.00
(B) RECURRING :		b) Travelling Expenses	30,000.00
i) Rent etc. on immovable property ... ..	... ..	c) Postage and Telephone.	15,000.00
ii) Interest on Fixed Deposits	6,60,000.00	d) Misc. expenses	15,000.00
iii) Dividend shares etc ... ..	... ..	e) Bank commission	2,000.00
iv) Income from Agri. land ... ..	... ..	f) Meeting Expenses	10,000.00
v) Other revenue Receipt ... ..	... ..	g) Audit fees	5618.00
vi) Legal Aid Fund ... ..	... ..	h) Affiliation fees ... ..	... ..
III. REALISATION FROM DISPOSAL OF ASSETS :		i) MFUCTO	4000.00
IV EXCESS OF EXPENDITURE OVER INCOME :		ii) AIFUCTO	7,000.00
TOTAL Rs.	7,30,000.00	iii) Contribution to public trust\ admn. Fund ... ..	... ..
		vi) Books Library ... ..	... ..
		iii) Payment of Salaries	60,000.00
		iv) Transfer of Depreciation Fund	45,000.00
		v) Special & Current repairs of building Furniture etc	10,000.00
		vi) Excess of income over expenditure	16,382.00
		TOTAL Rs.	7,30,000.00

NOTE : Estimated enrolment of members during the year is expected to be 10. On this account the Association will receive an estimated amount of Rs. 1,00,010/- However this amount cannot be included in the estimated receipts because this amount is to be invested in fixed deposit receipts or any other Govt. Securities as per Article III of the Constitution . - Sd. **B. T. Gawande**, Treasurer. NUTA

with a copy to MFUCTO General Secretary requesting to liaise with Chirabrata Sarkar, Under Secretary directly for further information in the matter.

(14) Even when the agitation was underway the election to the State Legislature was announced and the Code of Conduct was enforced. In view of this, the MFUCTO decided in its meeting at Pune on 24th August, 2014 to suspend the agitation during the period of Code of Conduct and resume the same after the Code of Conduct was withdrawn. Accordingly, as per the programme, the university level Associations held demonstrations before the office of the Vice- Chancellor of the University on 24th November and a state level Dharna was held at Mumbai on 1 December, 2014. On 8th December the teachers in the state proceeded on mass casual leave which was to be followed by an 'indefinite ceasework' from the 15th December. In the meantime, the new government came to power. The Organisation submitted a Demand memo to the new Chief Minister and the Minister of Higher Education. It may be stated that the Minister officially called MFUCTO for discussion on 19th November 2014 although nothing concrete followed. Nevertheless, the MFUCTO in its meeting held on 14th December while appreciating the view expressed by the Minister that the Govt. be allowed some time since the issues involved implementation of Court orders, decided on its own to withdraw the agitation.

(15) I am happy to inform this August body that the teachers from Rashtrasant Tukdoji Maharaj Nagpur University, Sant Gadge Baba Amravati University and Gondwana University participated in large numbers in all the programmes of agitation and made them successful. Nevertheless, the struggle has not ended. The Association is keeping a vigilant eye on the developments at all levels leaving nothing to chance. I have absolutely no doubt that the success will come our way since our demands are lawful and are based on strong legal footing.

Apathetic attitude of the State Government

(16) The State Government all along continued with its apathetic attitude in respect of the demands of the Association and the implementation of the Court orders. When one after the other court decisions came out but no implementation took place particularly in respect of NET-SET affected teachers, a contempt notice dated 17-09-

2014 in W.P. No. 6325/2013 was issued to the Director, Higher Education Pune and Joint Director Nagpur by our Advocate on behalf of one of the petitioners and Joint Secretary of the Association Dr. Nitin Kongre. In order to show that something was being done at his end, the Joint Director Nagpur addressed a communication dated 24-09-2014 to the concerned the contents of which could not be deciphered despite best of the efforts of reading.

(17) In the meantime, the Department of Higher and Technical Education sent a communication dated 11 November, 2014 to the Director of Higher Education and Joint Directors of Aurangabad, Nanded and Jalgaon divisions seeking their explanation for not implementing the court decisions and ensure their immediate implementation. The said communication was brought to the notice of the Joint Directors at Amravati and Nagpur. Although the Joint Director at Amravati appears to have taken some positive steps to implement the court orders, the Joint Director at Nagpur has continued with his dilly-dallying attitude and has sent a letter dated 1-1-2015 to the colleges asking them to submit 11 different documents

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 3761 OF 2014.

(1) Dr. Chandrashekhar V. Dhuley, Aged about 55 . Occ: Service, R/o. C/o. Dharampeth M.P. Deo Memorial Science College, Nagpur. (2) Dr. Mrs. Archana S. Kulkarni, Aged about 56, Occ: Service, R/o. C/o. Dharampeth M.P. Deo Memorial Science College, Nagpur. ...Petitioners.

VERSUS (1) The State of Maharashtra, Through Principal Secretary, Higher and Technical Education Department, Mantralaya, Mumbai 32. (2) Joint Director of Higher Education, Nagpur Division, Nagpur. (3) Rashtra Sant Tukdoji Maharaj Nagpur University, through its Registrar, Nagpur. (4) Dharampeth M.P. Deo Memorial Science College, Nagpur, Through its Principal, Nagpur.Respondent.

Mr. A.I. Sheikh, Advocate for the petitioners.
Mrs. Kalyani Deshpande, AGP for R-1 and 2.

Mr. R.D. Khade, Adv. for respondent no.3.

CORAM:

B.R.GAVAI & SMT. MRUDULA R. BHATKAR, JJ
DATE : 23.1.2015

ORAL JUDGMENT (PER B.R.GAVAI, J)

Heard.

2. Rule. Rule made returnable forthwith. By consent of the parties, the petition is taken up for hearing finally.

3. The facts in the present case, are identical with the facts in the Writ Petition No. 10283 of 2012 (Sudamrao Keshawrao Aher and others vs. The State of Maharashtra and others) and another decided by Aurangabad Bench on 21st November, 2013 and in W.P.No. 4628 of 2013 (Dr. Shripad Anandrao Sonegaonkar vs. State of Maharashtra and others) decided by this Court on 27.1.2014.

4. In that view of the matter, the respondents are directed to compute the amounts payable to the petitioners in accordance with the Judgment and order passed by the Division Bench of Aurangabad Bench in W.P.No. 10283 of 2012 and another and release the said amount to the petitioners. The same shall be done within a period of two months.

Rule is made absolute in the aforesaid terms. No order as to costs.

JUDGE

JUDGE

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

CAW No. 56/15 In WP No. 4377 of 2013

Prabhakar and ors v. The State of Maharashtra and ors
(Mr P. S. Sadavarte, Adv for petitioner Mr D. M. Kale, AGP for respdts 1 to 5)

**CORAM : B.P. DHARMADHIKARI AND
A.P. BHANGALE, JJ**

DATED : 13th January 2015

Heard for some time. One of the applicants in CAW No. 56/15 is a senior citizen. Demand is for arrears of VI Pay Revision. Reason given by the State Government in reply affidavit is tight fiscal position.

That cannot be an excuse to deny arrears. We direct respondents to file appropriate affidavit explaining time period within which arrears can be made over to the petitioners. Affidavit be filed within three weeks.

Stand over to 3.2.2015.

JUDGE

JUDGE

Note:- See para 19 of the Secretary's report on the working of the association for The year ending on 31st december, 2014 on page 31 of 2015 Bulletin.

in respect of the petitioners although these documents are a part of the enclosures to the petitions to which he was a party.

(18) A letter dated 12 December 2013 was issued by the Department informing about a meeting to be held at Mantralaya on 9-1-2014 regarding the salary for the period of non-cooperation with the examination-related work between 4-2-2013 and 10-05-2013. The said communication was received by the President of MFUCTO on 7 January, 2014 on fax. When the delegation of MFUCTO contacted the Desk Officer on 9 January, 2014 at 12.50 p.m., it was told that there was no meeting scheduled for that day. The MFUCTO recorded its protest in writing the same day. The issue of release of salary for this period also figured during discussion with the Minister on 19th November, 2014. However, no minutes of this meeting could become available and the fact remains that this salary has not been released even when the petition in the court is being pursued.

ISSUES OF SOCIAL WORK COLLEGE TEACHERS

(19) Although 100% arrears on account of sixth pay revision have been disbursed to the teachers under the Department of Higher Education, it remains a fact that no arrears have so far been disbursed to the teachers under the Department of Social Justice. Consequently the present Secretary of NUTA & 37 other teachers in R. T. M. Nagpur University area had filed a Writ Petition No.4377 of 2013 in the High Court of Judicature at Bombay Nagpur Bench. Now on 13th January, 2015 the Court has directed

the Government to file affidavit within three weeks explaining time period within which arrears could be made over to the petitioners.

