

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

Vidyapeeth Vidyarthi Bhavan, 'B' Road, Churchgate, Mumbai - 400 020

Shivajirao Patil, President

Tapati Mukhopadhyay, General Secretary

विद्यापीठ अनुदान आयोगाने दिनांक ८ जुलै २०११ रोजी विषय क्रमांक २.०९ अन्वये
**“महाराष्ट्रातील १९ सप्टेंबर १९९१ ते ३ एप्रिल २००० या कालखंडातील
 बिगर नेट/सेट अधिव्याख्यात्यांच्या संदर्भात”**

घेतलेल्या निर्णयाच्या बाबतीत

महाराष्ट्र प्राध्यापक महासंघाच्या कार्यकारी मंडळाने

रविवार, दिनांक ७ ऑगस्ट २०११ च्या बैठकीत संमत केलेला ठराव

(१) विद्यापीठ अनुदान आयोगाने त्यांच्या ८ जुलै २०११ च्या बैठकीत “**2.09 : To Consider the representations received in respect of lecturers appointed in the State of Maharashtra from 19.09.1991 till 03.04.2000.**” या विषयावर घेतलेल्या निर्णयाचे काळजीपूर्वक अवलोकन करण्यात आले.

(२) त्या निर्णयामध्ये फक्त महाराष्ट्राचा विचार झालेला आहे व त्यातही “appointment of various teachers in the State of Maharashtra from September 19,1991 until April 3,2000” याचा विचार झालेला आहे. उशिरा का होईना ही एक वेगळी विशिष्ट स्थिती आहे हे आयोगाच्या लक्षात आले ही समाधानाची गोष्ट आहे.

(३) १९ सप्टेंबर १९९१ ते ३ एप्रिल २००० पावेतो महाराष्ट्रातील सर्व नेमणूका एकाच स्थितीचे दर्शन घडविणाऱ्या असतांना, समान स्थितीमध्ये समान वागणूक न देता, विद्यापीठ अनुदान आयोगाने यापूर्वी तुकड्या तुकड्याने अनेक निर्णय घेतले व त्यामुळे या वर्गवारीतील शिक्षकांची सुद्धा अनेक तुकड्यांमध्ये विभागणी झाली, विद्यापीठ अनुदान आयोगाने घेतलेल्या उपरोक्त निर्णयामुळे या वर्गातील शिक्षकांसाठी यापूर्वी घेतलेल्या निर्णयाचे अनेक तुकडे एकत्र आले असून आता या सर्वांसाठी एकच निर्णय झालेला आहे ही सुद्धा समाधानाची बाब आहे.

(४) “या कालखंडात नेट/सेट सक्तीचे होते अशा प्रकारचा आग्रह विद्यापीठ अनुदान आयोगाने शेवटपर्यंत कायम ठेवला” असे दिसून येते व त्या स्थितीत ‘नेट/सेट’ची अट कुलगुरूंनी क्षमापित केल्याचे मानून त्या प्रत्येक नेमणूकीला मान्यता देण्याची केलेली प्रत्येक विनंती (Representation) विद्यापीठ अनुदान आयोगाने मान्य केलेली असतांना हा निर्णय महाराष्ट्र शासनाला व विद्यापीठांना कळवितांना कोणतीही गोष्ट मोघमपणे कळवून चालणार नाही. या निर्णयामध्ये अंतर्भूत असलेल्या “प्रत्येक शिक्षकाची सेवा स्थान निश्चितीच्या प्रयोजनासाठी कोणत्या दिनांकापासून धरवी?” या प्रश्नाचे स्पष्ट उत्तर विद्यापीठ अनुदान आयोगाने महाराष्ट्र शासनाला कळविले पाहिजे अशी मागणी करण्यात येत आहे कारण तसे मा. उच्च न्यायालयाचे आदेशच आहेत व या प्रश्नाचे स्पष्ट व कायदेशीर उत्तर “नेमणूकीच्या दिनांकापासून” असेच आहे कारण तसे मा. सर्वोच्च न्यायालयाचेच आदेश आहेत, अतएव तसे तातडीने कळविले जावे अशी विनंती करण्यात येत आहे.

टीप :- विद्यापीठ अनुदान आयोगाने दिनांक ८ जुलै २०११ रोजी विषय क्रमांक २.०९ अन्वये “महाराष्ट्रातील १९ सप्टेंबर १९९१ ते ३ एप्रिल २००० या कालखंडातील बिगर नेट/सेट अधिव्याख्यात्यांच्या संदर्भात” घेतलेल्या निर्णयात अंतर्भूत असलेल्या प्रत्येक शिक्षकांच्या बाबतीत “स्थाननिश्चिती व अन्य सर्व प्रयोजनासाठी त्याची सेवा कोणत्या दिनांकापासून धरली जाईल?” हे कळविण्याची व “ती सेवा नेमणूकीच्या दिनांकापासूनच धरली जाईल” असे कळविण्याची आवश्यकता नमुद असलेले कायदेशीर मुद्दे समाविष्ट असलेली टिप्पणी सोबत जोडली आहे.

विद्यापीठ अनुदान आयोगाने दिनांक ८ जुलै २०११ रोजी विषय क्रमांक २.०९ अन्वये

“महाराष्ट्रातील १९ सप्टेंबर १९९१ ते ३ एप्रिल २००० या कालखंडातील बिगर

नेट/सेट अधिव्याख्यात्यांच्या संदर्भात” घेतलेल्या निर्णयात अंतर्भूत

असलेल्या प्रत्येक शिक्षकाच्या बाबतीत

“स्थाननिश्चिती व अन्य सर्व प्रयोजनासाठी त्याची सेवा कोणत्या दिनांकापासून धरली जाईल?”

हे कळविण्याची व

“ती सेवा नेमणूकीच्या दिनांकापासूनच धरली जाईल”

असे कळविण्याची आवश्यकता नमुद असलेले कायदेशीर मुद्दे समाविष्ट असलेली टिप्पणी

(विद्यापीठ अनुदान आयोगाने दिनांक ८ जुलै २०११ रोजी विषय क्रमांक २.०९ अन्वये “महाराष्ट्रातील १९ सप्टेंबर १९९१ ते ३ एप्रिल २००० या कालखंडातील बिगर नेट/सेट अधिव्याख्यात्यांच्या संदर्भात” घेतलेल्या निर्णयाचा या टिप्पणीमध्ये यापुढे उल्लेख “आयोगाचा जुलै २०११ चा निर्णय” असा केलेला आहे.)

**कोणत्या तारखेपासून एक्झमशन लागू होईल हे कळविणे
युजीसीला बंधनकारक**

१. १९ सप्टेंबर १९९१ ते ३ एप्रिल २००० या कालखंडात महाराष्ट्रामध्ये नियमितपणे सेवेमध्ये आलेले सर्व बिगरनेटसेट अधिव्याख्याते आता विद्यापीठ अनुदान आयोगाच्या एका निर्णयाखाली आलेले आहेत. तो म्हणजे “आयोगाचा जुलै २०११ चा निर्णय” होय. यापूर्वी विद्यापीठ अनुदान आयोगाने महाराष्ट्रातील शेकडो अधिव्याख्यात्यांना नेटसेट या पात्रतेतून ‘एक्झमशन’ दिले. विशेषतः ५ नोव्हेंबर २००८ च्या एका पत्रान्वये नागपूर विद्यापीठामध्ये ६०० च्या वर अधिव्याख्यात्यांना असे एक्झमशन मिळाले. त्याच नोव्हेंबर महिन्यात महाराष्ट्रातील इतर विद्यापीठातील शेकडो शिक्षकांना एक्झमशन देण्यात आल्याची पत्रे मिळाली. पण त्यानंतरसुद्धा गेल्या २-३ वर्षात त्यांची स्थाननिश्चिती झालेली नाही. त्यामुळे काही शिक्षकांची प्रकरणे मा. उच्च न्यायालयात गेलीत. मा. मुंबई उच्च न्यायालयाच्या नागपूर खंडपीठाने दिनांक २० एप्रिल २०११ रोजी (४९०९ ऑफ २०१०) या प्रकरणात पुढील प्रमाणे निर्णय दिलेला आहे. :-

“We direct the respondent no. 5 University Grants Commission to communicate to the State Government the date when such exemption became effective as per notification dated 5/11/2008 in respect of the petitioners, within a period of three weeks”

मा. उच्च न्यायालयाने दिलेल्या या निर्णयानुसार एक्झमशन हे कोणत्या तारखेपासून लागू होईल हे कळविणे विद्यापीठ अनुदान आयोगावर बंधनकारक आहे.

