

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)

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28th January 2012

The Secretary

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

Subject: Unwarranted request from Principal Secretary, Higher Education, Government of Maharashtra to the UGC for reverting the decision on grant of exemption and regularization of services of non-NET/SET teachers in Maharashtra appointed during 19-9-1991 till 3-4-2000

Reference :- letter No.MIS-2011/CR-512/UNI-1, dated 2nd December 2011 from Principal Secretary, Higher Education, Government of Maharashtra.

Madam:

MFUCTO is shocked to know that Principal Secretary, in the Ministry of Higher & Technical Education, Government of Maharashtra has sent letter No.MIS-2011/CR-512/UNI-1, dated 2nd December 2011 in which a request has been made for reverting the decision of the UGC taken in its meetings held on 8th July 2011 and communicated by its letters No F.1-1/2002(PS) Exemp.Pt file IV to Principal Secretary, Government of Maharashtra Higher & Technical Education Department dated 16-8-2011 and to Dr. Tapati Mukhopadhyay, General Secretary MFUCTO by letter No. No.F-1-3/2011(PS)Exemp Dated 26.08.2011. MFUCTO considers this attempt as most unwarranted and aimed at interfering with the just and proper decision taken by the UGC after long deliberation and assessment of all issues involved in the matter. This attempt of the Government is to deprive the teachers of their lawful service benefits though many of them have put in even as long a service as 20 years. MFUCTO is compelled therefore to submit this letter bringing out important facts which would indicate that the demand of the Principal Secretary, Higher Education, Government of Maharashtra to the UGC is to say the least mischievous in intention and devoid of any merit whatsoever.

(2) At the outset it needs to be pointed out that Government of Maharashtra never introduced NET/SET as mandatory entry point qualification condition for recruitment of teachers in the State between the period 19th September 1991 and 3rd April 2000 through any of the existing lawful machinery such as through the **Standard Code** as per the provisions of Section 8(3) of the Maharashtra Universities Act, 1994 for the purpose of securing and maintaining uniform standards by Notification in the Official Gazette. Similarly 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**. None of these provisions was used by the Government of Maharashtra and/or the Universities in the State.

(3) MFUCTO has always accepted the qualifications laid down by the apex bodies as the basis for recruitment. MFUCTO never ever opposed the imposition of the qualification of NET/SET but in fact called upon the Government from time to time to introduce the said qualification through the available lawful instrument for all

Nagpur University Teachers' Association

MEETING NOTICE : 1

DATED : 15.03.2012

From :

Dr. A. W. DHAGE

Secretary, NUTA Sankalp Sahaniwas,
Khare Town, Dharampeth,
Nagpur-444 0010

To,

All the members of the Nagpur University Teachers' Association

Dear members,

I have the honour to inform you that General Body meeting of the Nagpur University Teachers' Association will be held at 12.00 noon, on the Day and the Date mentioned below.

2. If you propose to move any resolution for the consideration of the General Body, you are requested to send such resolution to me, with a copy to Prof. P. B. Raghuvanshi, President NUTA, Buty Plot, Near Mahajan Wadi, Rajapeth, Amravati 444601 within a period of 10 days from the date of the posting of this Bulletin.

3. It will not be possible to include in the agenda, resolutions received after the due date. So please make it convenient to send such resolutions, if any, within the stipulated time. The place of the meeting will be intimated to you alongwith the agenda.

Thanking you.

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

Time, Day and Date of the Meeting :
12.00 Noon on Sunday, the
13th May, 2012

the Universities in the State. It is worth noting that the UGC was also continuously writing to the State Government for setting up accredited NET at the State level and also to make

amendments to the existing University Statutes. The Government presented a deaf ear to the same.

(4) The opposition of the MFUCTO was to the

**विद्यापीठ अ-नुदाना आयोजना-ने दि. १६ व २६ ऑगस्ट, २०११ रोजी
जळविलेल्या पत्रावर मा. प्रधा-न सचिव, उच्च शिक्षण यांनी
यु. जी. सी. ला दिलेले पत्र**

GOVERNMENT OF MAHARASHTRA

No.MIS-2011/CR-512/UNI-1, : Date : 2 December 2011.

Higher & Technical Education Department, Madam Cama Road, Mantralaya, Mumbai 400032

To
The Secretary,
University Grants Commission,
Bahadur Shah Zafar Marg,
New Delhi-110002

Subject : Regarding grant of exemption and regularization of services of Non NET-SET Teachers recruited during 19-9-99 till 03-04-2000.

Ref. :- 1) Government of Maharashtra letter No. UGC 2009/ (332/09)UNI-1 Dated 24th August, 2009 & 5th March 2010
2) UGC letter No. F 1-1/2002(PS)Exemp-PL-file-IV, Dt. 16th August, 2011.

3) No. F-1-3/2001(PS)Exemp-Dt. 26/8/2011, 1/09/2011.

Dear Sir,

Kindly refer this office letter under reference and your letter regarding grant of exemption and regularization of the service of Non-NET-SET Teachers recruited during the period 19 September 1991 to 3rd April 2000 as referred to above on the caption subject.

Further to the representation of the General Secretary, MFUCTO, dt. 17th August, 2011 have sought clarification in respect of date of placement of Teachers falling within the purview of the decision of Commission dated 8th July 2011. The UGC vide its letter dt. 26th August, 2011/ 1st September 2011 have communicated the General Secretary of the organization (MFUCTO) that the services of such teachers for all purposes should be consider from the date of their regular appointments.

In this regard, I would like to reiterate that the Government of Maharashtra vide its letter under reference have categorically sought for the clarification from the UGC regarding the various issues involve while grant of exemption and regularization the services of Non NET-SET Teachers in Maharashtra with respect to the various judgments of High Court and Supreme Court in the matter. Further, it was also requested to specify that, if the exemption can be granted and/or the services can be regularize then which date should be taken for exemption and/or regularizing the services for non NET-SET teachers.

