

MAHARASHTRA FEDERATION OF UNIVERSITY & COLLEGE TEACHERS' ORGANISATION  
University Club House, B-Road, Churchgate, Mumbai 400 020

**REPORT**  
**OF THE MFUCTO ACTIVITIES FOR THE YEAR**  
**OCTOBER 2014 TO OCTOBER 2015**  
**As adopted**  
**by the General Council in it's Meeting**  
**held at Mumbai on Sunday, 27th December, 2015**

### 1. Introduction

1st June, 2014 MFUCTO Executive Committee assessed the then situation and passed a resolution demanding the dismissal of Government of Maharashtra for violating the constitutional norms for the governance of the State. It was the Congress and NCP led Government headed by Chief Minister Shri Prithviraj Chauhan. Shri Rajesh tope was the Minister of Higher Education. Shri Prithviraj Chauhan as a Chief Minister had displayed extreme ill will against the implementation of dozens of judgments of the Hon'ble High Court and Supreme Court of India. This particular act of the Government indicated break down of constitutional governance. The MFUCTO Executive Committee called upon the Hon'ble President of India to immediately dismiss this Government for breaking the constitutional arrangement to run the State Government.

### 2. The Role of BJP led Government in Maharashtra

**2.1** By the end of 2014 election of the Maharashtra assembly was declared. Before this BJP won the maximum seats and routed out Congress from the Central Government. Shri Narendra Modi became the Prime Minister of India. While giving our memorandum to the President of India, MFUCTO took special initiatives to meet Shri Rajnath Singh and Shri Nitin Gadkari and appraised them about present situation of Maharashtra with special reference to Higher Education. Shri Nitin Gadkari being a senior political leader from Maharashtra, and being an ex member of Maharashtra assembly, was made aware about the situation. He was sympathetic and assured that he and his party would defend the cause of Higher Education in Maharashtra.

**2.2** In the meantime Maharashtra election was declared. The code of conduct was imposed and MFUCTO withdrew their ongoing agitation in October 2014, but continued with their campaign with the different political parties. Many of the opposition leaders promised MFUCTO their help to resolve the long-standing problem. The most prominent out of these leaders was Shri Vinodji Tawde, who was fighting election from Borivali constituency, **was keeping continuous touch with the MFUCTO leaders, and assured in public that he would resolve these problems of MFUCTO**, like the nonpayment of salary for 72 days, Career Advancement for NET/SET affected teachers etc. He got support from the teachers. However, after the election, the first meeting with Shri Vinodji took place on 19th November 2014. The meeting was amicable and the minister further assured that he would take up the issue in the cabinet soon. However, after that meeting, the Government, especially the Education Minister was completely withdrawn from problem of the teachers; **instead of resolving the pending problems Shri Vinodji had taken many new initiatives to build up parallel teacher's organization with his party members and supporters.** He took initiatives to introduce Maharashtra University Act 2011, New Code and Conduct for teachers. These are attempts to take away the democratic rights of the teachers to participate in the governance of the Universities. MFUCTO is a mass organization. Since its inception, it has been working with all

the political parties and the Government for the cause of the education and for the welfare of the teachers. **Such attempts of Shri. Vinodji Tawade are undesirable as a Minister of Education in the State of Maharashtra.**

**2.3** No other State in India behaved in this manner with the teachers in Higher Education, as Maharashtra State is doing with NET/SET affected teachers. When NET/SET circular was issued by UGC in 19th September 1991, each State of India, took their position, introduced the order through the legal machinery available in the State. Finally, it came to State level Universities where the Vice Chancellors issued the directives amend the Statues and bring New Act, make it as a mandatory part of the eligibility condition for the candidates who would come to the profession. **This could not be applicable to the teachers, who were already in the profession. Maharashtra Government had not followed this procedure until April 2000.**

### 3. MFUCTO's - Court Cases

**3.1** The issues of NET/SET continued to remain foremost on the agenda of the organization, The Government, however, remained indifferent in the implementation of the order of High Court followed by Supreme Court. These were binding on the Government as per the article 129 and article 215 of the Constitution of India.