**नेमणूकीच्या दिनांकापासून सेवा नियमित
करावी लागेल**

२.१ महाराष्ट्र प्राध्यापक महासंघाच्या प्रतिनिधी मंडळाने शुक्रवार, दिनांक १०.०६.२०११ रोजी दिल्ली येथे प्रत्यक्ष विद्यापीठ अनुदान आयोगाच्या कार्यालयात जावून १८ कायदेशीर मुद्यांचे “MEMORANDUM submitted by MFUCTO delegation to the Hon'ble Chairman UGC on 10th June 2011” या मथळ्याचे एक निवेदन (दिनांकित १० जून २०११) विद्यापीठ अनुदान आयोगाला सादर केले होते. विनंतीचा त्यातील शेवटचा परिच्छेद जसाच्या तसा पुढील प्रमाणे :-

“In view of the points mentioned above we request the University Grants Commission that :-

(1) In view of the para 24 of the Hon'ble Supreme Court Judgement dated 8.9.1994, the position taken by the UGC as mentioned in the UGC letter dated 25 th December 1998 that entire service of the teacher be counted for the purposes of placement be communicated to the Hon'ble High Court. Further

(2) It be communicated to the Hon'ble High Court of Judicature at Nagpur that every teacher who was appointed

(from 1991 to 4.4.2000) through duly constituted Selection Committee and having had the then requisite minimum qualification as were existing at that time, is covered by proviso 2 of clause 2 of UGC regulation of April 2000, to satisfy the mandate of the Hon'ble High Court Nagpur that similarly situated will have to be similarly treated.

2.2 Once exemption from NET/SET is granted the appointment be treated as regularised. Para 24 of the judgement (delivered on 08.09.1994, in University of Delhi, Appellant v/s Raj Singh and others, Respondents. A.M. AHMADI AND S.P. BHARUCHA, JJ. : AIR 1995 SUPREME COURT 336.) is as follows. :-

24. As analyzed above, therefore the Delhi University may appoint as a lecturer in itself and its affiliated colleges one who has cleared the test prescribed by the said Regulations or it may seek prior approval for the relaxation of this requirement in a specific case; or it may appoint as lecturer one who does not meet this requirement without having first obtained the UGC's approval, in which event it would if it failed to show cause for it's failure to abide by the said Regulations to the satisfaction of the UGC, forfeit its grant from the U.G.C. If however it did show cause to the satisfaction of the U.G.C., it not only would not forfeit its grant but the appointment made without obtaining the U.G.C s prior approval would stand regularized." (P 316 of NB 2001)

२.२ दिनांक १० जून २०११ रोजी विद्यापीठ अनुदान आयोगाच्या कार्यालयात चर्चा झाली तेव्हा मा. सर्वोच्च न्यायालयाच्या दिनांक ८.९.१९९४ रोजीच्या (१८१९ ऑफ १९९४ या प्रकरणातील) निर्णयातील परिच्छेद २४

EXEMPT, EXEMPTED, EXEMPTION

**भाषा संचालनालय : महाराष्ट्र शासन
शासन व्यवहार कोश**

(मुळ आवृत्ती, मे, १९७३ पृष्ठ २१०)

Exempt : सुट देणे, माफी देणे, माफ करणे

Exempted : सुट मिळालेले, माफी मिळालेले

Exemption : सुट, माफी

**भाषा संचालनालय : महाराष्ट्र शासन
प्रशासन वाक्प्रयोग**

(मुळ आवृत्ती, १९६८ पृष्ठ ५६)

Exempted person : सुट दिलेली/मिळालेली व्यक्ती

Exemption from :ची माफी/सुट

चा उत्तरार्ध या महाराष्ट्र प्राध्यापक महासंघाच्या निवेदनातील क्रमांक ३ च्या मुद्याबाबत तेथील एक उपसचिव श्री. 'डोग्रासाहेब' यांनी "according to para. 24 of the SC Judgment dated 8-9-1994, our 1991 Regulation was mandatory" असे उद्गार काढले. त्याचा उल्लेख महाराष्ट्र प्राध्यापक महासंघाच्या १० जून २०११ च्या वृत्तपत्रिय प्रसारणामध्ये करण्यात आलेला आहे. तो पुढील प्रमाणे :-

"When MFUCTO brought to the notice of the UGC point No. 3, from the memorandum dated 10th June 2011 Mr. Dogra, Deputy Secretary of the UGC stated that according to para. 24 of the SC Judgment dated 8-9-1994, its 1991 Regulation was mandatory and that what MFUCTO was pointing out was only the latter part of the Para 24 of Supreme Court Judgment but not the earlier part thereof. MFUCTO delegation brought to the notice of Secretary that the earlier part of the Para 24 of the Judgment was what the Delhi High Court had stated and that the SC was merely quoting the same; whereas the latter part of Para 24 of the Judgment clearly indicated that the Regulation was recommendatory."

२.३ महासंघाच्या निवेदनाच्या मुद्दा क्रमांक ३ मध्ये मा. सर्वोच्च न्यायालयाच्या निर्णयातील परिच्छेद २४ चा फक्त उत्तरार्ध दिला होता. कारण तोच सर्वोच्च

न्यायालयाचा निर्णय आहे. पूर्वार्ध दिलेला नव्हता कारण त्यात मा. दिल्ली उच्च न्यायालयाचा निर्णय सर्वोच्च न्यायालयाने उधृत केला होता. आज विद्यापीठ अनुदान आयोगाच्या माहितीसाठी मा. सर्वोच्च न्यायालयाच्या या निर्णयातील पूर्ण परिच्छेद २४ जसाच्या तसा शब्दशः पुढे दिलेला आहे. :-

"24. It is now appropriate to clarify the direction that the Delhi High Court issued in allowing the writ petition. It held that the notification dated 19th September, 1991, by which the said Regulations were published, was valid and mandatory and the Delhi University was obliged under law to comply therewith. The Delhi University was directed to select lecturers for itself and its affiliated and subordinate colleges strictly in accordance with the notification. Put shortly, the Delhi University is mandated to comply with the said Regulations.

As analysed above, therefore, the Delhi University may appoint as a lecturer in itself and its affiliated colleges one who has cleared the test prescribed by the said Regulations; or it may seek prior approval for the relaxation of this requirement in a specific case; or it may appoint as lecturer one who does not meet this requirement without having first obtained the UGC's approval, in which event

University Grants Commission Bahadurshah Zafar Marg New Delhi - 110 002

MINUTES OF THE 479th MEETING OF THE UNIVERSITY GRANTS COMMISSION HELD ON 8th JULY 2011

The 479th meeting of the Commission was held on 8th July 2011 in which the following were present. :-

1. Prof. Ved Prakash,	Chairman
2. Mrs. Vibha Puri Das,	Member
3. Mrs. Vilasini Ramachandran,	Member
4. Prof. K.Ramamurthy Naidu,	Member
5. Dr. Vidya Yeravdekar,	Member
6. Prof. Achyutananda Samanta,	Member
7. Prof. Meenakshi Gopinath,	Member

Prof. Xavier Alphonse, S.J. and Prof. Dr. Sayed E. Hasnain, Commission Members could not attend the meeting and they were given **leave of absence**.

Shri R.D.Sahay, **Director, MHRD** also attended the meeting.

The following Officers of the UGC also attended the meeting.

Secretary, Dr. N.A. Kazmi

Additional Secretary, Dr. K.Gunasekaran

Financial Advisor, Shri. A.K.Dogra.

"**2.09** : To Consider the **representations** received in respect of lecturers appointed in the State of Maharashtra from 19.09.1991 till 03.04.2000.

The Commission **deliberated** on the issue regarding appointment of various teachers in the State of Maharashtra from September 19,1991 until April 3,2000 and resolved that all such appointments made on regular basis by various universities in the state of Maharashtra where the **university has granted exemption** to teachers from the requirement of NET in terms of the UGC Regulations, 1991 and subsequent Notification dated 24th December, 1998 and where the **representation** has been forwarded to Commission seeking further approval in relation to such regular appointments made during the said period w.e.f. September 19,1991 till April 3, 2000 **is approved**.