- * Date of Exemption
- * Date of appointment
- * Date of order of UGC
- * Any other date

In this regard I would also like to mention that if such exemption is granted or the decision taken by the UGC on the facts as mention below:-

- * NET-SET is compulsory as per the various notifications of UGC.
- * Only UGC is authorized to grant exemption for NET-SET and to decide the date from when to regularize the services of these exempted teachers. Government of Maharashtra has vide its G.R. No. NGC-1201/11815(38/01)/vishi-4, dated 18th October 2001 clarified that NET-SET is compulsory for all teachers appointed during 1991-99 and will draw salary in the lowest scale till they pass NET-SET.

* Hon'ble High Court, Mumbai has upheld the above GR through its various judgments from 2002 to 2008. (especially W.P. No. 5022/2001 dt. 15/18/20 Feb. 2002, W.P.No. 5375/2001 dt. 28.10.2002, W.P. No. 5782/2001 dt. 18.4.2004 and 4266/2006 dt. 27.11.2008).

* If exemption be granted and / or regularization done in view of the Judgement of the Hon'ble Supreme court dated

27th Feb. 2009 in the case of G.V. Chandrashekhara V/s Govt. of Karnataka which has laid down that "Unless the appointment is in terms of relevant rules and after a proper competition amongst the qualified persons the same would not confer any right on the appointee etc.

In the above circumstances following may be the implication on the said facts.

* Any date for exemption and / or regularizing the services may be violative of the aforesaid judgement of the Hon'ble Apex Court.

* It will also disturb the seniority list completely.

* This will amount to awarding the non - NET/SET teachers over those who worked diligently and obtained NET/SET earlier. NET/SET holders may therefore launch agitation.

* Nobody will take NET/SET seriously thereafter and not try to pass/acquire it.

* Non NET/SET teachers will claim higher pay scales which will add to the financial burden of the State.

However, I would like to bring your kind notice that if the UGC letter dt. 16/8/2011 addressed to the Principal Secretary (H&TE) & Government has simply mentioned that, "The Commission deliberated on the issue regarding appointment of various teachers in the state of Maharashtra from September 19th 1991 until April 3, 2000 & 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-SET in terms of the UGC regulations 1991 and subsequent notification dt. 24/12/98 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. 19/9/1991 till April 3, 2000 is approved."

In the said decision of the UGC, it has not specified on the various queries raised by the Government of Maharashtra through its various correspondence made to UGC neither answered nor clarified. **Therefore, it is very absurd on the part of UGC** to take such decision on the issues raised by the Government in its correspondence referred to above. This will create a feeling of resentment among the NET/SET qualified teachers if they are not given the reasonable and legitimate service conditions and if the non NET-SET Teachers have been granted the exemption by the UGC from the date of their appointment.

I shall therefore be grateful if you could look into the matter referred and **reconsider the decision of UGC dt. 26.8.2011 /1.9.2011** communicated to the General Secretary, MFUCTO for giving exemption to Non NET/SET Teachers from the date of their appointment. If these Non NET/SET Teachers their regular service from the date of their appointment, then they will demanding the difference of payment arrears and to regularize their services conditions from 19.9.1991 to 3.4.2000, with a huge amount of arrears from their date of appointment. This will be very huge financial burden on the State Government. **So, UGC may revert their above decision** on considering all facts stated above by the Government and communicate revise decision in this matter at your earliest.

Thanking you,

Encl : As above

(Sanjay Kumar)

Copy forwarded with compliments for information and necessary action to the Secretary (HE) Ministry of Human Resources Development Department.

Government of Maharashtra attempting to introduce NET/SET qualification retrospectively from 19-9-1991 to the teachers who have already been appointed and in service for many years. The State Government instead of firmly introducing NET/SET as compulsory qualification at the recruitment level by the competent legal instrument such as the Standard Code, was constantly introducing NET/SET through informal instruments and was simultaneously enjoying the benefits of not introducing it. Since NET/SET was not inducted as compulsory qualification at the recruitment level by legal instrument, hundreds of candidates without NET/SET have been recruited from 19-9-1991 till 3-4-2000. The recruitments were done through advertisements and selection by duly constituted selection committees, the appointments were approved by the concerned Universities and since the appointments were perfectly lawful in the teaching cadre, 100% salary grants were paid by the State Government in respect of such lawful appointments year after year and continued to be so paid even today.

(5) MFUCTO has always adopted a principled stand which is also based on the Hon'ble Supreme Court Judgment in University of Delhi v/s. Raj Singh and Others (AIR, 1995, SC, 336) while dealing with the UGC Notification dated 19th September 1991. (details given in para 23 below)

(6) In spite of this, since the Government of Maharashtra continued to impose the arbitrary decision on teachers appointed during 19-9-1991 till 3-4-2000, several hundreds of teachers moved the Hon'ble Division Bench of the Bombay High Court at Bombay, Aurangabad and Nagpur. The Hon'ble Aurangabad Bench of the Bombay High Court through Hon'ble Mr. Justice B.H. Marpalle and Hon'ble N.H. Patil by Judgment and Order dated 20th February 2002 (reported in 2003(2) Mh.L.J. 176) directed that the cases should be sent to the UGC for claiming exemption under the Regulations of 19-9-1991 and 4-4-2000.

(7) This was followed by the Order dated 18th April 2002 of another Division Bench of Hon'ble Mr. Justice V.G. Palshikar and Hon'ble Justice Smt. Nishita Mhatre by which the Judgment of Aurangabad Bench was accepted and it was observed as under:

"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 be 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 to process the applications....**"

It was further stated by the Hon'ble Division Bench at para.7 as under:

"In the event the UGC takes a decision adverse to the interests of teachers, the management and the university are directed not to act upon it for a period of four weeks from the date of communication by UGC to the college through the University."

All the contentions raised by the parties were kept open to be agitated in future if necessary.