**3.2 (A) After Nov 2014, Tawadeji did not meet MFUCTO officially. All his pre election assurances went into vain.** So MFUCTO's struggle in the court continued, and simultaneously during the post election period revived their agitational programme. The court battle took a new turn when Asha Ramdas Bidkar and 17 others teachers from Tuljapur got an order of Career Advancement from Aurangabad Bench of Bombay High Court Government of Maharashtra filed SLP (Special Leave Petition) in the Supreme Court against that order. Many unions belong to Maharashtra Federation, filed intervention applications in this matter. **Intervention application was also filed by MFUCTO on 4/4/2014 representing the case of NET/SET affected teachers in the State.**

(B) MFUCTO in their resolution of 7th April 2014 took decision that the measure to be taken to strengthen the ongoing legal battle in the Supreme Court. When MFUCTO came to know about the filing of an application of direction in the Supreme Court by the original petitioners on 4th July 2014, MFUCTO took a positive decision to facilitate the submission to strengthen the prayer in the intervention application. Along with the main petition of MFUCTO, other unions like NUTA, SUTA and PUCTO also filed intervention applications in Supreme Court. Each union also put their lawyer for fighting the battle. However, MFUCTO took this battle very seriously and have not kept any stone unturned. **MFUCTO appointed Senior Counsel (Shri. Krishna Kumar Guru) to fight this battle and under him a battery of junior lawyer (Adv. Hiren Dasan) fought this battle in Supreme Court :**

**3.3** The Intervention application got the court order on 18th

March 2015. In the order some new dimensions were added. The extract from the Supreme Court Order.

(a) "Extract Para 1. It has been pointed out by the Learned Senior Counsel that **Maharashtra Federation of University and College Teachers Organization, (MFUCTO)**, Respondent in Civil Appeal No. 10759/2013, had filed a Writ Petition which is pending before the Principal Bench, **This Association is also seeking to be heard in the proceedings before us.**"

(b) "Extract Para 2. In these circumstances the course which commends itself to us to stay the operation of the Impugned Order **without, in any manner, causing any disadvantage to any of the parties who are the beneficiaries to the Impugned judgment.**"

(c) "Extract Para 3. Accordingly, we request Hon'ble the Chief justice of the High Court of Judicature at Bombay to constitute or nominate a Bench at the Principal Bench, to which all pending Writ Petitions should be transferred, and which Bench should forthwith take up the matters, in expedition and decide all the Writ Petitions preferably within a period of six months from today." and

(d) "Extract Para 7. Liberty is also granted to affected persons to seek in the High Court of Judicature at Bombay ad interim orders which may place them in parity with other Lecturers/Assistant Professors similarly placed."

**3.4** Based on this judgment, a special bench has been constituted in Mumbai under the auspicious of Hon'ble Anup Mohta and Hon'ble Justice A. A. Sayyad, jj. All the cases pending in the different bench of Mumbai High Court has been transferred to Bombay High Court. This includes the contempt petition filed by NMUCTO and PUCTO. The following table shows the number of cases transferred from different benches to Bombay High Court.

University Area	No of Petition
Amravati	11
Aurangabad	42
Mumbai	11
Nagpur	71
Nanded	58
North Maharashtra	68
Pune	32
Solapur	10
Kolhapur	33
<b>Total</b>	<b>336</b>
(Prepared from the High Court Case documents)	

**Note :** Each petition contains one or more than one case total cases are around.

MFUCTO had taken a decision in their meeting held in Puna to appoint a Senior Counsel to fight the main petition. Simultaneously each unit also will appoint their Counsel for their respective cases.

**3.5** The hearing started on **16th July 2015**. Sixteen hearings had already taken place, which were mainly carried by the Senior Counsel of MFUCTO, Adv. Mihir Desai. Documentations have been compiled under the guidance of Prof. B. T. Deshmukh. The office of MFUCTO has been working round the clock. The

University of Mumbai being the closest centre of Bombay High Court, BUCTU has the responsibility to operate with the Senior Counsel as per the direction of MFUCTO EC. When this report will be placed for the general COUNCIL probably special bench of Bombay High Court will be in a position to deliver the judgment.