(20) (A) In respect of implementation of the Court order in W. P. No. 682 of 2012 regarding pension to the teachers of Social work colleges, the Government has finally issued a G. R. on 29th October, 2014 extending the benefit of Pension cum Gratuity scheme. It may be mentioned that this G.R. was issued only after filing a Contempt Petition No. 95 of 2014 as was anticipated in the last year's Annual Report.

(B) It is a matter of happy (or may be unhappy ?) coincidence that in respect of implementation of the Court order in W. P. No. 5771 of 2011 regarding pension to the teachers of Ayurved colleges, the Government has finally issued a G. R. on 17th January, 2015 extending the benefit of Pension cum Gratuity scheme. It may be mentioned that this G.R. was issued only after filing a Contempt Petition No. 102 of 2014 as was anticipated in the last year's Annual Report.

GOLDEN JUBILEE CELEBRATIONS

(21) As per the decision of the Association, the first function to celebrate Golden Jubilee Year of NUTA and AIFUCTO was held last year at Amravati. The concluding function of Golden Jubilee celebrations was held at the Convocation Hall of Rashtrasant Tukdoji Maharaj Nagpur University, Nagpur on the 16th of March, 2014. Dr. K. K. Theckedath, former President of AIFUCTO delivered the Golden Jubilee address on this occasion. Prof. C. R. Sadashivan, former President of MFUCTO, Prof. A. T.

राष्ट्रसंत तुकडोजी महाराज नागपूर विद्यापीठ

(सेंट्रल प्रोव्हिन्सेस शासन, शिक्षण विभागाची अधिसूचना क्रमांक ५१३ दिनांक १ ऑगस्ट, १९२३ द्वारा स्थापित व महाराष्ट्र विद्यापीठ अधिनियम, १९१४ द्वारा संचालित राज्य विद्यापीठ)

महाविद्यालयीन शाखा

छत्रपती शिवाजी महाराज प्रशासकीय परिसर, रविंद्रनाथ टागोर मार्ग, नागपूर-४४० ००१

दुरध्वनी क्रमांक ०७१२-२५२९९३२ फॅक्स नं. ०७१२५५५७०१

Email ID : ar-cs@nagpuruniversity.org

क्र.म.वि. : ७५४८ : दिनांक :- ०६/०१/२०१५

प्रति,

प्राचार्य,

(१) शिक्षण महर्षी कृष्णराव झोटींग पाटील महाविद्यालय, समुद्रपूर जि. वर्धा.
(२) नविरा महाविद्यालय, काटोल जि. नागपूर. (३) महात्मा गांधी कला, वाणिज्य महाविद्यालय, पारशिवनी जि. नागपूर. (४) राजेंद्रसिंग उर्फ बाबा व्यास कला व वाणिज्य महाविद्यालय, कोंढाळी ता. काटोल जि. नागपूर. (५) संत गाडगे महाराज महाविद्यालय, हिंगणा जि. नागपूर (६) राणी लक्ष्मीबाई महिला महाविद्यालय, सावरगांव ता. नरखेड जि. नागपूर. (७) नगर परिषद महाविद्यालय, मोवाड. (८) के. झेड. एस. सायंस कॉलेज, ब्राम्हणी, कळमेश्वर जि. नागपूर. (९) इंदिरा गांधी कला, वाणिज्य महाविद्यालय, कळमेश्वर जि. नागपूर. (१०) एन. एम. डी. महाविद्यालय, गोंदिया. (११) हजरत बाबा ताजुद्दीन महाविद्यालय, न्यु सुभेदार ले आउट, नागपूर. (१२) पी. पी. शिक्षण महाविद्यालय, गोंदिया. (१३) अशोक मोहरकर कला, वाणिज्य महाविद्यालय, अड्याळ जि. भंडारा. (१४) शिवाजी सायंस कॉलेज, कॉंग्रेस नगर, नागपूर. (१५) हुतात्मा राष्ट्रीय कला व विज्ञान महाविद्यालय, आष्टी जि. वर्धा. (१६) श्री लेमदेव पाटील महाविद्यालय, मांडळ जि. नागपूर. (१७) गोपिकाबाई भुरे महिला महाविद्यालय, तुमसर. (१८) मॉडेल कला व वाणिज्य महाविद्यालय, कारंजा घाडगे जि. वर्धा. (१९) श्री समर्थ कला व वाणिज्य महाविद्यालय, आष्टी जि. वर्धा. (२०) यशवंत महाविद्यालय, वर्धा. (२१) जी. एस. कॉमर्स कॉलेज, वर्धा. (२२) विद्या विकास कला, विज्ञान व वाणिज्य महाविद्यालय, समुद्रपूर जि. वर्धा. (२३) न्यु आर्ट्स, कॉमर्स अँड सायंस कॉलेज, वर्धा. (२४) कला व विज्ञान महाविद्यालय, पुलगाव जि. वर्धा. (२५) स्वावलंबी शिक्षण महाविद्यालय, जि. वर्धा. (२६) एम. बी. पटेल महाविद्यालय, सालेकसा जि. गोंदिया. (२७) जे. एम. पटेल महाविद्यालय, भंडारा. (२८) श्रीमती आर. एम. पटेल महिला महाविद्यालय, भंडारा. (२९) सी. जे. पटेल महाविद्यालय, तिरोरा जि. गोंदिया. (३०) समर्थ महाविद्यालय, लाखनी जि. भंडारा. (३१) प्रगती महिला कला महाविद्यालय, भंडारा. (३२) श्री संताजी कला, विज्ञान महाविद्यालय, पालांडुर जि. भंडारा. (३३) श्री पंढरीनाथ कला, वाणिज्य महाविद्यालय, नरखेड जि. नागपूर. (३४) एस. एस. गर्ल्स महाविद्यालय, गोंदिया. (३५) सी. पी. अँड बेरार महाविद्यालय, नागपूर. (३६) रामचंद्र मोखारे महाविद्यालय, नागपूर. (३७) सेवादल महिला महाविद्यालय, नागपूर. (३८) कला व वाणिज्य डिग्री महाविद्यालय, जवाहर नगर, भंडारा. (३९) जगत कला, वाणिज्य व विज्ञान महाविद्यालय, गोरेगांव जि. भंडारा. (४०) शरदचंद्र कला, वाणिज्य महाविद्यालय, बुटीबोरी जि. नागपूर.

(४१) कला, वाणिज्य व विज्ञान महाविद्यालय, आर्वी जि. वर्धा. (४२) भालेराव विज्ञान म. वि. सावनेर जि. नागपूर. (४३) एस. एस. जयश्याल महाविद्यालय, अर्जुनी मोरगांव जि. गोंदिया. (४४) बॅरि. शेषराव वानखेडे महाविद्यालय, मोहपा जि. नागपूर. (४५) संताजी महाविद्यालय, वर्धा रोड, नागपूर. (४६) जवाहरलाल नेहरू महाविद्यालय, वाडी नागपूर. (४७) प्रियदर्शिनी महिला महाविद्यालय, वर्धा. (४८) आर. एस. बिडकर महाविद्यालय, हिंगणघाट जि. वर्धा. (४९) एस. एन. मोरे महाविद्यालय, तुमसर.

विषय :- विगर नेट-सेट शिक्षकांचे स्थान निश्चिती करिता प्रस्ताव सादर करण्याबाबत.

संदर्भ :- मा. उच्च न्यायालयाचा याचिका क्र. ६४७३/२०१३, याचिका क्र. ६३२५/२०१३, याचिका क्र. ६३०९/२०१३, याचिका क्र. ५०२५/२०१३, याचिका क्र. ५१०२/२०१४, याचिका क्र. ११२२/२०१४ वरील निर्णय.

महोदय,

आपणास उपरोक्त विषयाचे व संदर्भित याचिकेवरील निर्णयाचे अनुषंगाने कळविण्यात येते की, आपल्या महाविद्यालयातील ज्या विगर नेट-सेट शिक्षकांनी स्थान निश्चितीचे लाभ मिळण्याकरिता मा. उच्च न्यायालयात दाखल केलेल्या याचिकांवर मा. उच्च न्यायालयाने अनुक्रमे दि. ३०.०१.२०१४, दि. १२.१२.२०१४, दि. ०५.०३.२०१४, दि. ०७.११.२०१४ रोजी दिलेल्या अंतरिम आदेशानुसार याचिकाकर्त्यांनी स्थान निश्चिती करणे बंधनकारक आहे. त्यानुसार महाविद्यालयात संदर्भित याचिकेनुसार विगर नेट-सेट असलेले शिक्षक याचिकाकर्त्यांस त्यांची स्थान निश्चिती करण्याकरिता खालील प्रमाणे दस्तावेजासह त्वरित विद्यापीठाकडे प्रस्ताव सादर करावा. जी महाविद्यालये मा. उच्च न्यायालयाचे निर्देशानुसार याचिकाकर्त्या शिक्षकांचे स्थान निश्चिती साठी प्रस्ताव सादर करणार नाहीत व त्यामुळे मा. उच्च न्यायालयाच्या आदेशाची अवमानना झाल्यास सर्वस्वी जबाबदारी महाविद्यालयाच्या प्राचार्यांची राहिल. याची नोंद घ्यावी.