It further resolved that a communication in this regard be sent to the universities concerned and the state of Maharashtra"

ATTESTED :- विद्यापीठ अनुदान आयोगाने काहीतरी निर्णय घेतला आहे, असे कळल्यावर महाराष्ट्र प्राध्यापक महासंघाचे अध्यक्ष श्री. शिवाजीराव पाटील व सचिव श्रीमती ताप्ती मुखोपाध्याय यांनी दिनांक २ ऑगस्ट २०११ रोजी विद्यापीठ अनुदान आयोगाच्या दिल्ली स्थित कार्यालयात प्रत्यक्ष स्वतः जावून आयोगाचे सचिव व तेथील अधिकारी यांच्याशी चर्चा केली. "निर्णय झाला आहे. असे सर्वत्र बोलल्या जात आहे. चार दिवसांनी तुमच्या 'वेबसाईट'वर निर्णय येईल. तेव्हा तो सर्वांना कळेल. उक्त निर्णयाची प्रमाणित प्रत आम्हाला मिळाली पाहिजे कारण दिनांक ७ ऑगस्ट २०११ रोजी महाराष्ट्र प्राध्यापक महासंघाच्या कार्यकारी मंडळाची मुंबई येथे बैठक असून प्रमाणित प्रत मिळाल्याशिवाय त्यावर आम्हाला कोणताही विचार करता येणार नाही" असे सांगितले. त्यावर शेवटी उपरोक्त निर्णयाची प्रत ATTESTED करून पदाधिकाऱ्यांना देण्यात आली.

ATTESTED

02.08.2011

B.K.SINGH

Deputy Secretary,

University Grants Commission

Bahadurshah Zafar Marg

New Delhi - 110 002

**AF : P 131 **

it would, if it failed to show cause for its failure to abide by the said Regulations to the satisfaction of the U.G.C. forfeit its grant from the U.G.C. If, however, it did show cause to the satisfaction of the U.G.C., it not only would not forfeit its grant but the appointment made without obtaining the U.G.C.s prior approval would stand regularised." मुळ निर्णयामध्ये २४ हा पूर्ण एकच परिच्छेद आहे. चटकन लक्षात यावे म्हणून येथे या पूर्ण परिच्छेदाचे फक्त दोन भाग केलेले आहेत.

एकाच प्रकारच्या शिक्षकांना एकाच प्रकारचा निर्णय

३.१ हे सर्व एकाच प्रकारचे प्राध्यापक आता आयोगाच्या जुलै २०११ च्या एकाच निर्णयाखाली आले हे खरे असले तरी त्यातील यापूर्वी एक्झमशन दिलेल्या शेकडो शिक्षकांची सेवा नेमणूकीच्या दिनांकापासून प्रत्यक्षात धरण्यात आलेली असून त्याप्रमाणे त्यांना स्थाननिश्चिती देण्यात आली व आर्थिक लाभ सुद्धा देण्यात आलेले आहेत. अशा शिक्षकांची संख्या महाराष्ट्रात १ हजाराच्या वर आहे. काही अधिकाऱ्यांनी अशा शिक्षकांची स्थाननिश्चिती रद्द करून त्यांच्यावर 'रिकव्हरी' काढण्याचा वेकायदेशिर प्रयत्न केला असता "IN THE HIGH COURT OF JUDICATURE AT BOMBAY CIVIL APPELLATE JURISDICTION : WRIT PETITION NO.1893 OF 2010" या प्रकरणात दिनांक ३ सप्टेंबर २०१० रोजी दिलेल्या निर्णयात मा.उच्च न्यायालयाने :-

"It is also common ground that their pay was fixed in the senior scale and the selection grade earlier. They were also paid in the senior scale and the selection grade as per the Government Resolution dated 11th December, 1999. It is also an admitted position that now by the orders which are impugned in these petitions, the Joint Director, Higher Education has cancelled the order made by him earlier fixing the scale of pay of the Petitioners in senior scale and selection grade " असे नमूद करून "The orders impugned in the petitions, whereby the orders made earlier fixing the scale of pay of the Petitioners in senior scale and selection grade have been cancelled, are set aside " असा निर्णय दिला.

३.२ "IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD WRIT PETITION NO. 1991 OF 2011" या दुसऱ्या एका प्रकरणामध्ये सुद्धा मा. उच्च न्यायालयाने "Admittedly, the petitioners in the present petitions are appointed as Lecturers in different colleges in this region. Admittedly, their pay was fixed in the senior scale and the selection grade earlier as per the applicable Government Resolution dated 11th December, 1999. Admittedly, the Joint Director of Higher Education, Pune Region has cancelled the order of earlier pay fixation." असे मत व्यक्त केले व पुढे "The impugned orders are set aside" असा निर्णय दिला.

आता हे सर्व शिक्षक आयोगाच्या जुलै २०११ च्या एका निर्णयाखाली आलेले आहेत. त्यातील शेकडो शिक्षकांची सेवा नेमणूकीच्या दिनांकापासून धरून त्यांना तसे आर्थिक लाभ मिळत आहेत, मिळाले आहेत. इतरांच्या बाबतीत विद्यापीठ अनुदान आयोगाने वेगळा निर्णय घेणे भेदभावाचे होईल.

२००९ चे बंधन १९९९ पूर्वी कसे लागू होईल?

४. मा. दिल्ली उच्च न्यायालयाने "W.P.(C) 13689/2009, W.P.(C) 2780/2010" या प्रकरणात दिनांक २३ सप्टेंबर २०१० रोजी स्पष्टपणे पुढील प्रमाणे निर्णय दिलेला आहे. :-

"36. Further, we find that Regulations 2009 are in no way retrospective in nature. In fact, they are prospective inasmuch as they apply to appointments made or proposed to be made after the date of notification and do not apply to appointments made on regular basis prior to the said date."

१९९९ चे रेग्युलेशन शिफारशीच्या स्वरूपाचे होते असा सर्वोच्च न्यायालयाचा निर्णय आहे. २००९ चा बंधनकारक नियम झाल्यावर तो पुढे लागू होईल असे उच्च न्यायालयाचे आदेश आहेत. अशा स्थितीमध्ये वेड घेऊन पेडगावला जाता येणार नाही. व २००९ नंतर साठी लागू केलेले बंधन १९९९ पूर्वीपासून लागू करता येणार नाही.

तदर्थ सेवासुद्धा धरण्याचे युजीसीचे १९९८ चे आदेश

५. विद्यापीठ अनुदान आयोगाने मा. सर्वोच्च न्यायालयाच्या १९९४ च्या निर्णयानंतर कायदेशिर सल्ला घेतल्यानंतर जे परिपत्रक दिनांक २५ डिसेंबर १९९८ मध्ये (D.O. NO. F-2-6/98-PS) निर्गमित केले होते त्यामध्ये पूर्वसेवा धरण्याच्या बाबतीत पुढील आदेश नमूद आहेत :-

"The Commission after seeking legal opinion on clause 1(e), has decided to include service rendered in adhoc capacity for counting of past service for placement in Senior Scale/Selection grade, provided, as the three conditions, as mentioned hereunder are fulfilled :-

- (a) The adhoc service was of more than one year duration;
- (b) The incumbent was appointed on the recommendation of duly constituted Selection Committee, and
- (c) The incumbent was selected to the permanent post in continuation to the adhoc service, without any break."

सन १९९८ मध्ये काढलेल्या या परिपत्रकाप्रमाणे तदर्थ सेवा धरण्याचे आयोगाचे त्यावेळचे आदेश आहेत. आयोगाच्या जुलै २०११ च्या निर्णयामध्ये समाविष्ट असलेला प्रत्येक शिक्षक नियमित नेमणूक झालेला व त्याच कालखंडातील आहे. अॅडव्हाक सेवा धरली जात असतांना नियमित सेवा न धरण्याचे कोणतेच कारण असू शकत नाही.

सन २०१० मधील विद्यापीठ अनुदान आयोगाची भूमिका

6. Even as late as in 2010 the latest UGC Regulations Notified (In the Gazette of India) under No.F.3-1/2009 dated 30th June 2010 dealt with the question of counting of past service for placement benefits as under:-

"10.0 COUNTING OF PAST SERVICES FOR DIRECT RECRUITMENT AND PROMOTION UNDER CAS:

10.1 (f) The adhoc or temporary service of more than 1 year duration can be counted provided that

- (i) The period of service was of more than one year duration
- (ii) The incumbent was appointed on the recommendation of duly constituted selection committee and
- (iii) The incumbent was selected to the permanent post in continuation to the ad hoc or temporary service without any break

NOTES

(1) This view of the UGC is in line with the Hon'ble Supreme Court decision rendered in Sharadendu Bhushan, Appellant v. Nagpur University, Nagpur & Ors, Respondents (AIR 1988, Supreme Court 335) that "experience is the basis of placement."

(२) भारत शासन राजपत्राच्या भाग ३ सेक्शन ४ मध्ये १८.०९.२०१० रोजी पृष्ठ ७८४८ वर विद्यापीठाचे हे २०१० चे रेग्युलेशन प्रकाशित झाले आहे.

(३) ते रेग्युलेशन्स बंधनकारक आहेत असा कर्नाटक हायकोर्टाने "Writ

Petition No. 13449-453 of 2011 (S-RES) 2077 of 2011” या प्रकरणात २२ जून २०११ रोजी निर्णय दिलेला आहे.