(8) In view of this Judgment and the Government of Maharashtra directing the Universities to send all the cases of Non-NET/SET teachers to the UGC for claiming exemption under Notification dated 19-9-1991 and/or 4-4-2000, several thousands of cases were sent to the UGC. The UGC took up for consideration the cases. In several hundreds of cases exemptions were granted and intimated to the University concerned and the teachers. The process at the UGC was continuing in the remaining pending cases. Some of the Universities had done the Placement in the senior scale and selection grade of the teachers who were granted exemption by the UGC by counting their service from the first date of their appointments and completed the pay fixations. The same were submitted to the Regional Joint Directors of Higher Education for stamping and release of salary as per new fixation. The Government however in spite of the grant of exemptions did not take up the cases for granting placement benefits under the CAS by raising the question viz., "from what date the service of the teacher should be counted for the grant of CAS?" This was unwarranted because the UGC had

from time to time intimated the State Governments and Universities that even the service rendered by teachers in ad hoc capacity should be counted for grant of CAS benefits. (details given in para 18 below)

(9) In view of the Government not granting CAS to such teachers, a number of teachers had moved the Hon'ble Bombay High Court Bench at Nagpur. In W.P. No. 4909 of 2010 decided on 20 April 2011, the Court Orders inter alia states as under:

"Shri Sombre, learned Government Pleader for respondent Nos. 1 to 3 (State of Maharashtra) states that though exemption is granted from clearing NET/SET examination vide notification dated 5-11-2008 issued by the UGC, however, the date of exemption in respect of passing of NET/SET examination has not been specifically mentioned in the said notification nor the petitioners are provided the said date and in absence thereof, the State Government could not decide the claims of the petitioners for grant of benefits under Career Advancement Scheme. **It is submitted that if the said date is made known to the State Government by the UGC the claims of the petitioners for grant of benefits under the Career Advancement Scheme can be considered** in accordance with law and procedure applicable in this regard.

"Shri Mishra, learned Assistant Solicitor General for respondent No.5 (UGC) states that if the State Government requests the UGC to declare the said date of exemption or provide information in this regard, the same shall be provided to the State Government as per direction of this Court.

"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 UGC 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 UGC, 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 the Career Advancement Scheme provided UGC communicates the date from which exemption is granted vide notification dated 5-11-2008 becomes effective. It is also brought to the notice of the Court that the State Government has already made request to the UGC in this regard.

"In the above background, we direct Respondent No. 5 UGC 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 re-consider the claims of the petitioners on receipt of communication from the UGC in respect of effective date of exemption, in this regard at the earliest."

(10) In view of this and also in view of other facts set out herein UGC took the decision and approved the services of the non-NET/SET teachers appointed between the period from 19-9-1991 and 3-4-2000. However, the UGC had not stated about the date from which the counting of service should be made for the CAS benefits. MFUCTO therefore had to approach the UGC for clarification of this point. The UGC was required to state the correct position by taking decision that counting of service for the purpose of CAS should be from the date of regular appointment. This was communicated by the UGC to the State Government as also to all the Universities in Maharashtra and to the MFUCTO which was sphere-heading the movement for justice for such teachers in Maharashtra since the 1990s. The act of the UGC is just and proper and it is as clear as crystal.

(11) By letter dated 24th August 2009, Government of Maharashtra had requested the UGC to communicate to them in respect of "if the exemption can be granted and/or services can be regularized then which date should be taken for exemption and or regularizing their service was for non-NET/SET teachers viz., date of exemption, date of appointment, date of order or any other date." Now when the UGC has come out with its final directions in the long-pending matter involving about ten thousand teachers in the State, Government of Maharashtra is once again writing to demand that the communication issued by the UGC should be withdrawn.

(12) On 26th August 2009, when the indefinite 44 day cease work of University and College teachers in Maharashtra

was to be ended, there was a Minutes of Agreement between the MFUCTO and the Government of Maharashtra signed in the presence of the Hon'ble Minister for Higher & Technical Education along with the Chief Secretary to the Government and the Principal Secretary, Higher & Technical Education in which it was in para.5 agreed as under:

"5. In accordance with the Regulations made by the University Grants Commission from time to time and the decisions of the Hon'ble High Court of Bombay in different Petitions (primarily Petitions Nos. 5022/2001, No.5375/2001, No.4266/2006) from time to time the power to grant exemption from NET/SET and the date of such exemption rests with the UGC. **The decisions of the UGC in this regard will be final.** In this regard in order to coordinate with the UGC a Committee shall be appointed consisting of two officers of the government and two representatives of the MFUCTO. Other action in the regard will be as per Government letter dated 31st July 2009 and para.3 of Government letter dated 4th August 2009...."

Thus Government is committed to the date given by the UGC for the counting of service both by virtue of Hon'ble High Court Orders as also agreement with the MFUCTO. The attempt now made by the Government of Maharashtra by its latest letter to the UGC is intended only to run away and abdicate from its legal obligation which is mischievous. This is entirely due to the bureaucratic arbitrariness which intends to deny to the thousands of teachers their rightful and just service benefits.

(13) Equality before the law :- One of the important fundamental rights enshrined in the constitution of India is that of right to equality. Article 14 of the constitution states "The state shall not deny to any person equality before the law or the equal protection of laws" meaning thereby that among equals law should be equal and it should be equally administered. No discrimination can be made either in the privileges conferred or in the liabilities imposed.

(14) They are all similarly situated :- On the basis of the Facts and the applicable law at that point of time, all the non NET/SET teachers appointed during the period 19th September 1991 till 3rd April 2000 in the State of Maharashtra belong to one and the same class as such **they are all similarly situated.** Each one of them was selected by duly constituted selection committee and was duly qualified to be so appointed as he was fulfilling the norms of minimum qualification existing at that point of time, Advertisements were approved by the Universities, selections were made by the duly constituted selection committees, 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. Every teacher forming part of this class is a confirmed teacher as per the provisions of the statutes of the respective Universities.

(15) Clear cut/unwarranted discrimination between identical categories of duly qualified teachers :- It must be admitted that it was in view of the two Division Bench Judgments of the Hon'ble Bombay High Court that the UGC had to go ahead with consideration of the cases of teachers appointed in Maharashtra during 19-9-1991 to 3-4-2000 for exemption. UGC vide its letter dated 5th November 2008, cleared several hundreds of cases for exemption and communicated to the Universities and the teachers. Thereafter again in 2009-2010 UGC granted exemptions in respect of more than 3000 teachers which were based on the decision taken by the UGC in its 468th meeting held on 23.02.2010. which were thereafter cancelled/withdrawn in view of the Union HRD Ministry's directions dated 30.03.2010 though the cases were identical to the cases where exemptions were granted previously.