(टिप :- त्यांचे नियुक्ती पत्रे, रुजुपत्रे, रिफ्रेशर कोर्सच्या प्रतीसह, मान्यता पत्राची प्रत व सेवापुस्तिकेच्या प्रतीसह विहित प्रपत्रात निवड समिती गठनाचा प्रस्ताव सादर करावा.)

आपला,

(डॉ. रमण मदन)

उपकुलसचिव (म.वि.) (अति.कार्यभार)

रा.तु.म., नागपूर विद्यापीठ, नागपूर

प्रतिलिपी माहितीकरिता :- (१) डॉ. अनिल ढगे, सचिव, नुटा, संकल्प सहनिवास, खरे टाउन, धरमपेठ, नागपूर-१०.

Sanap, President of MFUCTO and Dr. Tapati Mukhopadhyay, Secretary MFUCTO were present at a function presided over by Prof. B. T. Deshmukh, former President of NUTA. At a glittering function some of the past office bearers of the Association were felicitated in recognition of their services.

NUTA WEBSITE

(22) This year an important decision was taken to launch a website of the Association 'www.nuta.in' as an avenue to reach out to its members fast and effectively. This would allow the members, among other things a regular access to different government documents, court judgements, agitation programmes and meeting notices. A website with provision for bulk Email and bulk SMS would increase the Organisation's reach significantly and we would be able to update and mobilize the teaching community more effectively. The website would complement the efforts of the NUTA Bulletin

CONVENTIONS OF TEACHERS

(23) The University level conventions of teachers were held at Nagpur on 6 July, 2014 and at Amravati on 5 July, 2014. The District level conventions of members were held on 29th November, 2014 at 3. 30 p. m. at all district headquarters in which the Office-bearers of the District Units addressed the issues of considering the MFUCTO resolution of 2 November, 2014 and finalise action programme to make the agitation successful, the review of the developments in the courts in respect of Net-Set teachers etc. The review meeting of district unit President and Secretaries was held at Amravati on 7th December, 2014. The conventions at all the districts were largely attended by teachers.

AIFUCTO ACTIVITIES

(24) As a part of agitation for demanding dismissal of the then State Government, MFUCTO had planned a demonstration programme at Jantar Mantar, New Delhi on 4 August, 2014. AIFUCTO in its circular of 9-7-2014 not only announced its Secretariat's participation in the demonstrations but also appealed to its members from the nearby states to join the programme to show solidarity and support to the MFUCTO movement. In the same circular, it has also been mentioned that the UGC had finalized the recommendations on the Roll out date and the revised CAP in UGC Amendment Regulations 2013. The plan of action programme was however postponed for various reasons including elections.

TASKS AHEAD

(25) Friends, it is true that some of our demands are nearing fulfillment because of the struggle of NUTA under the able leadership of MFUCTO. However, some of the old issues have remained to be resolved and in the meantime new issues have been thrown up which the teachers have to face such as contractual appointments, commercialization of education, starting of self-financing courses and institutions and exploitation of teachers and non-teaching staff in the system. You are aware that NUTA is committed to taking up the problems of every section of the teaching community irrespective of their number and strength in the organization. NUTA has therefore several tasks ahead viz.

(a) Full and faithful implementation of the decisions of the Supreme Court and different benches of Bombay High Court in respect of Net-Set affected teachers, benefit of 14940/-, benefit of stepping up of pay of those teachers who were awarded Ph. D. prior to 1-1-2006, the difference of Gratuity, and stoppage of recovery on account of stagnation increments.

(b) To ensure the release of salary for the period of 'non-cooperation in exam-related work' agitation in 2013 unlawfully withheld by the Govt.

(c) To ensure implementation of the High Court Order dated 10 June 2013 and Supreme Court Order of 10 January, 2014 in respect of pension and gratuity benefit to the teachers of Ayurved Colleges.

(d) Payment of sixth pay arrears to the teachers in colleges of Social Work and Physical Education

(e) Issuance of GR implementing sixth pay revision for the teachers in unaided colleges of Engineering in the state.

(f) Stopping arbitrary functioning at the office of the Joint Directors.

(g) Compelling the government to withdraw orders on contractual appointments and till such withdrawal pay them the salary on par with their counterparts in Government colleges.

(h) To take up the problems of engineering college teachers including the issue of withdrawal of their arrears for 55 months from 1-1-1996 to 31-7-2000.

(i) Fight against anti-teacher attitude of the Government.

(j) Enactment of suitable legislation for providing penalties for non-compliance of the university Grievance committee recommendations.

(k) Oppose the move of the Central Government towards privatization of Pension and Gratuity and demand of extending old triple benefit scheme to those appointed after 1-1-2004 as recommended by UGC.

(l) Making SET examination more transparent including unambiguous minimum percentage of marks.

(m) Ensure that all the benefits which teachers are given under the central orders are extended to Librarians and Directors of Physical Education.

(n) Faithful implementation of the central sixth pay revision 'package scheme'.

(o) To take all the ongoing cases in the Courts to their logical end

MEMBERSHIP OF NUTA

(26) The NUTA membership has reached by the end of the year. This year the increase in membership is. I am glad to announce that NUTA Bulletin has completed 39th year of its purposeful existence. This year we have circulated 204 pages of NUTA Bulletin. On going through the pages of the NUTA Bulletin one finds that the Executive Committee has made an attempt to include relevant developments and documents and keep the members updated about the issues concerning their professional life.

(27) I am grateful to the media and their representatives from Nagpur, Amravati and Gadchiroli areas for wide coverage of various events, programmes and the press-notes issued from time to time. This report shall not be complete unless I acknowledge the active cooperation and support of all the members of NUTA and other colleagues as well as the members of teaching profession at different levels to the activities of the Association and response given by them to various calls given by NUTA from time to time.

Yours,

(Dr. Anil Dhage)

नुटाच्या आमसभेच्या वेळी करावयाच्या व्यवस्थेसंबंधी सूचना

आमसभा ठरलेल्या वेळी म्हणजे बरोबर दुपारी १२.०० वाजता सुरु होत असते, हे लक्षात ठेवूनच एकूण व्यवस्था असावी. सभा सुरु होण्याच्या पूर्वीच्या एक तासात सर्व सदस्य आपापल्या सोबत आणलेल्या जेवणाच्या डब्यांचा एकमेकांसोबत आस्वाद घेत असतांना त्यांच्या बसण्यासाठी बगीच्यात, झाडाखाली, सावलीत किंवा ऊन असल्यास खोल्यातून स्वच्छतायुक्त व्यवस्था व सोबत पिण्याच्या पाण्याची नीट व्यवस्था ही आमसभेच्या आयोजकांनी करावी एवढीच याबाबत अपेक्षा असते. - डॉ.अनिल धगे, सचिव, नुटा

"REPORTABLE"

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 11527 OF 2014

(Arising out of SLP(C) No.11684 of 2012)

State of Punjab and others etc. ... Appellants

VERSUS

Rafiq Masih (White Washer) etc. ... Respondent(s)

JUDGMENT : DECEMBER 18, 2014.**Jagdish Singh Khehar, J.****1.** Leave granted.

2. All the private respondents in the present bunch of cases, **were given monetary benefits, which were in excess of their entitlement.** These benefits flowed to them, consequent upon a mistake committed by the concerned competent authority, in determining the emoluments payable to them. The mistake could have occurred on account of a variety of reasons; including the grant of a status, which the concerned employee was not entitled to; or payment of salary in a higher scale, than in consonance of the right of the concerned employee; or because of a wrongful fixation of salary of the employee, consequent upon the upward revision of pay-scales; or for having been granted allowances, for which the concerned employee was not authorized. **The long and short of the matter is, that all the private respondents were beneficiaries of a mistake committed by the employer,** and on account of the said unintentional mistake, employees were in receipt of monetary benefits, beyond their due.

3. Another essential factual component in this bunch of cases is, that the respondent-employees were not guilty of furnishing any incorrect information, which had led the concerned competent authority, to commit the mistake of making the higher payment to the employees. The payment of higher dues to the private respondents, in all these cases, was not on account of any misrepresentation made by them, nor was it on account of any fraud committed by them. Any participation of the private respondents, in the mistake committed by the employer, in extending the undeserved monetary benefits to the respondent-employees, is totally ruled out. It would therefore not be incorrect to record, that the **private respondents, were as innocent as their employers, in the wrongful determination of their inflated emoluments.**

4. The issue that we have been required to adjudicate is, whether all the private respondents, against whom an order of recovery (of the excess amount) has been made, should be exempted in law, from the reimbursement of the same to the employer. For the applicability of the instant order, and the conclusions recorded by us hereinafter, the ingredients depicted in the foregoing two paragraphs are essentially indispensable.