**3.6** However, during the course of the hearing in Mumbai High Court Maharashtra Government further revealed their anti – teacher attitude. Maharashtra Government has taken a complete U-turn from their earlier position with reference to the career development of NET/SET affected teachers. There are many evidences already shown as 'Exhibits' in different writ petitions. For example, at the time of the withdrawal of **44 days strike in 2009**, a negotiation between the government and MFUCTO happened. The government clearly stated in the negotiation that it was the UGC, which had power to relax/exempt the qualification. **If such exemption comes from the UGC, Maharashtra government would regularize the non NET/SET teachers appointed from 19th Sept, 1991 to 3rd April, 2000.** There are several other evidences also. But now the Government pleader is saying that the NET/SET affected teachers in Maharashtra would be continued in their service, would get the lowest pay scale, and they would not get the Career Advancement benefit. Surprisingly, the UGC lawyer Rue Rodrigues also followed the same line of the government. This means that the UGC is contradicting their own resolution circulated on 26 th August 2011. **This is case of connivance between the Maharashtra government and the UGC.** We believe that the **Mumbai high court will deliver a verdict in favour of the teachers.**

#### **4. MFUCTO's Action Programme for 2014-15**

**4.1 (A)** But the Maharashtra Government, whether it is formed by the Congress - NCP or BJP, remained apathetic about the problem of the teachers; they continued to be indifferent. Due to this indifference, MFUCTO has to take the course of legal action. Nevertheless, in almost all the cases, apart from the NET/SET, which is yet to be resolved, **most of the judgments given are in the favour of the teachers.** For example, Gratuity case, pension case for the teachers those retired prior to 2006 and between 2006 and 2009, Ph.D. increment for the teachers who obtained the degree prior to 2006 or after 2009, etc.

**(B) However, Government had not implemented any of the court decisions with dignity.** Hundreds of contempt petitions have been lying with the court. Government has not implemented those. Whenever any contempt petition came for hearing government asked for apology in the court with folded hand, which does not suffice the cause of contempt. The precise example about the situation, which was seen in Aurangabad bench of Bombay High Court when the Joint Director of Jalgaon division asked apology with folded hand for non implementation of the court order. In the affidavit he has stated that **"At the outset I tender my unconditional apology for not having complied with the orders passed by this Hon'ble High Court and pray that the said apology may kindly be accepted"**. What he has not done **"The orders of which the Petitioners are alleging contempt against the Respondents are based upon the decision of this Hon'ble High Court in the case of Asha Ramdas Bidkar Versus The State of Maharashtra and Others"**. MFUCTO in its meeting dated 28th June 2015 raised the question: **What is the meaning of only asking for apology?**

## **QUESTION ?**

**"Whether introduction of NET / SLET as eligibility condition for recruitment and appointment of Lecturers in Universities / College / Institutions as per Gazette Notification dated 11.07.2009 prescribed by University Grants Commission (UGC) will effect the selections and appointments made in accordance with the approved advertisements / notifications published before 11.07.2009 when the eligibility condition was not compulsory NET / SLET ?**

(1) See Para 5(B) of "Notes of Arguments" on Page 34 of this Bulletin. (2) This Question was framed by the Hon'ble Bench itself. See Para 2 of the Judgment. Full Text of the Judgment dated 02.07.2010 is circulated on Page 75 of 2010 NUTA Bulletin.

4.2 It has been mentioned that the Supreme Court and the High Court orders are the constitutional bindings on the State Government, but disobeying these orders, Maharashtra Government has shown their disregard to the Constitutional mechanism. While litigations were going on some issues, there were several other, which also to be attended by MFUCTO.

4.3 To press for this demand, an action programme was chalked out as per which a state level 'Jail Bharo' was held at Azad Maidan Mumbai on 21st July, 2014. The demonstrations were to be held before the Minister of Higher Education and other ministers visiting the district place in the state for public function. A strong demonstration took place in Mumbai before Shri . Rajesh Tope, at Chowpaty near Bhavans College. Similar demonstrations were held before the Deputy Chief Minister Shri Ajit Pawar at Amravati, Yeotmal and Wardha. The demonstrations at Amravati had also to face police action. On 4th August, 2014 Dharna and demonstrations were organized at Jantar Mantar, New Delhi and the leadership called upon the Union Higher Educational Minister Smt. Smriti Irani, and submitted a copy of the resolution to her. In this programme, AIFUCTO had fully extended support. **AIFUCTO, in this circular of 9th July 2014 announced its secretariat, and not only participated in demonstration, but also appealed to its members from the nearby states to join the programme to show solidarity and support to the MFUCTO has programme.**

#### 4.4 Post Election Action Programme, 2014

When the MFUCTO agitation was under way, the election of the State Legislature was announced and the code of conduct was enforced. MFUCTO in its meeting held in Pune on 24th August 2014, suspended the agitation during the period of code of conduct and decided to resume the same after the code of conduct would be withdrawn. As per the decision of MFUCTO, following 'actions' were organized in all over Maharashtra:

(1) University level demonstrations, organized by the University Level Union before the office of the Vice-Chancellor of the University on 24 Nov 2014 took place.