This led to a peculiar situation whereby the exemptions granted earlier continued to be valid while the exemptions granted later came to be cancelled/withdrawn. This is a clear case of discrimination between identical categories of teachers who were duly qualified as per the then existing norms. The Hon'ble Bombay High Court in Writ Petition Nos. 4266/2006, 5037/08,4486/2007, 4386/07, 4500/07 and 462/2008 on dated 27th November 2008 had ruled that similarly situated will have to be similarly treated and directed the Universities to grant approvals in all such cases.

"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"**

Considering the above mentioned judgement of Hon'ble Bombay High Court and unwarranted discrimination between identical categories of duly qualified teachers, *the decision taken by the UGC in its meeting held on 8th July 2011 and subsequently communicated to the Government of Maharashtra by letter dated 16th August 2011 and to the MFUCTO by letter dated 26th August 2011 is perfectly constitutional, legal, valid, just and correct.*

(16) High Court quashes the orders of Joint Directors to cancel placement benefits granted to exempted teachers

:- On the basis of exemptions granted, hundreds of teachers received the benefits of CAS Placements in the senior scale and selection grade by taking into account their service from the first date of their appointments. The attempt on the part of some officials of the Government to cancel the said Placement benefits by issuing orders came to be quashed and set aside by the Hon'ble Bombay High Court in bunches of Petitions.

(A) The Bombay High Court in W.P. No. 1893 of 2010 on 3 rd 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. 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,"** (P 39 of NB 2011)

(B) The Aurangabad Bench of Bombay High Court in W.P. No. 1991 of 2011 gave a following verdict on 24 th 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)

Considering the decisions of various benches of Bombay High Court, now the situation is, wherein Hundreds of exempted candidates are getting CAS after counting their service from day one and Hundreds of such similarly situated teachers are deprived of the same benefit amounting to violent

discrimination, this discrimination is avoided by the UGC decision. In this view of the matter, *the decision taken by the UGC in its meeting held on 8th July 2011 and subsequently communicated to the Government of Maharashtra by letter dated 16th August 2011 and to the MFUCTO by letter dated 26th August 2011 is perfectly constitutional, legal, valid, just and correct.*

(17) High Court directs UGC to communicate the date of exemption to the Government of Maharashtra :- The UGC was also under the Order dated 20th April 2011 of the Hon'ble High Court at Bombay in Writ Petitions No.4908 of 2010 through Their Lordships Hon'ble Mr. Justice D.D. Sinha and Hon'ble Mr. Justice A.P. Bhangale (referred to in para.9 herein) to communicate to the Government of Maharashtra the date from which the counting of service is to be made for the CAS benefits.

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)

While doing so, the UGC was naturally to be guided by the decisions of the Apex Court in a number of cases including in the Judgment in University of Delhi v/s. Raj Singh and Others (AIR, 1995, SC, 336)

Considering the above said directions of the Hon'ble High Court, and in view of the regulation and directives of UGC mentioned para 18 below *the decision taken by the UGC in its meeting held on 8th July 2011 and subsequently communicated to the Government of Maharashtra by letter dated 16th August 2011 and to the MFUCTO by letter dated 26th August 2011 is perfectly constitutional, legal, valid, just and correct.*

(18) No one can expect UGC to violate its own regulations and directions

(A) UGC Notification of 1993 in which in para.8.0.0 viz., COUNTING OF PAST SERVICE, it is clearly set out at 8.6.0 (a), (b) and (c) as under:

"8.6.0

(a) The ad hoc 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 ad hoc service without any break"

(B) This UGC Regulation has been adopted in Maharashtra through GR No.NGC-1892/(2224)/UNIE-4, dated 11th February 1994. It clearly states all the above conditions listed at (a), (b) and (c).

(C) 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."

(D) 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 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 adhoc or temporary service without any break"

(E) 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.** "

Since last 20 years or more UGC through its regulations and notifications constantly directing that the adhoc or a temporary service is also to be counted for the purposes of granting CAS benefits. How this then can be denied to the Hundreds of confirmed teachers? How a Principal Secretary of any state can request the UGC to act against its own regulations and Notifications? Keeping this in mind and ruling of the Supreme court that "experience is the basis of placement" *the decision taken by the UGC in its meeting held on 8th July 2011 and subsequently communicated to the Government of Maharashtra by letter dated 16th August 2011 and to the MFUCTO by letter dated 26th August 2011 is perfectly constitutional, legal, valid, just and correct.*

(19) It may not be out of place to state here that MFUCTO had held Massive demonstrative rallies of Teachers from Maharashtra at New Delhi on 2nd August 2010 and met Shri Kapil Sibal, Hon'ble Union Minister for Human Resource Development who made a forthright statement that "NET had become mandatory only after June 2009 and that therefore the question of making NET a mandatory condition, for teachers appointed after 19th September 1991 till 2009, would not arise and would be illegal as no conditions of service can be implemented with retrospective effect" Hon'ble member of Parliament Shri. Vasudeo Acharya was present during this discussion. It was by the intervention of Hon'ble minister of HRD shri. Kapil Sibal HRD Ministry addressed the letter dated 3.11.2010, to the UGC, wherein 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)

Considering the H.R.D. ministry's letter dated 3.11.2010, *the decision taken by the UGC in its meeting held on 8th July 2011 and subsequently communicated to the Government of Maharashtra by letter dated 16th August 2011 and to the MFUCTO by letter dated 26th August 2011 is perfectly constitutional, legal, valid, just and correct.*

(20) Catena of Judgements by SUPREME Court :- There are also other Judgments of the Hon'ble Supreme Court of India such as Ashok Kumar Sharma and Others v/s. Chander Shekhar and Another {1997 (4) SCC 1} as also Gopal Krushna Rath v/s. M.A.A. Baig (Dead) by Lrs and Others {1999 (1)SCC0544}.

(A) 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 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.*"

(B) 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

विद्यापीठ अनुदान आयोग व अजिल भारतीय तंत्रशिक्षण परिषदेच्या शिफारशीनुसार राज्यात उच्च व तंत्रशिक्षण जेव्हात जायत पदवी, पदव्युत्तर व पदविजा संस्था तसेच अजिल विद्यापीठे, तंत्रशास्त्र विद्यापीठ यातील अध्यापक व प्राचार्यांच्या पदांच्या नियतवयोमा-नुसार सेवानिवृत्तीच्या वयोमर्यादेत वाढ करण्याबाबत.