5. Merely on account of the fact, that the release of these monetary benefits was based on a mistaken belief at the hands of the employer, and further, because the employees had no role in the determination of the employer, could it be legally feasible, for the private respondents to assert, that they should be exempted from refunding the excess amount received by them? Insofar as the above issue is concerned, it is necessary to keep in mind, **that the following reference was made by a Division**

Bench of two Judges of this Court, for consideration by a larger Bench:

"In view of an apparent difference of views expressed on the one hand in *Shyam Babu Verma and Ors. vs. Union of India & Ors.* (1994) 2 SCC 521 and *Sahib Ram Verma vs. State of Haryana* (1995) Supp. 1 SCC 18; and on the other hand in *Chandi Prasad Uniyal and Ors. vs. State of Uttarakhand & Ors.* (2012) 8 SCC 417, we are of the view that the remaining special leave petitions should be placed before a Bench of Three Judges. The Registry is accordingly directed to place the file of the remaining special leave petitions before the Hon'ble the Chief Justice of India for taking instructions for the constitution of a Bench of three Judges, to adjudicate upon the present controversy."

(emphasis is ours)

The aforesaid reference was answered by a Division Bench of three Judges on 8.7.2014. While disposing of the reference, the three-Judge Division Bench, recorded the following observations in paragraph 7:

"7. In our considered view, the observations made by the Court not to recover the excess amount paid to the appellant-therein were in exercise of its extra-ordinary powers under Article 142 of the Constitution of India which vest the power in this Court to pass equitable orders in the ends of justice."

(emphasis is ours)

Having recorded the above observations, the reference was answered as under:

"12. Therefore, in our opinion, the decisions of the Court based on different scales of Article 136 and Article 142 of the Constitution of India cannot be best weighed on the same grounds of reasoning and thus in view of the aforesaid discussion, there is no conflict in the views expressed in the first two judgments and the latter judgment."

13. In that view of the above, we are of the considered opinion that reference was unnecessary. Therefore, without answering the reference, we send back the matters to the Division Bench for its appropriate disposal."

(emphasis is ours)

6. In view of the conclusions extracted hereinabove, it will be our endeavour, to lay down the parameters of fact situations, wherein employees, who are beneficiaries of wrongful monetary gains at the hands of the employer, may not be compelled to refund the same. In our considered view, the instant benefit cannot extend to an employee merely on account of the fact, that he was not an accessory to the mistake committed by the employer; or merely because the employee did not furnish any factually incorrect information, on the basis whereof the employer committed the mistake of paying the employee more than what was rightfully due to him; or for that matter, merely because the excessive payment was made to the employee, in absence of any fraud or misrepresentation at the behest of the employee.

7. Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits

wrongly extended to employees, can only be interfered with, **in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover.** In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when this Court exempted employees from such recovery, even in exercise of its jurisdiction under Article 142 of the Constitution of India. Repeated exercise of such power, "for doing complete justice in any cause" would establish that the recovery being effected was iniquitous, and therefore, arbitrary. And accordingly, the interference at the hands of this Court.

8. As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the preamble of the Constitution of India. The right to recover being pursued

by the employer, will have to be compared, with the effect of the recovery on the concerned employee. **If the effect of the recovery from the concerned employee would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery.** In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover.

9. The doctrine of equality is a dynamic and evolving concept having many dimensions. The embodiment of the doctrine of equality, can be found in Articles 14 to 18, contained in Part III of the Constitution of India, dealing with "Fundamental Rights". These Articles of the Constitution, besides assuring equality before the law and equal protection of the laws; also disallow, discrimination with the object of achieving equality, in matters of employment; abolish untouchability, to upgrade the social status of an ostracized section of the society; and extinguish titles, to scale down the status of a section of the society, with such appellations. The embodiment of the doctrine of equality, can also be found in Articles 38, 39, 39A, 43 and 46 contained in Part IV of the Constitution of India,

शासन अनुदानित खाजगी आयुर्वेदिक व युनानी महाविद्यालये व रुग्णालये
यांमधील शिक्षक व शिक्षकेतर कर्मचाऱ्यांना सेवानिवृत्ती वेतन (पेंशन)
व मृत्यू-नि-सेवानिवृत्ती उपदान (गॅच्युईटी) योजना लागू करण्याबाबत...

महाराष्ट्र शासन

वैद्यकीय शिक्षण व औषधी द्रव्ये विभाग,

शासन निर्णय

क्र. एडीआर २०१३/ प्र. क्र. ५६/१३/आयु-२,

९वा मजला, गो.ते.रुग्णालय संकुल इमारत, लोकमान्य टिळक मार्ग, मुंबई ०१
दिनांक : १७ जानेवारी, २०१५

प्रस्तावना :- वैद्यकीय शिक्षण व औषधी द्रव्ये या विभागांतर्गत शासन अनुदानित खाजगी १६ आयुर्वेद व ३ युनानी अशी १९ महाविद्यालये व रुग्णालये व १ संलग्नित रुग्णालय, अशा एकूण २० खाजगी अनुदानित संस्था आहेत. तसेच या संस्थांमध्ये २२१३ शिक्षक व शिक्षकेतर शासनमान्य पदे आहेत. अल्पशुल्कात रुग्णांना सेवा उपलब्ध होत असल्यामुळे लोकहितास्तव संस्थांची आर्थिक अक्षमता विचारात घेऊन दिनांक १ जानेवारी, २००४ पासून १०० टक्के वेतन अनुदान शासनाकडून दिले जात आहे. या संस्थामधील कर्मचाऱ्यांना महाराष्ट्र नागरी सेवा, नियम लागू नाहीत. मात्र कर्मचाऱ्यांना अंशदायी भविष्य निर्वाह निधी योजना (CPF) लागू आहे.

दिनांक १० जून, २०१३ रोजी मा. उच्च न्यायालय खंडपीठ, नागपूर यांनी विदर्भ महाविद्यालय व इतर ३ महाविद्यालय विरुद्ध महाराष्ट्र शासन, याचिका क्रमांक ५७७१/२०११ या संदर्भात मा. उच्च न्यायालयाने अंतरिम: असे निदेश दिले की, याचिका दाखल झाल्यापासून म्हणजे दिनांक २१/११/२०११ पासून संबंधित चार खाजगी अनुदानित आयुर्वेद याचिकाधारक संस्थामधील दि. ०१.११.२००५ पूर्वी नियुक्त कर्मचाऱ्यांना निवृत्तीवेतनाचा लाभ तत्कालीन शिक्षण व सेवायोजन विभागाच्या दिनांक २१/११/२०१३ च्या अखत्यारीत असल्यामुळे दिनांक २१/११/२०१३ नुसार असलेल्या शासन निर्णयातील तरतुदीप्रमाणे देण्यात यावा.

हा न्याय निर्णय शासनाच्या विरोधात असल्यामुळे विधी व न्याय विभागाच्या निर्देशाप्रमाणे वरील निर्णयाविरोधात मा. सर्वोच्च न्यायालयात विशेष अनुमती याचिका दाखल करण्यात आली होती.

तथापि, सदर याचिका मा. सर्वोच्च न्यायालयात खारीज (Dismissed) करण्यात आली. यासंदर्भात पुनर्विलोकन याचिका (Review Petition) Diary No.21784/2014 मा. सर्वोच्च न्यायालयात दि. ०७/०७/२०१४ रोजी दाखल करण्यात आलेली असून प्रलंबित आहे. अद्याप स्थगिती नाही.