(2) After the University Level actions, it was a state level Dharna held in Mumbai on 1st December 2014.

(3) On 8 December 2014, the teachers of the state proceeded on mass casual leave, which was to be followed by an indefinite cease work from 15th December, 2014.

(4) In the meantime, the new Government of Maharashtra came to power. MFUCTO submitted the demand memo to the new Chief Minister and Minister of Higher Education. Since it is a new Government and the minister requested to be given some more time to resolve MFUCTO's long pending problem. MFUCTO is a mass organization representing more than 20,000 teachers. It has close connectivity with the students and parents. 10-15 lakhs students are under the guidance of teachers, who are affiliated with MFUCTO. Thus, MFUCTO has to take reasonable decision appropriate to fit with the political and social situation.

(5) On 14 December 2014, MFUCTO Executive Committee met at Mumbai and decided on its own to withdraw the forth coming agitation because Government needed some more time. **But till Oct 2015, Government has not taken any positive initiative to resolve any of the problems of MFUCTO.**

#### 5. MFUCTO's Salary Petition

Government did not release the salary for 71 days from March, April and 10 days of May 2013 for the non-cooperation with the

university's examination works. MFUCTO filed the first petition in Nov 2013. The prayer in the petition are given below:

#### 5.1 Salary Petition : 1

Petitioner "Maharashtra Federation of University and College Teachers Organizations" versus Respondents "The State of Maharashtra Department of Higher and Technical Education Mantralaya" (Petition No 1913 of 2013)

#### 1. PRAYER

(a) That in exercise of its jurisdiction under Article 226 of the Constitution of India this Hon'ble Court may be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate direction or order calling for the record and proceedings leading to the issuance of Circular letter dated 6th March 2013 by Respondent No.1 as at Ex. F hereto containing **directions** Respondents Nos. 2 to 3 and other Regional Joint Directors of Higher Education in the State not to release the salaries to teachers who participated in the agitation of non-cooperation in University related examinations by applying the principle of 'No Work No Pay' and after examining the legality, validity, propriety and correctness thereof quash and set aside the said order.

(b) That in exercise of its jurisdiction under Article 226 of the Constitution of India this Hon'ble Court may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, direction or order directing the Respondents No. 1 to 3 and other Regional Joint Directors of Higher Education to release to the teachers within a period of two weeks the salaries for the months of March, April, 10 days of May and 25 days of February 2013 or for the period the salary has not been released.

(c) That pending hearing and final disposal of the petition, Respondents Nos. 1 to 3 may be directed by an order and mandatory injunction of this Hon'ble Court not to make any recovery in respect of any salary paid for the month of February 2013 by treating any period as falling under the principle of 'No Work No Pay'.

(d) Costs of and incidental to the present Petition be provided for.

(e) For such further and other reliefs as the nature and circumstances of the case may require or justify or as this Hon'ble Court may deem just and proper.

For which act of kindness the Petitioner shall ever as in duty bound pray. **After the first hearing in Nov 2013 when the government was asked to file an affidavit, no further movement of the case took place. Hence, the petition was amended :**

#### AMENDMENT

#### 1. Add the following at the end of Prayer clause (b)

**"with interest at the rate of 15% p.a. from the date the amounts became due till payment."**

Due to the enormous delay in the Court, MFUCTO's E C decided to file the second petition. The second petition was filed by BUCTU on behalf of MFUCTO.

#### 5.2 Salary Petition : 2

Petitioner "Bombay University and College Teachers Union" versus Respondents "State of Maharashtra and Others" (Petition No (L) 1766 of 2015)

#### 2. PRAYER

(a) That this Hon'ble Court may be pleased to issue a writ of Certiorari or any other appropriate writ in the nature of Certiorari quashing and setting aside the impugned Circular dated 06.03.2013 annexed at Exhibit A to Petition;

(b) That this Hon'ble Court may be pleased to issue a writ of Mandamus or any other appropriate writ in the nature of Mandamus or any other appropriate writ in the nature of Mandamus directing the Respondent to release the salaries of the Petitioners for month of March 2013, April 2013 and 10 days of May 2013 with interest @

## ANSWERED

**"For all the above reasons, therefore we answer the question framed by us holding that the selections and appointments made pursuant to the advertisement 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."**

(1) See Para 5(B) of "Notes of Arguments" on Page 35 of this Bulletin. (2) The framed Question was answered by the Hon'ble Bench in Para 11 of the said Judgment dated 02.07.2010. Full Text of the Judgment is circulated on Page 75 of 2010 NUTA Bulletin.