महाराष्ट्र शासना : उच्च व तंत्रशिक्षण विभाग,

शासना शुध्दीपत्रक क्र. संजीर्ज - २०११/(३९६/११)/विशि-१, मादाम जामा रोड, हुतात्मा राजजुरु चौक,
मंत्रालय, मुंबई - ४०००३२, दि. २३ फेब्रुवारी २०१२

- वाचा :- १) उच्च शासनाच्या म-गुण्यबळ विज्ञान मंत्रालयाचे पत्र क्र. १-३२/२००६-यु. II/यु. I (i) दि. ३१ डिसेंबर, २००८
२) शासना निर्जय क्र. ए-जीसी-२००९(२४३/०९)/विशि-१, दि. १२ ऑगस्ट, २००९
३) उच्च शासनाच्या म-गुण्यबळ विज्ञान मंत्रालयाचे पत्र क्र. एफ-१-७/२०१०-यु. II. दि. ११ मे, २०१०.
४) विद्यापीठ अनुदान आयोगाचे विनिमय २०१०, क्र. एफ-३-१/२००९, दि. ३० जून, २०१०.
५) अजिल भारतीय तंत्रशिक्षण परिषदेची अधिसूचना क्र. ३७-३/लिजल/२०१०, दि. ५ मार्च, २०१० (पदवी)
६) अजिल भारतीय तंत्रशिक्षण परिषदेची अधिसूचना क्र. ३७-३/लिजल/२०१०, दि. ५ मार्च, २०१० (पदविजा)
७) शासना निर्जय क्र. एस.पी.सी. २०१०/(३४/१०)/तांशि-२, दि. २० ऑगस्ट, २०१०
८) शासना निर्जय क्र. संजीर्ज - २०१०/(५०३/१०)/विशि-१, दि. २५ फेब्रुवारी २०११
९) शासना निर्जय क्र. संजीर्ज - २०१०/(५०३/१०)/विशि-१, दि. ५ मार्च, २०११
१०) शासना निर्जय क्र. संजीर्ज - २०१०/(५०३/१०)/विशि-१, दि. २३-नोव्हेंबर, २०११

प्रस्तावना :

उच्च शासनाचे म-गुण्यबळ विज्ञान मंत्रालय, विद्यापीठ अनुदान आयोग, अजिल भारतीय तंत्रशिक्षण परिषद यांच्यावद्दुन सहाय्यावेतना आयोगाच्या सुधारित वेतना संरचना लाऊ करण्यासंदर्भात प्राप्त झालेल्या शिफारशी, तथा विद्यापीठ अनुदान आयोग व अजिल भारतीय तंत्रशिक्षण परिषदेच्या जर्ज्यजेतील अभ्यासक्रम राबविजारी अजिल विद्यापीठे, तंत्रशास्त्र विद्यापीठ, अजिल विद्यापीठांशी संलग्नित महाविद्यालये व महाराष्ट्र राज्य तंत्रशिक्षण मंडळाशी संलग्नित तंत्र शिक्षण-यातील अध्यापकांचे नियतवयोमा-नुसार सेवानिवृत्तीचे वय निर्धारित जेव्हाचे निज व अनुषंगिज बाबींचा साजल्या-ने विचार करून संदर्भाधी-न क्र. ९ येथील दि-नांज ५ मार्च, २०११ च्या शासना निर्जया-वये अजिल विद्यापीठे व संलग्नित महाविद्यालयातील अध्यापक व प्राचार्य पदांच्या नियतवयोमा-नुसार सेवानिवृत्तीच्या वयोमर्यादेत वाढ करण्याचा निर्जय घेज्यात आलेला आहे.

उक्त दि-नांज ५ मार्च, २०११ च्या शासना निर्जयाविरुद्ध मा. मुंबई उच्च न्यायालयात याचिजा क्रमांज २०९३/२०११, ३१९७/२०११, ३४६३/२०११, ६२६२/२०११, ७१४३/२०११, ७७५६/२०११, ९५१/२०११, ९५३/२०११ याचिजा लॉजिज क्रमांज १४०९/२०११, १४२६/२०११ व १४९७/२०११ दाजल झाल्या होत्या. सदर याचिजेच्या अनुषंगाने मा. उच्च न्यायालया-ने दि. ३० सप्टेंबर, २०११ रोजी दिलेले आदेश विचारात घेऊ-न दि-नांज २३-नोव्हेंबर, २०११ रोजी सुधारित शासना निर्जय निर्जमित करण्यात आला आहे. सदर शासना निर्जयामध्ये मा. उच्च न्यायालया-ने दि. ३० सप्टेंबर, २०११ रोजी दिलेल्या आदेशातील जालील मुद्द्यांवर शासना आदेश निर्जमित करण्यात आलेले-नव्हते.

२. मा. उच्च न्यायालयाच्या आदेशातील परिच्छेद - ३० मध्ये (I) In the premises, we hold that clauses 11(1), 11(3) and 11(4) of the GR dated 5th March 2011 do not suffer from any infirmities/unconstitutionality and hence the challenge to the validity of the said clauses is hereby rejected. However, we direct, by way of exception, for the limited up to 31st March 2014, to place the cases of the Assistant Professors who do not possess a Ph.D. degree but have received the benefits of the Career Advancement Scheme, before the Performance Review Committee and the said committee shall assess their performance as per the parameters set out for deciding their retention beyond the age of 60 years.

(II) We also direct that the performance review of the college / University teachers and Principals who have retired during the intervening period i.e. from 28th February, 2011 onwards be completed as expeditiously as possible and in any case within a period of six weeks from the issuance of the revised notification. The Principals/Lecturers/Professors who are found to be fit for being continued till the age of 62 years or 65 years as the case may be, shall be entitled for the payment of salary for the intervening period.

(III) Indeed such parameters suggested could be only illustrative and not exhaustive. Nonetheless, emphasis of such

exercise to review the performance during the last five years ought to be on academic achievements and free from personal bias, unfairness and arbitrariness.