(४) २००९ चे रेग्युलेशन बंधनकारक आहेत असा बिहार हायकोर्टाने “In the High Court of Judicature at Patana CWJC No. 11775 of 2010 Decided on 20.08. 2010 ” या प्रकरणात निर्णय दिलेला आहे.

UGC's policy decision.

7.1 युजीसीच्या स्थायी समितीचा निर्णय :- “While considering the appointments of NET/SET affected teachers who have been appointed after April 2000, The standing committee of UGC in its meeting dated 3 rd and 4 th Sept. 2008 made some policy recommendations. where in “**With regard to the candidates who had not cleared the NET/SLET at the time of selection or appointment** and were otherwise found qualified and appointed against existing vacancies on the recommendation of the Selection Committee but were not appointed on a regular basis for

lack of NET/SLET clearance and due to non approval from the concerned authorities, the **Committee was of the opinion that if the said appointees have been in continuous service for a period of five years, they will be recommended for exemption from NET/SLET. The Committee further finds that such appointments at the initial stage were only irregular, in the sense, that it is not illegal though the other requirements for regular appointment such as qualifications, selection procedure and existence of vacant posts etc. were duly met and therefore could be regularized.** The committee feels that their appointment was necessitated due to non availability of NET/SLET qualified candidates and their five years service is considered to be sufficient for regularizing their services.” अशी महत्वाची शिफारस स्थायी समितीने केली.

7.2 युजीसीचा निर्णय :- On these recommendations, the UGC took some policy decisions in its meeting held on 7th and 8th Oct. 2008 in which one decision is as follows.:-

“With reference to your proposal on the above subject, I am directed to inform you that the matter was placed before the Commission at its meeting held on 7th & 8th October, 2008. **The Commission was of the view that since no NET qualified/NET exempted candidate was available at the time of interview and had continued service of 5 or more years the NET /SLET qualification is relaxed in respect of the following candidates for appointment as Lecturer with the following conditions :-**

- (i) That the recommended exempted candidate should have been selected by a duly constituted Selection Committee.
- (ii) The constitutional provisions of reservation for SC/ST etc. are followed in these selections.”

7.3 UGC communicated the above said decision in respect of such 637 teachers (out of which many teachers have been appointed after April 2000) to the registrar Nagpur University on 5th November 2008. (alongwith the registrars of other universities regarding the similar appointments of teachers.)

Central government's order to UGC

8. In HRD Ministry's order dated 3.11.2010, the following references have been made. :-

“The above mentioned resolution perhaps does not take into account the fact that appointments, If any, pursuant to the date of coming into force of **these regulations are bound to be prospective only. Appointments can never be made with retrospective dates.**

Similarly, since by Commissions own admission, the regulations are prospective in nature and not retrospective.” (P 6 of NB 2011)

वर नमूद केलेला मुद्दा क्रमांक १ लक्षात घेता विद्यापीठ अनुदान आयोगाने दिनांक ८ जुलै २०११ रोजी विषय क्रमांक २.०९ अन्वये “महाराष्ट्रातील १९ सप्टेंबर १९९१ ते ३ एप्रिल २००० या कालखंडातील बिगर नेट/सेट अधिव्याख्यात्यांच्या संदर्भात” घेतलेल्या निर्णयात अंतर्भूत असलेल्या प्रत्येक शिक्षकाच्या बाबतीत “स्थाननिश्चिती व अन्य सर्व प्रयोजनासाठी त्याची सेवा कोणत्या दिनांकापासून धरली जाईल?” हे कळविण्याची आवश्यकता आयोगाच्या सहज लक्षात येईल असे वाटते. त्याप्रमाणे या टिप्पणीतील सर्व मुद्दे लक्षात घेतले तर “ती सेवा नेमणूकीच्या दिनांकापासूनच धरली जाईल” असे कळविण्याची आवश्यकता सुद्धा सहज लक्षात येईल.

महाराष्ट्र शासन

क्रमांक संकीर्ण २०११/(२६८/११)/विशि-१

उच्च व तंत्र शिक्षण विभाग,

मंत्रालय, मादाम कामा रोड, हुतात्मा राजगुरू चौक, मुंबई ४०० ०३२

दिनांक : ३ ऑगस्ट, २०११

प्रति,

संचालक, उच्च शिक्षण, महाराष्ट्र राज्य, पुणे

विषय :- दि. १९.९.१९९१ ते ३.४.२००० या कालावधीतील नेट/सेट मधून सूट मिळालेल्या अधिव्याख्यात्यांना करियर अॅडव्हान्समेंट योजना (कॅस) लागू करण्याबाबत.

महोदय

उपरोक्त विषयाच्या अनुषंगाने विद्यापीठ अनुदान आयोगाने १९.९.१९९१ ते ०३.०४.२००० या कालावधीतील ज्या बिगर नेट/सेट अधिव्याख्यात्यांना (सहाय्यक प्राध्यापक) नेट/सेट अर्हतेमधून ज्या अटी/ शर्तीच्या अधीन राहून सूट दिलेली आहे, त्या अटीची पूर्तता करणाऱ्या अधिव्याख्यात्यांना (सहाय्यक प्राध्यापक) खालीलप्रमाणे करियर अॅडव्हान्समेंट योजना लागू करण्याचा प्रस्ताव शासनाच्या विचाराधीन आहे.

(अ) विद्यापीठ अनुदान आयोगाने नेट/सेट अर्हतेमधून सूट देण्याच्या आदेशामध्ये ज्या दिनांकापासून सूट दिल्याचे नमूद केले आहे त्या दिनांकापासून संबंधित अधिव्याख्यात्यांना करियर अॅडव्हान्समेंट योजनेसाठी पात्र धरून त्या अनुषंगाने योजनेचा फायदा देऊन स्थाननिश्चिती करणे.

(ब) ज्या अधिव्याख्यात्यांच्या प्रकरणांमध्ये फक्त नियुक्तीचा दिनांक नमूद केलेला आहे. परंतु कोणत्या दिनांकापासून सूट द्यावी याबाबतचा दिनांक नमूद केलेला नाही. अशा अधिव्याख्यात्यांना त्यांच्यासंदर्भात विद्यापीठ अनुदान आयोगाने नेट/सेट अर्हतेमधून सूट देण्याचे आदेश ज्या दिनांकास निर्गमित केले आहेत त्या दिनांकापासून स्थाननिश्चिती करणे.

(क) विद्यापीठ अनुदान आयोगाने ज्या अधिव्याख्यात्यांच्या बाबतीत सूट देताना नेट/सेट अर्हता/पात्रता धारण करण्यास त्यांच्या आदेशात काही अवधी दिलेला आहे. विद्यापीठ अनुदान आयोगाने विहित केलेल्या अवधीमध्ये अर्हता/पात्रता धारण करणाऱ्या अधिव्याख्यात्यांना त्यांनी ज्या दिनांकास पात्रता धारण केली आहे त्या दिनांकापासून करियर अॅडव्हान्समेंट योजनेचा फायदा देणे.

उपरोक्त प्रमाणे करियर अॅडव्हान्समेंट योजना लागू केल्यास शासनावर अंदाजे किती आर्थिक भार येईल, याबाबतची विद्यापीठ निहाय माहिती शासनास कृपया तात्काळ उपलब्ध करून द्यावी, ही विनंती.

आपला

(विकास तु. कदम)

कक्ष अधिकारी, महाराष्ट्र शासन

प्रत : सर्व विभागीय सह संचालक, उच्च शिक्षण, कुलसचिव, सर्व अकृषि विद्यापीठे. यांना विनंती करण्यात येते की, उपरोक्त मुद्याबाबतची माहिती संचालक, उच्च शिक्षण यांना महाविद्यालय व अधिव्याख्याता निहाय त्वरीत सादर करावी.