18% p.a. from the date on which the amount became due.

(c) Pending hearing and final disposal of the Petition the implementation and execution of the impugned Circular dated 06.03.2013 annexed at Exhibit B to the petition;

**(d) Pending hearing and final disposal of the petition to release the salaries of the Petitioners for month of March 2013, April 2013 and 10 days of May 2013 with interest @ 18% p.a from the date on which the amount became due;**

(e) **Ad-interim order** in term of prayer clause (c) and (d);

(f) For the cost of the Petition;

(g) And for such other further reliefs as this Hon'ble Court May deem fit for the proper

This case has come for hearing twice, the third hearing is awaited.

## 6. Other Cases

There are some other important cases, which MFUCTO or its components units are fighting.

### 6.1 Pension Case

MFUCTO has taken serious view about the discrimination in pension for the teachers retired prior to 2006 and after that. In fact, there is discrimination between the two groups as per the Maharashtra Civil Services (Pension) Rules, 1982. The clause (6) of the said Resolution reads thus:

“(6) Pension shall be calculated at 50% of Pensionable Pay in all cases and shall be subject to a minimum of Rs. 1275 per month and a maximum of upto 50% of highest pay admissible in the State Government, (which is Rs. 24,500 per month since 1st January 1996), but the full pension in no case shall be less than 50% of the minimum of the revised scale of pay introduced with effect from 1st January 1996 for the post last held by the employee at the time of his retirement...”

In spite of this resolution there is discrimination, Government have been dividing the teachers and creating groups within the group. MFUCTO's NUTA unit not only took the cognizance of the situation but also has taken certain steps which paved the way for a bigger battle in the High Court for equality in treatment for teachers those who have retired prior to 2006..

### 6.2 Anomalies in Ph.D increment

Anomalies exist in many areas. In 4th Pay commission UGC had given two incentive increments for the Ph.D holders, which continued in Sixth Pay Commission. Recommendation also UGC increased the incentives for the Ph.D holder. Those who have obtained Ph.D degree during the course of their professional Career would get three increments and those who would enter the profession with Ph.D degree would get five increments. This has resulted in creating the discrimination between the teachers, who obtained Ph.D degree prior to 2006, and those who obtained Ph.D degree after 2006. Taking the example from the same college, mainly from Nagpur, Amravati region petition have been filed where it was sited that a senior teachers having Ph.D degree earned less salary then junior teacher obtained

Ph.D degree after 2006. The Court has given the following decision –

“This would be discriminative between Senior Teacher and Junior Teacher. Note 5 below Appendix I of the G.R need to be so applied that such discrimination is removed. For the above reason both the Petitions need to be allowed with directions that Respondents shall take necessary action to step up the pay of the Petitioners in both the Petitions so as to be at par with juniors where all the things given are same and shall not discriminate only because the junior teacher has acquired Ph.D Degree in the course of 6th Pay Commission. The salaries of the Petitioners in both the Petitions may be re-fixed and arrears be paid within a period of THREE MONTHS. For Petitioners who have already retired, the pension shall be re-fixed accordingly.”

### 6.3 Injustice to the newly appointed Teachers

It is brought to the notice that fully qualified candidates appointed through the proper selection procedure in different universities did not get their salary till they get their approval from the University. Now days it requires between one year to two years depending on the procedure in the University to get the letter of approval. Their salary began after getting the letter of approval from the date they got the letter. The backlog of salary in Mumbai region is more than few crores. The young teacher generally cannot go to court for getting their remuneration. There is a lot of dissatisfaction in the mind of young teacher for such treatment. Moreover, in many cases, particularly in rural areas of Konkan district under Mumbai University. The management of the colleges pay the basic pay of the teachers even after getting the grant. This is serious corruption in the higher education.

### 6.4 Exploitation of the Private Engineering College Teachers

(a) The Private Engineering colleges in both the urban areas and more so in the rural areas, have been facing multidimensional crisis. On the one hand most of the management does not pay as per the pay commission recommendations. As a result, they get less salary than their counter parts in the Government colleges. Moreover, they do not get carrier advancement allowances as per the recommendation of AICTE.