३. उक्त मुद्द्यांच्या अनुषंगाने शासना आदेश निर्जमित करण्याची बाब शासनाच्या विचाराधी-न होती.

शासना शुध्दीपत्रक

४. प्रस्तावनेत-नमूद जेलेल्या सर्व बाबी व मा. उच्च न्यायालयाचे दि. ३० सप्टेंबर, २०११ रोजीचे आदेश विचारात घेऊ-न शासना पुढीलप्रमाणे आदेश देत आहे. :-

(१) विशेष अपवाद (exception) म्हणून दि-नांज ३१ मार्च २०१४ या जलमर्यादे पर्यंत ज्या सहाय्य प्राध्यापकां-नी पी.एच.डी. पदवी धारज जेलेली-नाही. परंतु, जरिअर अॅडव्हा-समेंट स्कीम अंतर्गत फायदे देज्यासाठी त्यांना शासना-ने मा-यता दिलेली आहे, अशा सहाय्य प्राध्यापकांची प्रजरजे संदर्भाधी-न क्रमांज - १० येथील दि-नांज २३-नोव्हेंबर २०११ च्या शासना निर्जया-वये घटीत जेलेल्या आढावा समितीसमोर निर्जयार्थ ठेवज्यास शासना मा-यता देत आहे.

(२) आढावा समिती-ने अशा सहाय्य प्राध्यापकांची / अध्यापकांची प्रजरजे संदर्भाधी-न क्रमांज - ९ येथील दि-नांज ५ मार्च, २०११ व संदर्भाधी-न क्रमांज - १० येथील दि-नांज २३-नोव्हेंबर, २०११ च्या शासना निर्जयामधील पी.एच.डी. व वार्षिज जोपनीय अहवालाची अट वजळता विहीत जेलेल्या इतर सर्व बाबी विचारात घेऊ-न तपासावीत.

(३) जे सहाय्य प्राध्यापक/अध्यापक/प्राचार्य माहे फेब्रुवारी, २०११ व त्या-ंतर सेवानिवृत्त झालेले आहेत त्यांचे प्रस्ताव सुध्दा आढावा समिती-ने सुधारित मार्जदर्शज तत्वा-नुसार तपासावीत.

(४) दि. १ एप्रिल, २०१४ पासून संदर्भाधी-न क्रमांज - ९ येथील दि. ५ मार्च, २०११ च्या शासना निर्जयातील सर्व बाबींची पूर्तता प्रजे अनिवार्य राहिल. तसेच संदर्भाधी-न क्रमांज - १० येथील दि. २३-नोव्हेंबर, २०११ च्या शासना निर्जयातील मार्जदर्शज तत्वे यापुढेही अंमलात राहतील.

५. संदर्भाधी-न क्रमांज - १० येथील दि. २३-नोव्हेंबर, २०११ च्या शासना निर्जयामध्ये जालीलप्रमाणे अल्पशी सुधारजा करण्यात येत आहे.

(१) परिच्छेद क्रमांज - ४(ब)(v) ऐवजी "संबंधित अध्यापका-ने चर्चासत्र / परिसंवाद / जर्ज्यशाळांमध्ये जिती संशोधन लेज (Research paper) सादर जेले आहेत."

(२) परिच्छेद क्रमांज - ४(ब)(vi) ऐवजी "विद्यापीठामार्फत राज्य / राष्ट्रीय / आंतरराष्ट्रीय स्तरावरील जिती शैजिज चर्चासत्र / परिसंवाद / जर्ज्यशाळांच्या आयोजन समितीमध्ये सहभाज घेतलेला आहे."

(३) परिच्छेद क्रमांज - ४(ब)(viii) व (ix) मधील "संदर्भजंथ" या शब्दा-ंतर "संपादित जंथ" या शब्दाचा समावेश करण्यात येत आहे.

(४) परिच्छेद क्रमांज - ४(ब)(xii) व (xiii) ऐवजी "संबंधित अध्यापका-ने राज्य / राष्ट्रीय स्तरावरील उपक्रमांमध्ये जिती पारितोषिज / पुरस्कार / प्रशस्तीपत्र प्राप्त जेले आहेत."

(५) परिच्छेद क्रमांज - ४(ज)(ii) ऐवजी "विभाजीय / राज्य / राष्ट्रीय स्तरावरील चर्चासत्र / परिसंवाद / जर्ज्यशाळांमध्ये जिती संशोधन-पर लेज (Research paper) सादर जेले आहेत."

(६) परिच्छेद क्रमांज - ४(ज)(vii) व (viii) ऐवजी "संबंधित अध्यापका-ने विभाजीय राज्य / राष्ट्रीय स्तरावरील उपक्रमांमध्ये जिती पारितोषिज / पुरस्कार / प्रशस्तीपत्र प्राप्त जेले आहेत."

(७) परिच्छेद क्रमांज - ४(ज)(iv) व (v) मधील "संदर्भजंथ" या शब्दा-ंतर "क्रमिज पुस्तके" या शब्दाचा समावेश करण्यात येत आहे.

६. वरील आदेश विचारात घेऊ-न आढावा समिती-ने त्यांच्या जर्ज्यजेतातील प्रजरजे तपासून पात्र सहाय्य प्राध्यापकांचे / अध्यापकांचे / प्राचार्यांचे प्रस्ताव संचालज, उच्च शिजज यांचेमार्फत शासना-स त्वरीत सादर करावेत.

७. सदर शासना निर्जय महाराष्ट्र शासनाच्या www.maharashtra.gov.in या संजेट स्थळावर उपलब्ध करण्यात आला असून त्यांचा सांजेटांज क्रमांज २०१२०२१८०७३१२८२२८००१ असा आहे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व-नांवा-ने

(राजाराम जाधव)
शासनाचे उपसचिव

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) “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.”