तसेच मा. उच्च न्यायालय खंडपीठ नागपूर यांच्या वरील निर्णयानुसार या विभागाने कार्यवाही न केल्यामुळे शासनाविरोधी व्यक्तिशः नावाने याचिका क्रमांक ५७७१/२०११ च्या संदर्भात अवमान याचिका क्र. १०२/२०१४ उपरोक्त न्यायालयात दाखल झालेली आहे. या पार्श्वभूमिवर संबंधित चार

(विदर्भ आयुर्वेद महाविद्यालय, अमरावती, श्री आयुर्वेद महाविद्यालय, नागपूर, श्रीगुरुदेव आयुर्वेद महाविद्यालय, मोझरी, जि. अमरावती, डा. मा. म. आयुर्वेद महाविद्यालय, यवतमाळ) याचिकाधारक संस्थेतील शासनमान्य कर्मचाऱ्यांना, सेवा निवृत्ती वेतन, उपदान, परिभाषित निवृत्ती योजना (DCPS) इत्यादी लागू करण्याचा प्रस्ताव शासनाच्या विचाराधीन होता. उपरोक्त बाबी विचारात घेऊन शासनाने पुढील प्रमाणे निर्णय घेतला आहे

शासन निर्णय:

(१) मा. उच्च न्यायालय, खंडपीठ नागपूर यांच्या दिनांक १०/६/२०१३ च्या आदेशानुसार दिनांक २१/११/२०११ पासून तत्कालीन शिक्षण व सेवायोजन विभागाच्या शासन निर्णय दिनांक २१/११/२०१३ प्रमाणे संबंधित (विदर्भ आयुर्वेद महाविद्यालय, अमरावती, श्री आयुर्वेद महाविद्यालय, नागपूर, श्रीगुरुदेव आयुर्वेद महाविद्यालय, मोझरी, जि. अमरावती, डा. मा. म. आयुर्वेद महाविद्यालय, यवतमाळ) चार संस्थामधील दि. ०१.११.२००५ पूर्वी नियुक्त व निवृत्त शासनमान्य शिक्षक व शिक्षकेतर कर्मचाऱ्यांना विहित थकबाकीसह निवृत्तीवेतन व उपदान देण्यात यावे. तसेच दिनांक ०१.११.२००५ पूर्वी नियुक्त व दि. २१.११.२०११ रोजी कार्यरत शासनमान्य कर्मचाऱ्यांना वरील निवृत्तीवेतन व उपदान योजना लागू करण्यात यावी.

(२) या संस्थामधील दिनांक १/११/२००५ पासून नियुक्त शिक्षक व शिक्षकेतर कर्मचाऱ्यांना दि. २१.११.२०११ पासून शासकीय कर्मचाऱ्यांप्रमाणे परिभाषित निवृत्ती वेतन योजना (DCPS) लागू करण्यात यावी.

(३) त्याप्रमाणे शासन हिस्सा म्हणून असलेल्या उपरोक्त कर्मचाऱ्यांच्या अंशदायी भविष्य निर्वाह निधी योजना (CPF) मधील रक्कम शासन जमा करण्यात यावी.

सदर शासन निर्णय वित्त विभागाच्या अनौपचारिक संदर्भ क्र. २९/१४/सेवा-४, दिनांक ०१/०३/२०१४ अन्वये प्राप्त सहमतीनुसार निर्गमित करण्यात येत आहे.

(स.सं. बेनके)

शासनाचे उपसचिव

प्रति,

संचालक, आयुष संचालनालय, मुंबई.

प्रत अग्नेषित- (१) मा. मंत्री, वैद्यकीय शिक्षण यांचे खासगी सचिव, मंत्रालय, मुंबई (२) मा. राज्यमंत्री, वैद्यकीय शिक्षण यांचे खासगी सचिव, मंत्रालय, मुंबई (३) मा. मुख्य सचिव, यांचे उपसचिव, मंत्रालय, मुंबई (४) कुलगुरु, आरोग्य विज्ञान विद्यापीठ, नाशिक (५) महालेखापाल-१ (लेखा व अनुज्ञेयता), महाराष्ट्र, मुंबई (६) महालेखापाल-२ (लेखा व अनुज्ञेयता), महाराष्ट्र, नागपूर (७) वित्त विभाग, वित्तीय सुधारणा-१/व्यय-१३/सेवा-४, मंत्रालय, मुंबई (८) सहायक संचालक, आयुर्वेद, नागपूर (९) सहायक संचालक, आयुष संचालनालय, मुंबई (१०) कोषागार अधिकारी, नागपूर (११) प्राचार्य, विदर्भ आयुर्वेद महाविद्यालय, अमरावती (१२) प्राचार्य, श्री आयुर्वेद महाविद्यालय, नागपूर (१३) प्राचार्य, श्रीगुरुदेव आयुर्वेद महाविद्यालय, मोझरी, जि. अमरावती (१४) प्राचार्य, डा. मा. म. आयुर्वेद महाविद्यालय, यवतमाळ (१५) निवड नस्ती, आयु-२

dealing with the “Directive Principles of State Policy”. These Articles of the Constitution of India contain a mandate to the State requiring it to assure a social order providing justice – social, economic and political, by *inter alia* minimizing monetary inequalities, and by securing the right to adequate means of livelihood, and by providing for adequate wages so as to ensure, an appropriate standard of life, and by promoting economic interests of the weaker sections.

10. In view of the afore-stated constitutional mandate, equity and good conscience, in the matter of livelihood of the people of this country, has to be the basis of all governmental actions. An action of the State, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent, that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding

right of the employer, to recover the amount. Or in other words, till such time as the recovery would have a harsh and arbitrary effect on the employee, it would be permissible in law. Orders passed in given situations repeatedly, even in exercise of the power vested in this Court under Article 142 of the Constitution of India, will disclose the parameters of the realm of **an action of recovery (of an excess amount paid to an employee) which would breach the obligations of the State, to citizens of this country, and render the action arbitrary, and therefore, violative of the mandate contained in Article 14 of the Constitution of India.**

11. For the above determination, we shall refer to some precedents of this Court wherein the question of recovery of the excess amount paid to employees, came up for consideration, and this Court disallowed the same. **These are situations, in which High Courts all over the country, repeatedly and regularly set aside orders of recovery made on the expressed parameters.**

(i). Reference may first of all be made to the decision in **Syed Abdul Qadir v. State of Bihar**, (2009) 3 SCC 475, wherein this Court recorded the following observation in paragraph 58:

“58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See *Sahib Ram v. State of Haryana*, 1995 Supp. (1) SCC 18, *Shyam Babu Verma v. Union of India*, (1994) 2 SCC 521, *Union of India v. M. Bhaskar*, (1996) 4 SCC 416, *V. Ganga Ram v. Director*, (1997) 6 SCC 139, *Col. B.J. Akkara (Retd.) v. Govt. of India*, (2006) 11 SCC 709, *Purshottam Lal Das v. State of Bihar*, (2006) 11 SCC 492, *Punjab National Bank v. Manjeet Singh*, (2006) 8 SCC 647 and *Bihar SEB v. Bijay Bahadur*, (2000) 10 SCC 99.”

(emphasis is ours)

First and foremost, it is pertinent to note, that this Court in its judgment in *Syed Abdul Qadir’s* case (supra) recognized, that the issue of recovery revolved on the action being iniquitous. Dealing with the subject of the action being iniquitous, it was sought to be concluded, that when the excess unauthorised payment is detected within a short period of time, it would be open for the employer to recover the same. Conversely, if the payment had been made for a long duration of time, it would be iniquitous to make any recovery. **Interference because an action is iniquitous, must really be perceived as, interference because the action is arbitrary.** All arbitrary actions are truly, actions in violation of Article 14 of the Constitution of India. The logic of the action in the instant situation, is iniquitous, or arbitrary, or violative of Article 14 of the Constitution of India, **because it would be almost impossible for an employee to bear the financial burden, of a refund of payment received wrongfully for a long span of time.** It is apparent, that a government employee is primarily dependent on his wages, and if a deduction is to be made from his/her wages, it should not be a deduction which would make it difficult for the employee to provide for the needs of his family. Besides food, clothing and shelter, an employee has to cater, not only to the education needs of those dependent upon him, but also their medical requirements, and a variety of sundry expenses. Based on the above consideration, we are of the view, that **if the mistake of making a wrongful payment is detected within five years, it would be open to the employer to recover the same.** However, if the payment is made for a period in excess of five years, even though it would be open to the employer to correct the mistake, it would be extremely iniquitous and arbitrary to seek a refund of the payments mistakenly made to the employee. In this context, reference may also be made to

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.
WRIT PETITION NO. 2215 of 2014.

(1) Baburao Lobbaji Jibhkate, Aged about 67 years, Occ.Retired, r/o.N-36, Behind Gajanan Mandir, Reshimbag, Nagpur 440009.(2) Yograj Baliram Dangore, Aged about 65 years, Occ.Retired, r/o. 24,Chitnis Nagar, “Suyog”, Near Water Tank, Tajbag (Big), Umred Road, Nagpur. (3) Vasant M. Umalkar, Aged about Major, Occ. Retired, r/o. Ward No.09, Near State Bank of India, Narkhed, Distt. Nagpur. (4) Youraj D. Chalkhor, Aged about Major, Occ. Retired, r/o. c/o. Asha Hospital & Research Centre, Plot No.2, Suraksha Nagar, Amravati Road, Datta Wadi, Nagpur. ...**PETITIONERS VERSUS** (1) The State of Maharashtra, Through its Principal Secretary, Department of Higher Education, Mantralaya, Mumbai. (2) The Director of Higher Education, Administrative Building, Shivajinagar, Pune. (3) The Joint Director of Higher Education, Nagpur Division, Nagpur. (4) The Senior Auditor (Higher Education Grants), Nagpur Region, Nagpur....**RESPONDENTS**

Mr.A.I.Sheikh, Adv. for the petitioners.Mrs.Ketki Joshi, A.G.P. for respondent nos. 1 to 4.