**FS : P 83 **

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

*Registered under the Trade Union Act 1926. No By II-8162 of 1985
Affiliated to the All India Federation of University and College Teacher's Organizations (AIFUCTO)
Vidyapeeth Vidyarthi Bhavan, 'B' Road, Churchgate, Mumbai – 400 020*

**MEMORANDUM
on points Related to NET/SET
submitted by MFUCTO delegation to the
Hon'ble Chairman UGC on
10th June 2011**

(1)

1.1 UGC issued a regulation in 1991 making NET/SET compulsory. Thereafter in 1998 UGC has also issued a notification with a provision of making NET/SET compulsory even for the placement in senior scale and selection grade (Para 8.2.0 of UGC Notification dated 24th December 1998, - P 20 of NB 1999) But UGC had to withdraw the above mentioned provision due to Hon'ble supreme court's 1994 judgement. Even UGC had to cancel all its earlier notifications and had to issue a new regulation on 4th April 2000. The first sentence of the said regulation reads.:-

"In exercise of the powers conferred by clause (e) & (g) of sub-section (1) of Section 26 read with Section 14 of University Grants Commission Act, 1956 (3 of 1956), and in supersession of the Regulations issued under University Grants Commission letter No.F.1-93/74 (CPP) Part (v) dated 13th June, 1983 and No.F.1-11/87 (CPP-II) dated 19th September, 1991 and Notification No.1-93/74(CP) dated 19th February, 1985, 26th November, 1985 and No.F.3-1/94 (PS) dated 24th December, 1998, the University Grants Commission hereby makes the following regulations," (P 66 of NB 2000)

1.2 By cancelling all its earlier regulations regarding NET/SET as mentioned above, the UGC made its position clear and issued a new regulation on 4th April 2000 wherein it says. "No person shall be appointed to a teaching post in university or in any of institutions including constituent or affiliated colleges recognised under clause (f) of Section 2 of the University Grants Commission Act, 1956 or in an institution deemed to be a university under Section 3 of the said Act in a subject if he/she does not fulfil the requirements as to the qualifications for the appropriate subjects as provided in the Annexure." While clearly mentioning the above provision in para 2, UGC has also appended proviso 2 to this clause. Regarding the persons who have already been appointed, the proviso clearly states. :-

" Provided further that these regulations shall not be applicable to such cases where selections of the **candidates having had the then requisite minimum qualification as were existing at that time** through duly constituted Selection Committees for making appointments to the teaching posts have been made prior to the enforcement of these regulations." (P 66 of NB 2000)

(2)

Supreme courts important judgement

2. As per the supreme courts judgement delivered on

08.09.1994, in University of Delhi, Appellant v/s Raj Singh and others, Respondents. A.M. AHMADI AND S.P. BHARUCHA, JJ. : AIR 1995 SUPREME COURT 336.:-

"i) Regulations are valid : Regulations (1991), notified on 19th September, 1991, by the University Grants Commission are valid.

ii) recommendatory : The provisions of clause 2 of the said Regulations are, therefore, recommendatory in character.

iii) application prospective : The second proviso to clause 2 makes the application of the said Regulations prospective." (P 316 of NB 2001)

UGC's 1991 regulation regarding NET/SET is recommendatory in nature. The decision whether to make it mandatory or not is to be taken by the concerned university or the state Govt. Such decision if taken shall be implemented only after making and issuing necessary statute or standard code. Supreme court has also made it clear that this regulation shall come into force prospectively and not retrospectively and this regulation relates to all applicants i.e. candidates.

Due to the above mentioned judgement of supreme court, UGC had to issue a regulation on 4th April 2000 as mentioned above.

(3)

Once exemption from NET/SET is granted the appointment be treated as regularised.

3. Para 24 of the judgement (delivered on 08.09.1994, in University of Delhi, Appellant v/s Raj Singh and others, Respondents. A.M. AHMADI AND S.P. BHARUCHA, JJ. : AIR 1995 SUPREME COURT 336.) is as follows. :-

"24. As analyzed above, therefore the Delhi University may appoint as a lecturer in itself and its affiliated colleges one who has cleared the test prescribed by the said Regulations or it may seek prior approval for the relaxation of this requirement in a specific case; or it may appoint as lecturer one who does not meet this requirement without having first obtained the UGC's approval, in which event it would if it failed to show cause for its failure to abide by the said Regulations to the satisfaction of the UGC, forfeit its grant from the U.G.C. If however it did show cause to the satisfaction of the U.G.C., it not only would not forfeit its grant but the appointment made without obtaining the U.G.C.'s prior approval would stand regularized." (P 316 of NB 2001)

(4)

Lawful instruments for prescribing qualifications

for the post of lecturers in Maharashtra

4. MFUCTO sent a memorandum to UGC on 30 th March 2003. Para 2 of the said Memorandum is as follows:-

"2. LAWFUL INSTRUMENT FOR PRESCRIBING QUALIFICATIONS:

2.1 The Non-Agricultural Universities in Maharashtra, viz, University of Mumbai, SNDT Women's University, University of Pune, Nagpur University, Amravati University, Shivaji University, North Maharashtra University, Dr. Babasaheb Marathwada University and Ramanand Tirth University are governed by the provisions of the Maharashtra Universities Act, 1994. **Section 51(8) of the said Act provides that Recruitment and Qualifications of the teachers of the Universities and the affiliated colleges is to be regulated by Statutes to be made by the Universities.** In case Statutes do not exist or where Statutes exist but they need to be amended, and if in the opinion of the Universities it is likely to take time before new Statutes could be brought into existence or existing Statutes could be amended, Section 14(8) of the Act provides **the Vice Chancellors with powers to issue directions.**

2.2 Section 8(3) of the said Act empowers the State Government to issue **Standard Code** for the purpose of securing and maintaining uniform standards by Notification in the official Gazette.

2.3 It may be pointed out that the UGC is fully aware of such provisions in the Universities Act in different States in the country and therefore in all the Regulations/ Notifications that the UGC has been issuing from time to time, the UGC has been emphasizing that it would be necessary for the Universities to make Statutes to implement the UGC Notifications/Regulations." (P 596 of NB 2001)

(5)**State Government's lackadaisical attitude**

5. Amravati University Vice Chancellor Hon'ble Dr. S.N.Patil had sent a letter on 10th December 2002. In para no.6 and 12 he stated. :-

"Approach of the State Government

6) The approach of the State Govt. is very clear from the following submission -

(a) Depending upon the UGC notification No. F-1/11/87/CPP dated 19th Sept. 1991 the state Govt. has issued a GR dated 23rd October 1992 (Please refer enclosure No. **10**) which was immediately withdrawn by the new GR dated 27th November 1992 (Please refer enclosure No. **11**) .

(b) Meanwhile UGC was continuously writing to State Govt. for setting up a accredited NET at State Level and to make suitable amendment in the University Statute.

(c) The constantly changing mind of the State Govt. will be clear from the fact that, the State Govt. has issued three circulars within the span of three months. First circular was issued on 2-2-1994 (Please refer enclosure No. **12**) directing the University to continue the services of the teacher, who have not passed the NET for further period till 31st March 1994. Second Circular was issued on 7-3-1994 (Please refer enclosure No. **13**) for extending the limit of passing NET till 31-3-1995. Third circular was issued on 28-4-1994 (Please refer enclosure No. **14**) specifying therein that the tenure of services of the teachers in the Colleges and Universities has been further extended up to 31-3-1996 for passing NET.

(d) There after Higher and Technical Education and Employment Department of the State of Maharashtra

again issued Government Resolution No. NGC/1794/7945/UE-4 dated 22-12-1995 (Please refer enclosure No. **15**) for withdrawing the limit of passing NET/SET examination which was earlier prescribed till 31-3-1996 and it was clearly mentioned that the appointment of such lecturers should be considered on ad-hoc basis. Even though such appointments should be considered on ad-hoc basis, such lecturers shall not be removed from the services on the ground that they have not passed NET/SET examination, however yearly increments shall not be granted to such lectures till they pass NET/SET Examination.

(e) Then the State Government again issued GR dated 22-5-1998 (Please refer enclosure No. **16**) by resolving to relax the condition of withholding the yearly increments with effect from 1.4.1998. It further prescribes that the yearly increments of the lecturers after 1.4.1998 should not be withheld on the ground that such Lecturers have not passed NET/SET examination.