(C) 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 N o.1 of 1996 and to issue fresh advertisement according to the Rules which had come into force. (P 76 of NB 2010)”

(D) Once the due date of submission of application is over,

no change in qualification is permitted. Nagpur Bench of Bombay High Court in W.P. No. 1489 of 2010 (Pronounced on 2.2.2010) 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)

Considering the various judgements delivered by Hon'ble Supreme Court and High Courts, the decision taken by the UGC in its meeting held on 8th July 2011 and subsequently communicated to the Government of Maharashtra by letter dated 16th August 2011 and to the MFUCTO by letter dated 26th August 2011 is perfectly constitutional, legal, valid, just and correct.

(21) The then Minister for Higher Education in Maharashtra admitted regarding the non implementation of NET/SET qualification in Maharashtra during this period :- Hon'ble Minister for Higher Education in Maharashtra admitted on the floor of Legislative Council of Maharashtra State that Government of Maharashtra made a 'mistake' in not making NET/SET qualification compulsory by legal instrument in the state of Maharashtra during 1991 to 1999. On 3rd August 2001, Minister for Higher Education stated in legislative council as below :-

“सभापती महोदय, ही बाब खरी आहे की, १९९१ साली यु.जी.सी.ने रेग्युलेशन राज्य सरकारला पाठविले होते. त्यानंतर राज्यसरकारने हे रेग्युलेशन विद्यापीठांना पाठवत असतांना ते असाधारण राजपत्रात प्रसिध्द करून पाठवावयास पाहिजे होते. तसे करण्यात आले असते तर ते लीगल इन्स्ट्रुमेंट ठरले असते. परंतु राज्य सरकारकडून त्या वेळी ही चुक झालेली आहे. १९९१ मध्ये जी.आर.काढून राज्य सरकारने विद्यापीठांना हे आदेश पाठविले होते. राज्य सरकारचा हा जी.आर.जरी असला तरी लीगल इन्स्ट्रुमेंट नसल्यामुळे विद्यापीठांनी आपल्या स्टॅट्युटसमध्ये बदल केलेले नसतील.”

(See Official proceedings (dated 3.8.2001) of the Legislative Council of Maharashtra, Vol. 125 (No. 15), page 141.) **In English :-** “Mr. Chairman sir it is true that when Government of Maharashtra received UGC regulation in 1991, it was the duty of Government of Maharashtra to have send these regulations to universities through the legal instrument i.e. by publishing it in an

राज्यातील बिजर -नेट / सेट अध्यापजं-ना दि-गांज ३१/१२/२०११ पर्यंत -नेट / सेट परीजा उत्तीर्ण होजे अनिवार्य...

महाराष्ट्र शासन : उच्च व तंत्रशिक्षण विभाग,

शासन-निर्जय क्रमांज विअआ-२००९ / (४३८/०९)-विशि-१ मंत्रालय, मुंबई, : दि-गांज २० डिसेंबर, २०११

वाचा :

- १) विद्यापीठ अनुदान आयोगाचे क्र. एफ.क्र.१-१/२००२ (पीएस) पीटी फाईल-III दि-गांज २७/०/२००९ चे पत्र
- २) शासन-निर्जय उच्च व तंत्रशिक्षण विभाग क्र. विअआ-२००९/(४३८/०९)विशि-३ दि-गांज ३०/०१/२०१०
- ३) क्रमांज संजीर्ज २००९/(३५९/०९)/विशि-३ दि-गांज ८ सप्टेंबर, २०१० चा शासन-निर्जय
- ४) क्रमांज संजीर्ज २००९/(३५९/०९)विशि-३ दि-गांज ३० सप्टेंबर, २०१० चे परिपत्र
- ५) विद्यापीठ अनुदान आयोगाचे पत्र क्र. एफ. १-१/२००२(पीएस) एक्झम पीटी.फाईल-IV दि-गांज १६/०८/२०११.
- ६) विद्यापीठ अनुदान आयोगाचे पत्र क्र. एफ.१-३/२०११ (पीएस) एक्झम दि-गांज २६/०८/२०११.

प्रस्ताव-ना :

विद्यापीठ अनुदान आयोगा-ने त्यांच्या संदर्भाधी-न क्र. १ येथील दि-गांज २७/८/२००९ च्या पत्रा-वये राज्यातील बिजर -नेट/सेट अध्यापजं-नी दि-गांज ३१/१२/२०११ पर्यंत -नेट/सेट परीजा उत्तीर्ण होजे अनिवार्य असल्याचे आदेश दिले. त्या-नुसार शासन-ना-ने संदर्भाधी-न क्र. ३ येथील दि-गांज ८/९/२०१० चा शासन-निर्जय निर्जमित जेला आहे. २. आता विद्यापीठ अनुदान आयोगा-ने संदर्भाधी-न क्र. ५ व ६ येथील अनुक्रमे दि-गांज १६/८/२०११ व २६/८/२०११ रोजीच्या पत्रा-वये दि-गांज १९/९/१९९१ ते ३/४/२००० या जलावधीतील बिजर -नेट/सेट अध्यापजं-ना -नेट/सेट मधु-न सूट देण्याचा निर्जय आयोगा-ने दि-गांज ८/७/२०११ च्या बैठकीमध्ये घेतला असल्याचे जळविले आहे. त्या-नुसार उक्त दि-गांज ८ सप्टेंबर २०१० च्या शासन-निर्जयातील परिच्छेद ११ मधील सूच-नेला तूर्त स्थिती देण्याची बाब शासन-नाच्या विचाराधी-न होती.

शासन-निर्जय

३. वर -मुद प्रस्ताव-नेमध्ये स्पष्ट जेल्याप्रमाजे संदर्भाधी-न क्र. ३ येथील दि-गांज ८ सप्टेंबर, २०१० च्या शासन-निर्जयातील परिच्छेद ११ मधील सूच-नेस तूर्त स्थिती देण्यात येत आहे.

महाराष्ट्र राज्याचे राज्यपाल यांच्या आदेशा-नुसार व -नावा-ने.

(रा.जो. जाधव)
उपसचिव, महाराष्ट्र शासन

extraordinary gazette as standard code notification. but Government of Maharashtra made a mistake and instead sent it through Government Resolution. Since it was a G.R. and not a legal instrument, universities in Maharashtra might not have bothered to amend their statutes."