CORAM : B.P. DHARMADHIKARI & A.P.BHANGALE,JJ.
DATED:JANUARY 12, 2015.

ORAL JUDGMENT
(Per B.P.Dharmadhikari, J)

1. Rule returnable forthwith. Heard by consent.

2.Learned Counsel for the petitioners states that, for the alleged excess payment resulting from withdrawal of **stagnation allowances** already released to the petitioners when they were in service, **recovery was made at the time of retirement.** The said communication dt.18.3.2010 is questioned before this Court. Similar communication was set aside by the Division Bench of this Court at Aurangabad and challenge thereto by the State Government in the Apex Court has failed on 9.5.2012. The learned Counsel invites our attention to the order passed on 29.1.2013 in Writ Petition No.5892 of 2012 in the similar facts.

3.The learned A.G.P. submits that though the controversy appears to be covered by the afore-said order, she is awaiting instructions on facts.

4. Very recently, **the Hon'ble Apex Court has considered the controversy and evolved five principles and pointed out when deductions are not permissible.** The retirement is contingency included in it. The said Judgment is delivered in Civil Appeal No.11527 of 2014, dt.18.2.2014, *State of Punjab and Others etc. vs. Rafiq Masih (White Washer) etc.*

5. In view of this, the Writ Petition is allowed by making the rule absolute in terms of prayer clause (a) of the instant petition.

6. The respondents to refund the amount deducted from the petitioners within next four months with interest calculated at 12 % on the said amount from the date of deduction till its actual payment.

7. Needless to clarify that this direction shall operate if the amount is not already refunded to the petitioner.

JUDGE

JUDGE

the decision rendered by this Court in **Shyam Babu Verma v. Union of India** (1994) 2 SCC 521, wherein this Court observed as under:

“11. Although we have held that the petitioners were entitled only to the pay scale of Rs 330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs 330-560 but as they have received the scale of Rs 330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same.”

(emphasis is ours)

It is apparent, that in Shyam Babu Verma's case (supra), the higher pay-scale commenced to be paid erroneously in 1973. The same was sought to be recovered in 1984, i.e., after a period of 11 years. In the aforesaid circumstances, **this Court felt that the recovery after several years of the implementation of the pay-scale would not be just and proper.** We therefore hereby hold, **recovery of excess payments discovered after five years would be iniquitous and arbitrary, and as such, violative of Article 14** of the Constitution of India.

(ii). Examining a similar proposition, this Court in Col. B.J. Akkara v. Government of India, (2006) 11 SCC 709, observed as under:

“28. Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.”

(emphasis is ours)

A perusal of the aforesaid observations made by this

IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT NAGPUR, NAGPUR.

WRIT PETITION NO. 125/2015 & WRIT PETITION NO. 129/2015

(1) WRIT PETITION NO.125/2015:- (1) Mrs. Vijaya Baburao Rajurkar Aged about 66 years, occu: Retired R/o C/o Shri R.L.T. College of Science, Akola. (2) Ku. Pramila Tukaramji Hend, Aged about 64 years, occu: Retired R/o C/o G. S. Tompe College, Chandur Bazar. (3) Dr. Pandurang Laxmanrao Sontakke Aged about 64 years, occu: Retired R/o C/o G. S. Tompe College, Chandur Bazar. (4) Shri Arun Madhao Kale Aged about 61 years, occu: Retired R/o C/o M/s M.E.S. Arts and Commerce College, Mehkar Dist. Buldana. (5) Shri Manohar Manikrao Bansod Aged about 61 years, occu: Retired R/o C/o Shri V N Arts and Shri A.N. Commerce College, Washim. ...PETITIONERS. **VERSUS** (1) The State of Maharashtra Through its Principal Secretary Higher Education Mantralaya, Mumbai-32. (2) The Director of Higher Education Administrative Building, Shivajinagar Pune. (3) The Joint Director of Higher Education Amravati Division, Amravati. (4) The Senior Auditor Higher Education Department, Amravati Region, Amravati. ...RESPONDENTS **(Mr. A.I. Sheikh, Adv. for petitioners Ms. Kalyani Deshpande, AGP for respondents)**

(2) WRIT PETITION NO. 129/2015 :- (1) Dr. Nirnkush Vinayakrao Khubalkar Aged about 62 years, occu: Retired R/o C/o LAD College, Nagpur. (2) Dr. (Mrs) Nalini Madhaorao Wadjikar Aged about 65 years, occu: Retired R/o C/o LAD College, Nagpur. (3) Mrs. Ratnaprabha Ram Padwad Aged about 66 years, occu: Retired R/o C/o L.A. D. College, Nagpur. (4) Prof. Uday Rajeshwar Chaudhari Aged about 63 years occu: retired R/o C/o J B Science College, Wardha. (5) Prof. Krushna Upasraoji Thombare Aged about 66 years, occu: Retired R/o C/o Pandharinath Mahavidyalaya Narkhed. (6) Prof. Waman Vasantrao Apte Aged about 66 years, occu: retired R/o C/o Karamvir Mahavidyalaya Mul. (7) Prof. Balanand Jayramji Gedekar Aged about 65 years, occu: retired R/o C/o Karamvir madhavidyalaya, Mul. (8) Prof. Bhagwan Somaji Chaudhari Aged about 67 years, occu: Retired R/o C/o Karamvir Mahavidyalaya, Mul. ...PETITIONERS. **VERSUS** (1) The State of Maharashtra Through its Principal Secretary Department of Higher Education Mantralaya, Mumbai. (2) The Director of Higher Education Administrative Building, Shivajinagar Pune. (3) The Joint Director of Higher Education Nagpur Division Nagpur. (4) The Senior Auditor, Higher Education Department, Nagpur Region, Nagpur. **(Mr. A.I. Sheikh, Adv. for petitioners Ms. Kalyani Deshpande, AGP for respondents)**

CORAM : B.R.GAVAI & Mrs. MRIDULA BHATKAR, JJ.

DATED : 29th January, 2015.

ORAL JUDGMENT : (Per B.R.Gavai, J.)

1. Rule. Rule made returnable forthwith. Heard by consent.

2. The petitioners have approached this Court challenging the communication dated 18th March, 2010 on the basis of which recovery was made from the petitioners on account of **withdrawal of stagnation increment** from the pension account of the petitioners.

3. A similar point arose for consideration before the Division Bench of this Court in Writ Petition No. 9054/2010 along with batch of petitions. This Court has taken a view that the recovery from the salary/pension of an employee cannot be made if the amount in excess was paid to such an employee for the reasons not attributed to such an employee.

4. In the present case, it is not the case of the respondents that the stagnation amount was paid to the petitioners on account of any misrepresentation made by the petitioners.

5. In that view of the matter, both the Writ Petitions are allowed in terms of Prayer Clause (a) of the respective petition. The refund along with an interest at the rate of 12 per cent per annum shall be made to the petitioners, within a period of four months from today.

Rule made absolute in the aforesaid terms.

JUDGE

JUDGE

Court in Col. B.J. Akkara's case (*supra*) reveals a reiteration of the legal position recorded in the earlier judgments rendered by this Court, inasmuch as, it was again affirmed, that the right to recover would be sustainable so long as the same was not iniquitous or arbitrary. In the observation extracted above, this Court also recorded, that recovery from employees in lower rung of service, would result in extreme hardship to them. The apparent explanation for the aforesaid conclusion is, that employees in lower rung of service would spend their entire earnings in the upkeep and welfare of their family, and if such excess payment is allowed to be recovered from them, it would cause them far more hardship, than the reciprocal gains to the employer. **We are therefore satisfied in concluding**, that such recovery from employees belonging to the lower rungs (i.e., Class-III and Class-IV - sometimes denoted as Group 'C' and Group 'D') of service, should not be subjected to the ordeal of any recovery, even though they were beneficiaries of receiving higher emoluments, than were due to them. Such recovery would be iniquitous and arbitrary and therefore would also breach the mandate contained in Article 14 of

the Constitution of India.

(iii). This Court in *Syed Abdul Qadir v. State of Bihar* (*supra*) held as follows:

"59. Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made."

(emphasis is ours)

Premised on the legal proposition considered above, namely, whether on the touchstone of equity and

IN THE HIGH COURT OF JUDICATURE AT BOMBAY : CIVIL APPELATE JURISDICTION
WRIT PETITION NO. 5087 OF 2013

Anil Krishnarao Phadnis ...Petitioner vs. Matoshree Bayabai Shripatrao Kadam Kanya mahavidyalay & Ors. ...Respondents
(Mr. C. G. Gavnekar for the Petitioner Ms S.S.Bhende, AGP for the respondent Nos. 2 to 6)

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

DATE : OCTOBER 25,2013

P.C. : Leave to amend.