(f) Instead of firmly introducing NET/SET as a compulsory qualification at recruitment level by the competent legal instrument such as Standard Code, The State Govt. was constantly introducing NET/SET qualification by informal instruments and was simultaneously enjoying the benefits of not introducing it. Since NET/SET was not inducted as a compulsory qualification at the recruitment level by legal instrument, hundreds of candidates, without NET/SET, were recruited from 1991 till the **cutoff** date i.e. 30.12.1999 in this university area. Advertisements were approved, selections were made, approvals were granted by the university, and because it was the perfectly lawful recruitment in the teaching cadre, 100% salary grants were paid by the State Govt. in respect of such lawfully recruited teachers year after years and continued to be so paid even today. A small number of teachers shown in **Appendix-A**, from out of the lawfully recruited so many teachers are carved out for discriminatory treatment by Govt. resolution No. NGC 720/11815/[38]/01/UE-4 dated 18.10.2001" (P 589 of NB 2001)

12) REQUEST IN RESPECT OF**(A) Cases covered by Second proviso of para 2 of "UGC Regulation 2000" :-**

Every teacher (approved by this university) mentioned (at Sr.No. 1 to 30) in column No. 2 of the **Appendix-A** working as a lecturer in the college mentioned in column No. 3, was duly selected by a duly constituted selection committee on a date mentioned in column No. 6 of **Appendix-A**, and was having the then requisite minimum qualification (mentioned in column No. 4 of **Appendix-A**) as were existing at that time. (NET/SET was prescribed as a compulsory qualification at the recruitment level in this university for the first time by Direction No. 7 of 1999, dated 27.12.1999 (Please refer enclosure No. **7**) published in the Amravati University Gazette on 30.12.1999 on page No. 97) As per the judgement delivered by the Supreme Court of India referred at 2 above, U.G.C. Regulation 1991 regarding NET/SET can be implemented prospectively. In supersession of all previous notifications, U.G.C. issued "UGC Regulation 2000" notification. Every teacher mentioned in **Appendix-A** is covered by second proviso of Para 2 of the 2000 Regulation. It is the considered view of this university that NET/SET qualification is not applicable to the teachers mentioned in the **Appendix-A** as they are covered by second proviso of para 2 of the UGC regulation 2000 and protected by the Supreme Court judgement referred at 2 above. U.G.C. may kindly confirm this view of the university" (P 589 of NB 2001)

(6)**Universities communicated supreme court's judgement to UGC.**

6. The Registrar of Nagpur University wrote a letter

to UGC on 17 th December 2002 where in he stated in para 7. :-

"Supreme Court

"The University Grants Commission (Qualifications required of a person to be appointed to the teaching staff of a University and institutions affiliated to it) Regulations 1991" as notified on 19th September, 1991 by the University Grants Commission, were analysed by SUPREME COURT in Civil Appeal No. 1819 of 1994, decided on 8.9.1994, in University of Delhi, Appellant V/S Raj Singh and others, Respondents. (A.M. AHMADI AND S.P. BHARUCHA.); AIR 1995 SUPREME COURT 336) It was ruled by the Appex Court as follows:

i) Regulations are valid : Regulations (1991), notified on 19th September, 1991, by the University Grants Commission are valid.

ii) recommendatory : The provisions of clause 2 of the said Regulations are, therefore, recommendatory in character.

iii) Application prospective : The Second proviso to clause 2 makes the application of the said Regulations prospective. " (P 316 of NB 2001)

(7)

Hon'ble Vice Chancellor of Shivaji University Kolhapur Shri. Manikrao Salunke in his official letter dated 05.08.2008 communicated to UGC chairman as follows :-

" Since NET/SET condition was not inducted as a part of compulsory qualification of teachers, at the recruitment level by legal instrument, hundreds of candidates without NET/SET, have been recruited from 1991 till the Cut Off date of 7th January, 2000 in this University area. Naturally, advertisements were approved, Selections of teachers were made, approvals were also duly granted by the Universities including our University, also, and further because it was perfectly lawful recruitment in the teaching cadre, 100 % salary grants, including annual increments, had been paid by the State Govt. as well as by the UGC also (by way of revised scales from 01.01.1986), in respect of such lawfully recruited teachers year after year from 1991 and such teachers continue to be paid so even today.

In this respect, it is important to look at the second provision, as given in the second para of the UGC

Regulations dated 4th April, 2000, which reads thus : **"Provided further that these regulations shall not be applicable to such cases where selections of the candidates, having had the then requisite minimum qualifications as were existing at that time through duly constituted Selection Committees for making appointments to the teaching posts, have been made prior to the enforcement of these regulations "** (the emphasis provided.)

After having taken into consideration all the above situations/ Circumstances, in our opinion, it is quite clear that the NET/SET condition could not be legally made applicable to such teachers/candidates, whose strength is about 10,000 in the entire state. These teachers ought to have already been released from acquiring NET/SET condition.

Atleast, after a long period of time now we the University Grants Commission (UGC) and the respective University, may do it now. The University shall fulfill all necessary formalities after the UGC takes the initial action in this respect."

(8)

Once the due date of submission of application is over, no change in qualification is permitted as per Supreme court judgements.

8.1 In the case of *Ashok Kumar Sharma and others...Versus...Chander Shekhar and another*, reported in **1997 (4) Supreme Court Cases 18** the three Judge Bench considered the issue and held in paragraph No.6 thus:

"6.The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also

University Grants Commission : Bahadur Shah Zafar Marg : New Delhi 110 002

Dr. R.P. Gangurde, Additional Secretary,

25.12.1998 : D.O.No. F-2-6/98-(PS)

Dear Sir/Madam,

Kindly refer to this office letter D.O. No. F.1-6/90-(PS Cell) dated 27th November, 1990 (copy enclosed) regarding **counting of previous service rendered by lecturers for placement in the Senior Scale/Selection Grade.**

The Commission after seeking legal opinion on clause 1(e), has decided to include service rendered in adhoc capacity for counting of past service for placement in Senior Scale/Selection grade, provided, as the three conditions, as mentioned hereunder are fulfilled :-

- (a) The adhoc service was of more than one year duration;
- (b) The incumbent was appointed on the recommendation of duly constituted Selection Committee, and
- (c) The incumbent was selected to the permanent post in continuation to the adhoc service, without any break.

Yours Sincerely
(R.P.Gangurde)

have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their applications ought to have been rejected at the inception itself. This proposition is indisputable and in fact was not doubted or disputed in the majority judgment. This is also the proposition affirmed in *Rekha Chaturvedi v. University of Rajasthan*.”

8.2 In the case of *Gopal Krushna Rath...Versus...M.A.A. Baig (Dead) By Lrs. and others*, reported in *1999 (1) Supreme Court Cases 544* the Hon'ble Supreme Court in paragraph Nos.6 and 7 held thus:

“6. When the selection process has actually commenced and the last date for inviting applications is over, any subsequent change in the requirements regarding qualifications by the University Grants Commission will not affect the process of selection which has already commenced. Otherwise it would involve issuing a fresh advertisement with the new qualifications. In the case of *P. Mahendran v. State of Karnataka* this Court has observed (SCC p. 416, para 5)

“5. It is well-settled rule of construction that every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect.” The Court further observed that :

“Since the amending Rules were not retrospective, it could not adversely affect the right of those candidates who were qualified for selection and appointment on the date they applied for the post, moreover as the process of selection had already commenced when the amending Rules came into force, the amended Rules could not affect the existing rights of those candidates who were being considered for selection as they possessed the requisite qualifications prescribed by the Rules before its amendment.”

7. In the present case, therefore, the appellant possessed the necessary qualifications as advertised on the last date of receiving applications. These qualifications were in accordance with the Rules/guidelines then in force. There is also no doubt that the appellant obtained higher marks than the original Respondent 1 at the selection. There is no challenge to the process of selection, nor is there any allegation of malafides in the process of selection.” In the case of *Madan Mohan Sharma and another...Versus...State of Rajasthan and others*, reported in *2008 (3) Supreme Court Cases 724* the Hon'ble Supreme Court in paragraph Nos.11 and 12 held thus:

“11.Once the advertisement had been issued on the basis of the circular obtaining at that particular time, the effect would be that the selection process should continue on the basis of the criteria which were laid down and it cannot be on the basis of the criteria which has been made subsequently.

12. As per the circular which was obtaining at the time when the advertisement was issued dated 24-7-1995, the criteria for selection to the post of teacher Grade III was Secondary Examination though this was changed during the pendency of the advertisement. Subsequent amendment of the Rules which was prospective cannot be made retrospective so as to make the selection on the basis of the Rules which were subsequently amended. If this was to be done, then the only course open was to recall Advertisement No.1 of 1996 and to issue fresh advertisement according to the Rules which had come into force. (P 76 of NB 2010)”

8.3 Once the due date of submission of application is over, no change in qualification is permitted High court

judgements. - High Court in Petition No. 1489 of 2010 gave a following verdict :-

10. From the above, it is clear that the subsequent insertion of compulsory NET/SLET qualification by gazette notification dated 11.7.2009 made by University Grants Commission will have to be held to be prospective in its operation since in all these cases the advertisements as per earlier eligibility qualifications were duly approved and sanctioned by the University and were also published well before the cut-off date, namely, 11.7.2009 and at any rate before the last date of application that was to be made pursuant to these advertisements. **Last date of application as per advertisements is a crucial date in accordance with the law laid down by the Hon'ble Supreme Court.**

11. For all the above reasons, therefore, we answer the question framed by us holding that the selections and **appointments made pursuant to the advertisements published in these writ petitions prior to 11.07.2009 shall not be affected by introduction of compulsory NET/SLET eligibility criteria** as the said gazette notification dated 11.07.2009 is prospective in nature. In the result, we make the following order. (P 73 of NB 2010)

(9)

UGC's present stand/position.