He also stated in the Legislative Council of Maharashtra on the very same day that the NET/SET was implemented as a compulsory qualification at the recruitment level in December 1999. His words in Marathi are and are reproduced as under :-

"ज्यावेळी पाचवा वेतन आयोग लागू करण्याची वेळ आली त्यावेळी दिनांक ११-१२-१९९९ रोजी मी शिक्षण मंत्री होते. त्यावेळी या संदर्भात विहित पध्दतीने विद्यापीठांना आदेश देण्यात आले होते. एवढेच नव्हे तर विद्यापीठ कायद्यात सुध्दा त्या संदर्भात आपण काही दुरुस्ती केली होती. त्याचा परिणाम असा झाला की १९९१ साली राज्य सरकारने आदेश देऊनही विद्यापीठांनी आपल्या स्टॅट्युटमध्ये बदल केलेले नव्हते. आता १९९९ मध्ये राज्य सरकारने आदेश दिल्यानंतर सर्व विद्यापीठांनी आपल्या स्टॅट्युटमध्ये बदल केलेले आहेत."

(See Official proceedings (dated 3.8.2001) of the Legislative Council of Maharashtra, Vol. 125 (No. 15), page 141.) **In English :-** "When 5th pay commission was being implemented, i.e. On 11.12.1999, I was the Minister for Higher Education in Maharashtra and I had directed the universities through a legal instrument about the implementation of 5th pay commission. I also had suggested some amendments to Maharashtra University Act which were carried out. As on today, all the Universities in Maharashtra have amended their statutes, but it was not the case in 1991, even though the Government of Maharashtra had directed the Universities to change their statutes."

Considering the above mentioned stand taken by the Minister for Higher Education admitting that NET/SET was not made compulsory by law in Maharashtra, in the legislative Council, *the decision taken by the UGC in its meeting held on 8th July 2011 and subsequently communicated to the Government of Maharashtra by letter dated 16th August 2011 and to the MFUCTO by letter dated 26th August 2011 is perfectly constitutional, legal, valid, just and correct.*

(22) The Present Minister for Higher Education in Maharashtra also admitted the non implementation of NET/SET qualification in Maharashtra during this period :- The Present Minister for Higher Education in Maharashtra while participating in the discussion in Maharashtra Legislative Council on 17.12.2008 stated:-

"सभापती महोदय,.... अधिव्याख्यात्यांना नेट सेट ची परीक्षा १९९१ ला कमलसरी करण्यात आली होती परंतु लीगल इन्स्ट्रुमेंटच्या माध्यमातून किंवा स्टॅट्युटमध्ये किंवा व्हाईस चॅन्सेलरच्या शाखेच्यासमवेत किंवा गव्हर्नमेंटच्या कोड मध्ये यासंबंधीचा उल्लेख न केल्यामुळे नेट सेटची परीक्षा कायद्याने लागू करता आली नाही"

(See Official proceedings (dated 3.8.2001) of the Legislative Council of Maharashtra, Vol. 150 (No. 12), page UC) **In English :-** "Mr. Chairman Sir! NET/SET was communicated to be compulsory to lecturers in 1991 but since it was not prescribed by legal instrument such as by statute of the University or by the directions issued by the Vice Chancellors or Government's Standard code, it could not be implemented lawfully."

In view of the above -mentioned statement made by the Hon'ble Minister for Higher Education in Maharashtra regarding the non implementation of NET/SET qualification, *the decision taken by the UGC in its meeting held on 8th July 2011 and subsequently communicated to the Government of Maharashtra by letter dated 16th August 2011 and to the MFUCTO by letter dated 26th August 2011 is perfectly constitutional, legal, valid, just and correct.*

(23) Supreme Court ruled that 1991 Regulations are

recommendatory in character and prospective in its application :- MFUCTO had adopted all the time a principled stand which was also based on the Hon'ble Supreme Court Judgment in University of Delhi v/s. Raj Singh and Others (AIR, 1995, SC, 336) in which while dealing with the UGC Notification dated 19th September 1991 the Hon'ble Court (in para 21) had ruled as under :-

"21. We now turn to analyse the said Regulations.... The second proviso to clause 2 makes the application of the said Regulations prospective. The provisions of clause 2 of the said Regulations (UGC Regulation 19/9/1991) are, **therefore, recommendatory in character.** It would be open to a University to comply with the provisions of clause 2 by employing as lecturers only such persons as fulfill the requirement as to qualifications for the appropriate subject provided in the schedule to the Regulations. It would also be open, in specific cases, for the University to seek the prior approval of the UGC to relax these requirements. Yet again, it would be open to the University not to comply with the provisions of clause 2 in which case, in the event that it failed to satisfy the UGC that it had done so for good cause, it would lose its grant from the UGC. The said Regulations do not impinge upon the power of the University to select its teachers. The University may still elect its lecturers by written test and interview or either....."

Settled position of law in respect of 1991 regulation is stated in the above ruling of the apex court. The fact that thousands of non NET/SET teachers were lawfully appointed in Maharashtra during 1991-2000, clearly shows that NET/SET was not inducted lawfully as compulsory qualification at the recruitment level during this period in Maharashtra. In this backdrop, *the decision taken by the UGC in its meeting held on 8th July 2011 and subsequently communicated to the Government of Maharashtra by letter dated 16th August 2011 and to the MFUCTO by letter dated 26th August 2011 is perfectly constitutional, legal, valid, just and correct.*

(24) Prayer :

In view of the facts set out herein and the legal position and evidence, MFUCTO demands :-

(A) UGC should reject the request made by the letter mentioned in the reference outright and no decision should now be taken contrary to the decision taken by the UGC in its meeting held on 8th July 2011 and subsequently communicated to the Government of Maharashtra by letter dated 16th August 2011 and to the MFUCTO by letter dated 26th August 2011

(B) Unfortunately if and in case the UGC decides to reconsider the decision already arrived at, MFUCTO as representative organization of about 40,000 University and College teachers in the State should be given an opportunity of hearing and submitting judgments of the Hon'ble Supreme Court and Hon'ble High Courts along with other documents.

Thanking you,

Yours faithfully

(Tapati Mukhopadhyay)
General Secretary

(Shivajirao Patil)
President

MAHARASHTRA FEDERATION OF UNIVERSITY & COLLEGE
TEACHERS ORGANIZATIONS

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