1. Heard the learned counsel for the petitioner and the learned AGP for respondent Nos.2 to 6. Considering the limited controversy involved, service of notice to the first respondent is not necessary. **Forthwith taken up for final hearing.**

2. On 25th August 1992, the petitioner was appointed as Associate Professor in Hindi with the first respondent-college. **The petitioner superannuated on 30th June 2012.** On 12th May 2012, the first respondent-college forwarded the requisite papers to the sixth respondent for fixing the last pay drawn by the petitioner for the purpose of pensionary benefits. On 18th May 2012, **the pension proposal was returned by the sixth respondent on the ground that as there was no exemption granted to the petitioner from passing NET/SET examination, the pensionary benefit cannot be granted to the petitioner.**

3. The learned counsel for the petitioner has tendered on record **Government Resolution dated 27th June 2013.** The said Government Resolution records that as per the notification dated 19th September 1991 issued by the University Grants Commission, the qualifications for the post of Assistant Professor in non-agricultural Universities and affiliated colleges have been fixed. The said notification dated 19th September 1991 provides that the candidate should have a good academic career and minimum 50% marks in post graduate degree examination. It also provides that the candidate should have passed NET/SET examination. **The clause 14 of said Government Resolution dated 27th June 2013 lays down that the Assistant Professors who were appointed prior to 23rd October 1992, are not required to fulfill the qualifications prescribed by the said notification dated 19th September 1991. Therefore, the petitioner who was appointed on 25th August 1992 will not be governed by the notification dated 19th September 1991 issued by the University Grants Commission. Therefore, the pension proposal of the petitioner will have to be considered in the light of the Government Resolution dated 27th June 2013.**

4. Hence, we dispose of the petition by passing the following order:

(i) We direct the first respondent-college to **forward the pension papers of the petitioner** to the fourth respondent along with a copy of the Government Resolution dated 27th June 2013 as well as an authenticated copy of this order;

(ii) The petitioner shall supply an authenticated copy of this order and a true copy of the Government Resolution dated 27th June 2013 to the first respondent;

(iii) The first respondent shall **forward the papers to the fourth respondent** within a period of two weeks from the date of production of an authenticated copy of this order;

(iv) The fourth respondent shall process the proposal after taking into consideration the Government Resolution dated 27th June 2013. Appropriate decision shall be taken on the **pension proposal within a period of three weeks from date of receipt of the same by the fourth respondent.**

(REVATI MOHITE DERE,J.)

(A.S.OKA,J.)

arbitrariness, the extract of the judgment reproduced above, culls out yet another consideration, which would make the process of recovery iniquitous and arbitrary. It is apparent from the conclusions drawn in Syed Abdul Qadir's case (supra), **that recovery of excess payments, made from employees who have retired from service, or are close to their retirement, would entail extremely harsh consequences** outweighing the monetary gains by the employer. It cannot be forgotten, that a retired employee or an employee about to retire, is a class apart from those who have sufficient service to their credit, before their retirement. Needless to mention, that at retirement, an employee is past his youth, his needs are far in excess of what they were when he was younger. Despite that, his earnings have substantially dwindled (or would substantially be reduced on his retirement). Keeping the aforesaid circumstances in mind, we are satisfied that recovery would be iniquitous and arbitrary, if it is sought to be made after the date of retirement, or soon before retirement. A period within one year from the date of superannuation, in our considered view, should be accepted as the period during which the recovery should be treated as iniquitous. Therefore, it would be justified to treat an order of recovery, on account of wrongful payment made to an employee, as arbitrary, if the recovery is sought to be made after the employee's retirement, or within one year of the date of his retirement on superannuation.

(iv). Last of all, reference may be made to the decision in **Sahib Ram Verma v. Union of India**, (1995) Supp. 1 SCC 18, wherein it was concluded as under:

"4. Mr. Prem Malhotra, learned counsel for the appellant, contended that the previous scale of Rs 220-550 to which the appellant was entitled became Rs 700-1600 since the appellant had been granted that scale of pay in relaxation of the educational qualification. The High Court was, therefore, not right in dismissing the writ petition. We do not find any force in this contention. It is seen that the Government in consultation with the University Grants Commission had revised the pay scale of a Librarian working in the colleges to Rs 700-1600 but they insisted upon the minimum educational qualification of first or second class M.A., M.Sc., M.Com. plus a first or second class B.Lib. Science or a Diploma in Library Science. The relaxation given was only as regards obtaining first or second class in the prescribed educational qualification but not relaxation in the educational qualification itself.

5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs."

RULES FOR PROPOSING AMENDMENTS

(Reproduced from page 97 of 1977 NUTA Bulletin)

1. Any proposal before the meeting may be amended
 - (a) by leaving out a word or words or
 - (b) by leaving out a word or words in order to add or insert a word or words or
 - (c) by adding or inserting a word or words.
2. An amendment to be in order shall :
 - (a) not constitute a direct negative to the original resolution :
 - (b) be relevant to and within the scope of the resolution to which it is moved.

(emphasis is ours)

It would be pertinent to mention, that Librarians were equated with Lecturers, for the grant of the pay scale of Rs.700-1600. The above pay parity would extend to Librarians, subject to the condition that they possessed the prescribed minimum educational qualification (first or second class M.A., M.Sc., M.Com. plus a first or second class B.Lib. Science or a Diploma in Library Science, the degree of M.Lib. Science being a preferential qualification). For those Librarians appointed prior to 3.12.1972, the educational qualifications were relaxed. In Sahib Ram Verma's case (supra), a mistake was committed by wrongly extending to the appellants the revised pay scale, by relaxing the prescribed educational qualifications, even though the concerned appellants were ineligible for the same. The concerned appellants were held not eligible for the higher scale, by applying the principle of "equal pay for equal work". This Court, in the above circumstances, did not allow the recovery of the excess payment. This was apparently done because this Court felt that the employees were entitled to wages, for the post against which they had discharged their duties. In the above view of the matter, we are of the opinion, that it would be iniquitous and arbitrary for an employer to require an employee to refund the wages of a higher post, against which he had wrongfully been permitted to work, though he should have rightfully been required to work against an inferior post.

12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, **we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:**

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

13. We are informed by the learned counsel representing the appellant-State of Punjab, that all the cases in this bunch of appeals, would undisputedly fall within the first four categories delineated hereinabove. In the appeals referred to above, therefore, the impugned orders passed by the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above.

14. The appeals are disposed of in the above terms.

(Jagdish Singh Khehar) J.

(Arun Mishra) J.

New Delhi;

December 18, 2014.

कुंठीत वेतनवाढीच्या रिकव्हरीची न संपणारी गोष्ट संपली एकदाची ?

“या ५ प्रकारात रिकव्हरी काढता येणार नाही” - मा. सर्वोच्च न्यायालय

- प्रा. बी. टी. देशमुख

महाराष्ट्र प्राध्यापक महासंघाचे माजी अध्यक्ष

“अवमान याचिका दाखल झाल्यामुळे “रिकव्हऱ्यांचा परतावा” घरोघरी नेऊन देत असतांना तत्सम प्रकरणी “रिकव्हऱ्या काढण्याचा धंदा” अधिकाऱ्यांनी सुरुच ठेवला आहे” या मथळ्याचा माझा एक लेख १ सप्टेंबर २०१४ च्या बुलेटीन मध्ये प्रकाशित झाला होता. त्याच अंकांमध्ये “उच्च शिक्षणमंत्री राजेश टोपे हे या भ्रष्ट कारभारामध्ये सहभागी अथवा समभागी तरी आहेत किंवा उच्च शिक्षण विभागावरील त्यांचे नियंत्रण पूर्णपणे सुटले तरी आहे या मथळ्याचा महाराष्ट्र प्राध्यापक महासंघाच्या कार्यकारी मंडळाने रविवार दिनांक २४ ऑगस्ट २०१४ रोजीच्या पुणे येथील बैठकीत संमत केलेला ठराव” प्रकाशित झाला होता.