9.1 UGC by letter D.O. No.F.2-6/98 (PS) dated 25th December 1998 had pointed out that the decision of the UGC was after obtaining legal opinion in respect of counting of service for Placement benefits in the Senior Scale and Selection Grade is as under:

“The commission after seeking legal opinion on clause 1 (e) has decided to include service rendered in adhoc capacity for counting of past service for placement in senior scale/selection grade, provided as the three conditions, as mentioned hereunder are fulfilled.

(a) The adhoc service was of more than one year duration;

(b) The incumbent was appointed on the recommendation of duly constituted selection committee; and

(c) The incumbent was Selected to the permanent post in continuation to the adhoc service without any break.

9.2 Even as late as in 2010 the latest UGC Regulations Notified under No.F.3-1/2009 dated 30th June 2010 dealt with the question of counting of service for placement benefits as under:

“10.0 COUNTING OF PAST SERVICES FOR DIRECT RECRUITMENT AND PROMOTION UNDER CAS:

10.1 (f) The adhoc or temporary service of more than 1 year duration can be counted provided that

(i) **The period of service was of more than one year duration**

(ii) **The incumbent was appointed on the recommendation of duly constituted selection committee and**

(iii) **The incumbent was selected to the permanent post in continuation to the adhoc or temporary service without any break**

This is in line with the Hon'ble Supreme Court decision rendered in *Sharadendu Bhushan, Appellant v. Nagpur University, Nagpur & Ors, Respondents* (AIR 1988, Supreme Court 335) that **‘experience is the basis of placement.** ”

(10)**Central government's order to UGC**

10. In HRD Ministry's order dated 3.11.2010, the following references have been made. :-

"The above mentioned resolution perhaps does not take into account the fact that appointments, If any, pursuant to the date of coming into force of **these regulations are bound to be prospective only. Appointments can never be made with retrospective dates.**

Similarly, since by Commissions own admission, the regulations are prospective in nature and not retrospective." (P 6 of NB 2011)"

(11)**UGC's policy decision.**

11.1 While considering the appointments of NET/SET affected teachers who have been appointed after April 2000, The standing committee of UGC in its meeting dated 3 rd and 4 th Sept. 2008 made some policy recommendations. where in **"With regard to the candidates who had not cleared the NET/SLET at the time of selection or appointment** and were otherwise found qualified and appointed against existing vacancies on the recommendation of the Selection Committee but were not appointed on a regular basis for lack of NET/SLET clearance and due to non approval from the concerned authorities, the **Committee was of**

the opinion that if the said appointees have been in continuous service for a period of five years, they will be recommended for exemption from NET/SLET. The Committee further finds that such appointments at the initial stage were only irregular, in the sense, that it is not illegal though the other requirements for regular appointment such as qualifications, selection procedure and existence of vacant posts etc. were duly met and therefore could be regularized. The committee feels that their appointment was necessitated due to non availability of NET/SLET qualified candidates and their five years service is considered to be sufficient for regularizing their services." Such an important recommendation exist in it.

11.2 On these recommendations the UGC took some policy decisions in its meeting held on 7th and 8th Oct. 2008 in which one decision is as follows.:-

"With reference to your proposal on the above subject, I am directed to inform you that the matter was placed before the Commission at its meeting held on 7th & 8th October, 2008. **The Commission was of the view that since no NET qualified/NET exempted candidate was available at the time of interview and had continued service of 5 or more years the NET /SLET qualification is relaxed in respect of the following candidates for appointment as Lecturer with the following conditions :-**

(i) That the recommended exempted candidate should have been selected by a duly constituted Selection

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

Registered under the Trade Union Act 1926. No By II-8162 of 1985

Affiliated to the All India Federation of University and College Teacher's Organizations (AIFUCTO)

Vidyapeeth Vidyarthi Bhavan, 'B' Road, Churchgate, Mumbai - 400 020

PRESIDENT

Prof. Shivajirao Patil
SHIVAI 39 Rewu Nagar Dheku Road,
Amalner 425 401, District Jalgaon
(9422278418)

GENERAL SECRETARY

Dr. Tapati Mukhopadhyay
Park Side 3, Wing, Flat No. 1308, Kulupwadi
Road, Borivali (East) Mumbai 400 066
(022-28871430, 9820319455)

DATE 28TH JULY 2011

To,
The Chairman, University Grant Commission, Bahadur
Shah Zafar Marg, New Delhi 110 002.

Subject : Qualification of NET/SET for University and College Lecturers in Maharashtra- proper and legal implementation thereof

The meeting of the Executive Committee of MFUCTO held on 10th July, 2011 in Mumbai had taken a full review of the actions taken by MFUCTO on 2nd August, 2010, followed by 2nd December, 2010 and 3rd, 4th and 5th March 2011, subsequently a memorandum submitted 10th July, 2011 to UGC.

During this period from August 2010 to July 2011 MFUCTO delegations met Hon'ble Minister Shri. Kapil Sibal on two occasions (2nd August 2010 and 10th July 2011). In both the occasions Minister has given positive assurances in favor of resolving this problem. This meeting had taken place with the direct intervention of Hon'ble M.P. Shri. Basudev Acharya. In fact, the delegation was accompanied by Shri Acharya. The Executive Committee has taken a note on the contribution made by Mr. Acharya on this issue. However, the Executive Committee felt that no substantial progress could be made for finally resolving this long pending issue unless further agitation is launched. In this context, Executive Committee of MFUCTO has decided to intensify there agitation and resolved.

1. To organize a Massive Dharna in Delhi on 25th August, 2011 at Jantar Mantar from 11 to 4 to highlight following

demands made to UGC and to the Hon'ble Minister of HRD in memorandum dated 10th July, 2011.

a) In view of para 24 of the Hon'ble Supreme Court judgment dated 8.9.1994, the position taken by UGC as mentioned in UGC letter dated 25.12.1998 that entire service of the teacher be counted for the purpose of placement, be Communicated in the Hon'ble High Court.

b) It be communicated to the Hon'ble High Court of Judicature at Nagpur that every teacher who was appointed (from 1991 to 4.4.2000) through duly constituted selection committees and having had the then requisite minimum qualification as were existing at that time, is covered by proviso 2 of clause 2 of UGC Regulation of April 2000, to satisfy the mandate of the Hon'ble High Court Nagpur that "Similarly situated shall be similarly treated."

2. The Executive Committee of MFUCTO also gave a call to its affiliates to participate in the Dharna to be held by AIFUCTO in Delhi on 26th August, 2011.

This decisions to be communicated to HRD, Central Government and Hon'ble like minded members of parliament and leaders of all political parties immediately.

SHIVAJIRAO PATIL, President

TAPATI MUKHOPADHYAY, General Secretary.

Copy forwarded with complements to :- 1. Shri. Basudev Acharya the leader of the CPI-M Group in Lok Sabha

**FS : P 87 **

Committee.

(ii) The constitutional provisions of reservation for SC/ST etc. are followed in these selections."

11.3 UGC communicated the above said decision in respect of such 637 teachers (out of which many teachers have been appointed after April 2000) to the registrar on Nagpur University on 5th November 2008. (alongwith the registrars of other universities regarding the similar appointments of teachers.)

(12)

Hon'ble High Court's order on UGC's policy decision.

12. In Writ Petition Nos. 4266/2006, 5037/08, 4486/2007, 4386/07, 4500/07 and 462/2008 on 27th November 2008, The Hon'ble High Court's gave the following verdict :-

"So far as the lecturers, who were in service, from 1991 onwards, the issue of exemption to them is claimed to be covered by the orders passed by the UGC on 5.11.2008 based on the Commission's decision in its meeting dated 7th and 8th October 2008. If any of the petitioners are governed by this communication dated 5.11.2008 addressed by the UGC to the Registrar of the University concerned, undoubtedly, their proposals will have to be considered and approved, as per the said decision of UGC and also the decision of the Government of India, if any, subsequently taken and applicable to the teacher appointed between the years 1991 to 2006.