२. मा. नागपूर खंडपीठाने दिनांक २९ जानेवारी २०१३ रोजी सन २०१२ ची याचिका क्रमांक ५८९२ या प्रकरणात सर्व शिक्षकांकडून केलेल्या रिकव्हरीची रक्कम चार महिन्यात १२ टक्के व्याजासह परत करा असे आदेश पारित केले होते. ते पुढील शब्दात:- “we find that interest of justice can be met with by directing respondents to arrange for refund and to refund the amount so deducted from the pension of petitioners before this Court within a period of four months from today with same interest as awarded by Aurangabad Bench in its order dated 22nd August, 2012. Petition is thus partly allowed. No costs.” (P158 NB14)

३. दिनांक १ ऑक्टोबर २०१३ रोजी सन २०१२ च्या याचिका क्रमांक १०५४ मध्ये मा. औरंगाबाद खंडपीठाने अशाच प्रकरणी दिलेल्या निर्णयाचे एक महत्वाचे वैशिष्ट्य असे की पुन्हा पुन्हा तशाच तशा प्रकरणी शिक्षकांना न्यायालयात हेलपाटे घालावे लागू नये म्हणून तत्सम प्रकरणातल्या सर्वांना लागू पडतील असा यथायोग्य शासननिर्णय राज्यशासनाने निर्गमित करावा असाही आदेश मा. खंडपीठाने दिला. तो पुढील शब्दात:- “It would be appropriate that the respondents follow these directions in the cases of the similarly situated persons, in order to avoid further petitions to the court.” (P161 NB14)

४. मा. खंडपीठाच्या निर्णयाप्रमाणे धोरणात्मक शासननिर्णय काही राज्य शासनाने काढला नाही. रिकव्हऱ्यांचा उद्योग अखंडपणे चालूच राहिला, त्यानंतरची कोर्टकचेरी पुन्हा नागपूर खंडपीठासमोर झाली. अमरावती विभागातील निरनिराळ्या २० शिक्षकांना याचिका दाखल कराव्या लागल्या. सन २०१३ ची ही याचिका क्रमांक ६४७२ सुनावणीला आली व दिनांक ४ ऑगस्ट २०१४ रोजी मा. नागपूर खंडपीठाने याबाबतीत निर्णय दिला. हा निर्णय २०१४ च्या बुलेटीनच्या पृष्ठ क्रमांक १६२ वर प्रसृत करण्यात आलेला आहे. मा. खंडपीठाने आपला आदेश पुढीलप्रमाणे शब्दबद्ध केलेला आहे:- “In view of the aforesaid, the writ petition is allowed. The respondents are directed to refund the amount that was recovered from the pension of the petitioners within a period of four months.”

५. इतक्या उपरही तत्सम प्रकरणी रिकव्हऱ्या चालूच होत्या त्यामुळे मा. नागपूर खंडपीठासमोर आणखी एक म्हणजे सन २०१४ ची याचिका क्रमांक २२१५ शिक्षकांना दाखल करावी लागली होती. या याचिका (W.P. NO. 2215 of 2014.) प्रकरणी आता दिनांक १२ जानेवारी २०१५ रोजी मा. उच्च न्यायालयाने निर्णय दिला (P35 NB15) असून स्पष्टपणे पुढीलप्रमाणे आदेशीत केले आहे. :-

“The respondents to refund the amount deducted from the petitioners within next four months with interest calculated at 12% on the said amount from the date of deduction till its actual payment.” मा. उच्च न्यायालयाच्या नागपूर खंडपीठाचा दिनांक १२ जानेवारी २०१५ रोजीचा हा निर्णय याच अंकात (पृष्ठ ३५ वर) प्रसृत केलेला आहे.

६. याच निर्णयामध्ये आठ-पंधरा दिवसांपूर्वी या संदर्भात दिलेल्या मा. सर्वोच्च न्यायालयाच्या एका निर्णयाचा (C.A.No.11527 of 2014) खुद्द मा. न्यायमूर्तींनी उल्लेख केलेला आहे तो पुढील शब्दात :-

“Very recently, the Hon'ble Apex Court has considered the controversy and evolved five principles and pointed out when deductions are not permissible. The retirement is contingency included in it. The said Judgment is delivered in Civil Appeal No.11527 of 2014, dt.18.2.2014, State of Punjab and Others etc. vs. Rafiq Masih (White Washer) etc.” (P35 NB15)

७. मा. सर्वोच्च न्यायालयाचा दिनांक १८ डिसेंबर २०१४ रोजीचा निर्णय याच अंकात (पृष्ठ ३३ वर) प्रकाशित करण्यात आला आहे. मा. सर्वोच्च न्यायालयाने आपल्या या निर्णयात पुढील ५ प्रकारामध्ये रिकव्हरी काढण्याची अनुमती असणार नाही असा ठाम निष्कर्ष नोंदविला आहे. मुळ पुढीलप्रमाणे :-

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group C and Group D service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.” (P33 NB15)

८. इतक्या उपरही तत्सम प्रकरणी रिकव्हऱ्या चालूच होत्या त्यामुळे मा. नागपूर खंडपीठासमोर आणखी दोन म्हणजे सन २०१५ ची याचिका क्रमांक १२५ व १२९ शिक्षकांना दाखल कराव्या लागल्या होत्या. या याचिका (W.P. 125 & 129 of 2015) प्रकरणी आता दिनांक २९ जानेवारी २०१५ रोजी मा. उच्च न्यायालयाने निर्णय दिला असून हा निर्णय याच अंकात (पृष्ठ ३६ वर) प्रसृत केलेला आहे. (P36 NB15)

कुंठित वेतनवाढीच्या रिकव्हऱ्या काढण्याचे हे लचांड मा. सर्वोच्च न्यायालयाच्या उपरोक्त निर्णयानंतर तरी थांबेल अशी आपण अपेक्षा करू या.

PR :- (1-6) P156-162 NB14 (7-8) P35-36 NB15

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1371 OF 2015

Prof. Deepak Rajaram Yeole & Ors. ...Petitioners **VS.** University Grants Commission & Ors. ...Respondents **WRIT PETITION NO.1378 OF 2015** Dr.Lahanu Govind Retwade & Ors. ...Petitioners **VS.** University Grants Commission & Ors. ...Respondents **WRIT PETITION-L-NO.60 OF 2015 (ORIGINAL SIDE)** More Kailas Bhanudas & Ors. ...Petitioners **VS.** University Grants Commission & Ors. ...Respondents

Mr.Chetan Alai for the Petitioners in WP/1371/2015 Mr.Sariputta Sarnath for Petitioners in WP/1378/2015 & WP/60/2015 Mr.C.P. Yadav, Assistant Government Pleader, for Respondent Nos.2 to 4 in WP/1378/2015 & WP/60/2015 Mr.M.P. Jadhav, Assistant Government Pleader, for Resp. Nos.2 to 4 in WP/60/2015 Mr.Rui Rodrigues for Resp. No.5

CORAM : SMT. VASANTI A. NAIK & SHRI C.V. BHADANG, JJ.
DATE : 10th FEBRUARY, 2015

P.C.:- Heard.

The learned counsel for the parties state that the issue involved in these cases stands answered in favour of the petitioners herein by the judgment rendered by the Aurangabad Bench of the Bombay High Court.

The learned Assistant Government Pleader for the State does not dispute this position but states that the Special Leave

Petition is filed against the judgment rendered by the Aurangabad Bench and the same is pending.

The learned counsel for the parties, however, state that the Hon'ble Supreme Court has passed an interim order in the Special Leave Petition and the Aurangabad Bench of this Court has, in Writ Petition No. 9470 of 2013, passed an order similar to the order passed by the Hon'ble Supreme Court.

In view of the aforesaid, we intend to pass a similar order in these cases also.

Hence, Rule.

The learned Assistant Government Pleaders waive notice on behalf of the respondent Nos. 2 to 4. Mr. Rodriques, the learned counsel waives notice on behalf of respondent Nos.1 and 5.

In view of the U.G.C. Notification / letter dated 4th November, 2008, though the petitioners have not passed the NET/SET examination, they would be entitled to the benefits of the Career Advancement Scheme only for the purpose of pay scale, if they have completed 6 years of service as on that date. **The benefits should be granted within a period of six months.**

The parties are at liberty to move this Court for an early disposal of the Writ Petitions after the Hon'ble Supreme Court decides the Special Leave Petition.

(C.V. BHADANG, J.)

(VASANTIA. NAIK, J.)

(PR: (1-7) P121 B14 (8-16) P121 B14 (17) P151 B14 (18) P184 B14 (19) P190 B14 (20) P2 B15 (21) P5 B15 (22) P14 B15 (23) P23 B15 (24) P24 B15 (25) P27 B15 (26) P40 B15

AIFUCTO

All India Federation of University & College Teachers' Organisations

(Regd. Under act xxi of 1860)

MASSIVE DEMONSTRATION

&

COURT ARREST PROGRAM

in

Delhi

Date : March 13, 2015

Venue: Jantar Mantar time: 11.a.m

OUR DEMANDS

- (1)** Immediate MHRD approval of UGC decisions on 3rd amendments of UGC Regulations-2010 and P.H.D. Regulations
- (2)** HRM appointment to AIFUCTO to discuss the long standing professional demands
- (3)** Allocate 6 percent GDP to education in the budget 2015-16
- (4)** Immediately constitute VII pay revision committee
- (5)** Strengthen public funded education
- (6)** Regulate private sector institution
- (7)** Ensure regular pension scheme & reject pension scheme-2004
- (8)** Consult teachers' organisation on education policies including RUSA

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