The petitioners, therefore, will have to approach the University concerned, which in turn may submit its report of University Grants Commission," (P 171 of NB 2008)

(13)

Decide in 4 months

13. In the High Court of Judicature at Bombay, Appellate side. Writ Petition No. 5782 of 2001 Co-ram V.G.Palshikar & Smt. Nishita Mhatre. JJ Date : 18.4.2002 it is stated :-

"5. In view of the fact that no time limit is fixed by the Aurangabad bench. In our opinion, interest of justice require that such time limit is fixed. The process of receiving the requests from the management for consideration regarding relaxation etc. of the conditions by the UGC will take time and it would therefore be appropriate to fix some time limit. The managements where they are directed to approach the UGC for relaxation shall do so within **four months** from the date of the order of this court. The concerned University then process the same and forward them to UGC. This be done by the concerned Universities within **four months** of receiving the requests from the managements. **The UGC will have then four months** time to process the applications and request so made and then take decision. " (P 42 of NB 2002)

(14)

14. The Bombay High Court in petition No. 1893 of 2010 on 3rd September 2010 gave a following verdict. :-

"2. Admitted position is that the Petitioner in these petitions are working as Lecturers in different Colleges affiliated to Pune University. **It is also common ground that their pay was fixed in the senior scale and the selection grade earlier. They were also paid in the senior scale and the selection grade as per the Government Resolution dated 11th December, 1999.** It is also an admitted position that now by the orders which are impugned in these petitions, **the Joint Director,**

Higher Education has cancelled the order made by him earlier fixing the scale of pay of the Petitioners in senior scale and selection grade. It is also an admitted position that this has been done without issuing any show cause notice to the Petitioners. **In our opinion, the orders made in favour of the Petitioners as a result of which there was enhancement in the pay package of the Petitioners, could not have been cancelled by the Joint Director without hearing and issuing show cause notice to them.** As it is an admitted position that the orders granting senior scale and selection grade have been cancelled without granting an opportunity of being heard to the Petitioner, in our opinion, those orders will have to be set aside.

3. In the result, therefore, all the petitions succeed and allowed. **The orders impugned in the petitions, whereby the orders made earlier fixing the scale of pay of the Petitioners in senior scale and selection grade have been cancelled, are set aside,** with liberty to the Respondent No.2 to make fresh order in accordance with law. All the contentions available to both sides are kept open. Rule made absolute. No order as to costs. " (P 39 of NB 2011)

(15)

15. The Aurangabad Bench of Bombay High Court in petition no. 1991 of 2011 gave a following verdict on 24th March 2011. :-

"2. Admittedly, the petitioners in the present petitions are appointed as Lecturers in different colleges in this region. Admittedly, their pay was fixed in the senior scale and the selection grade earlier as per the applicable Government Resolution dated 11th December, 1999. Admittedly, **the Joint Director of Higher Education, Pune Region has cancelled the order of earlier pay fixation. It is admitted fact that this exercise was carried without issuing any show cause notices to the petitioners.** Thus, the petitioners are adversely affected by the order without granting an opportunity of being heard. In our opinion, therefore, those orders will have to be set aside. Further, some of the Lecturers working within the jurisdiction of Pune University with the similar grievances have succeeded on this ground, **vide order dated 3rd September, 2010 passed in writ petition No. 1893/2010 and five other writ petitions,** a copy of which is placed before us by learned counsel for the petitioners.

3. In the result, all the petitions succeed and are allowed. **The impugned orders are set aside with liberty to the Joint Director of Higher Education to make fresh order in accordance with law.** All the contentions to both the sides are kept open. Rule made absolute. No order as to costs." (P 38 of NB 2011)

(16)

16. The Nagpur Bench of Bombay High Court in petition no. 4909 of 2010 gave a following verdict on 20th April 2011.:-

"We have considered the contentions canvassed by the learned Counsel for the parties. In the backdrop of the above referred facts, it is apparent that though the University Grants Commission vide notification dated 5/11/2008 exempted Lecturers from clearing NET/SET examination, however, only because the date from which such exemption would come into effect was not communicated/declared by the University Grants Commission, the claims of the petitioners for grant of senior grade pay scale as per Career Advancement Scheme could not be finalized by the State Government. **The State Government is ready and willing to consider the claims of the petitioners for grant of benefits under Career Advancement Scheme**

provided University Grants Commission communicates the date from which exemption granted vide notification dated 5/11/2008 becomes effective. It is also brought to the notice of this Court that the State Government has already made a request to the University Grants Commission in this regard.

In the above background, **We direct the respondent no.5 University Grants Commission to communicate to the State Government the date when such exemption became effective as per notification dated 5/11/2008 in respect of the petitioners, within a period of three weeks from the date of communication of this order. We direct the State Government to reconsider the claims of the petitioners on receipt of communication from the University Grants Commission in respect of effective date of exemption, in accordance with law and procedure applicable in this regard at the earliest. With these observations and directions, the petition is disposed of. Copy of this order be given to Shri Mishra, learned Assistant Solicitor General for respondent no.5.** " (P 35 of NB 2011)

(17)

17. Sant Gadge Baba Amravati University has completed the process of placement before 26 th May 2010 in respect of the teachers who have been granted exemption by UGC. The certificates to that effect have also been issued to them.:-

"Now therefore, it is hereby certified that every teacher included in the said list who was appointed on or before 4th April 2000 and has been granted exemption from NET/SET by the UGC and whose name is mentioned in the said list is a confirmed teacher in as much as his/her services were confirmed after a period of two years (24 months) from his/her date of appointment as per the provisions of Statute 53 of this University. Further he/she has been granted Exemption by the UGC from NET/SET vide UGC's above mentioned letter. **Further it is the view of this University that his/her case is covered by proviso 2 of UGC Regulation 2000** as has been communicated by the Vice-Chancellor of this University vide his letter No. AU/8/10/C-2140/2002 dated 10-12-2002 to the UGC. All contents of the said letter including Para 12(A) are equally applicable *mutatis-mutandis* to his/her case also.

In view of this the service of every teacher (whose name appears in the said list and who was appointed on or before 4 th April 2000 and in whose case the procedure of placement in Senior Scale/Selection

Grade through duly constituted selection committee is completed) **is counted from the date of his/her appointment for the purposes of placement in Senior Scale / Selection Grade.**

Since, facts of the case are common in respect of all the teachers included in the said list, this common certificate is hereby issued for the purposes of fixation and placement as per the provision of Para 12 of 'Annexure-A' of the direction No. 21 of 2009. "

Sd/- Registrar

Sant Gadge Baba Amravati University, Amravati." (P 8 of NB 2011)

(18)

18. Hon'ble Delhi High Court in petition No. 13689 of 2009 gave a verdict on 6th December 2010. Para 36 of the said judgement is as follows :-

"36. Further, we find that Regulations 2009 are in no way retrospective in nature. In fact, they are prospective inasmuch as they apply to appointments made or proposed to be made after the date of notification and do not apply to appointments made on regular basis prior to the said date." (P 20 of NB 2011)

PRAYER

In view of the points mentioned above we request the University Grants Commission that :-

(1) In view of the para 24 of the Hon'ble Supreme Court Judgement dated 8.9.1994, the position taken by the UGC as mentioned in the UGC letter dated 25 th December 1998 that entire service of the teacher be counted for the purposes of placement be communicated to the Hon'ble High Court. Further

(2) It be communicated to the Hon'ble High Court of Judicature at Nagpur that every teacher who was appointed (from 1991 to 4.4.2000) through duly constituted Selection Committees and having had the then requisite minimum qualification as were existing at that time, is covered by proviso 2 of clause 2 of UGC regulation of April 2000, to satisfy the mandate of the Hon'ble High Court Nagpur that "similarly situated will have to be similarly treated."

Prof. Shivajirao Patil, President
Dr. Tapati Mukhopadhyay, Secretary
Dr. P.B. Raghuvanshi, Vice President

MAHARASHTRA FEDERATION OF UNIVERSITY & COLLEGE TEACHERS' ORGANISATIONS (MFUCTO) **AF : P 135 **

हा अंक १५.०८.२०११ रोजीचा विशेषांक म्हणून प्रकाशित करण्यात येत आहे.

NUTA BULLETIN (Official Journal of NAGPUR UNIVERSITY TEACHERS' ASSOCIATION)
CHIEF EDITOR : Dr.A.G.Somvanshi, Shankar Nagar, AMRAVATI-444 606. **EDITOR** : Prof. S.S. Gawai 1, Abhinav State Bank Colony, Chaprashi Pura, Camp, AMRAVATI 444 602. **PUBLISHER** : Prof. Dhote D.S., 4C, 'Rajdatta', Mahalaxmi Colony, Near Shankar Nagar, Amravati-444 606. Type Setting at NUTA Bulletin Office, Phundkar Bhavan, Behind Jain Hostel, Maltekadi Road, Amravati-444 601.
PRINTED AT Bokey Printers, Gandhi Nagar, Amravati. (M.S) **REGD NO. MAHBIL/2001/4448** Postal Registration No. ATI/RNP/78/2009-11 WPP Registration No. NR/ATI/WPP-01/2009-11 Price : Rs. Five / Name of the Posting office : **R.M.S. Amravati.** Date of Posting : **17.08.2011**

If Undelivered , please return to : NUTA Bulletin Office, Phundkar Bhavan, Behind Jain Hostel, Maltekadi Road, **Amravati-444 601.**

To,.....
.....
.....
.....
.....
.....