(b) In case of all the University in Maharashtra, private engineering college teachers did not get their 55 months arrears arising out of 5th pay commission recommendation. State level Working Committee of the engineering teachers filled a petition against this for justice. The case is going but in a very slow pace. **The engineering college teachers intend to keep a senior Counsel for fighting this case** MFUCTO is in agreement with the engineering teachers that the case to be fought more vigorously by appointing a senior counsel.

(c) The bigger crisis of private engineering colleges in Maharashtra is that they are suffering from lack of the threshold student population. Total number of vacant seats is increasing every year as per the information from the office of the director of technical education. In 2009-10 total number seats were 87,646 and the admitted position were 86,952, thus the vacant seats

Recently Hon'ble Division Bench comprising Shri. B. R. Gawai and A. A. Sayed JJ by a judgment dated 20.10.2010 in W.P. No. 357/2010 revisited the same issue and considering the earlier judgment referred supra followed the same view. In paragraph no.7 it was observed that

“It can thus clearly be seen that the Division Bench in unequivocal terms has held that the necessity to have NET / SET qualification have to be construed as prospective in nature and only effective from July 2009 the Court has held that what is crucial is the date of advertisement”.

(1) See Para 5(B) of "Notes of Arguments" on Page 35 of this Bulletin. (2) Full Text of this Judgment dated 20.10.2010 is circulated on Page 11 of 2011 NUTA Bulletin.

were 694. In 2010-11 total number of seats increased 1,14,268 but the admitted students were 93,428, the vacant seats were 20,840 (18.24%). In 2011-12 total number of seats again increased 1,34,024 but the admitted position were 1,033,09 the vacant seats were 30,715 (22.92%). In 2012-13 total seats again increased 1,48,294 and the admitted position 1,06,691 vacancy remain 41,603 (28.05%). In 2013-14 seat further increased 1,54,827 and admitted position was 1,02,427 and vacancy 52,400 (33.84%) and 2014-15 the admission open for 1.54 laks seats and admission nearly took place 89,242. Many of the engineering colleges are facing closure, and the private engineering college teachers do not have any security of job. Thus, large number of engineering college teachers is moving from one institute to another institute with a yearly contractual appointment. Such a situation cannot provide quality education.

#### 7. FUNCTION OF THE LEGAL COMMITTEE

7.1 (A) MFUCTO's Legal committee consist of ;

Prof A.T. Sanap,

Dr. Tapati Mukhopadhyay,

Dr. S.P Lawande

Dr. Pravin Raghuvanshi

Dr. Madhu Paranjape

Prof. C.R. Sadasivan and

Prof B.T. Deshmukh

Legal Committee constituted by the Executive Committee In 2012 since then it has been working consistently to strengthen the legal battle of MFUCTO .

**Legal Committee played most effective role when MFUCTO decided to file intervention application** against the Special Leave Petition (SLP) filed by the state of Maharashtra impugning the order dated 01.08.2013 passed by the Aurangabad bench of Hon'ble High Court in writ petition no 11477/2010 entitled Smt. Asha Ramdas bidkar V/S State of Maharashtra. MFUCTO decided to intervene in that case, to represent 6000 NET/SET affected teachers in Maharashtra.

(B) Legal Committee conducted several meetings prior to the submission of intervention application. The meetings took place on 8th December 2013 at Amravati, 30th December 2013 at Lonavala, 1st March 2014 at Gwalior and 20th March 2014 at Pune to finalize the intervention application. The draft was prepared by ex president of MFUCTO advocate C.R Sadasivan under the guidance of Prof. B.T. Deshmukh and finally submitted to Supreme Court lawyer. Intervention application then filled in April 2014. Hearing began in August 2014; during each hearing MFUCTO team used to remain present in Delhi and worked in close coordination with the Supreme Court lawyer appointed by MFUCTO. Several meetings took place with Supreme Court lawyer Adv Hiren Dasan. Dasan advised to appoint senior counsel. Executive Committee agreed in the proposal. Accordingly, Adv Krishna Kumar Guru was engaged for the case. From the month of August 2014 up to march 2015 legal conferences took place on 21/8/2014, 27/11/2014, 20/1/2015, 23/3/2015 with Adv Guru at his residence and also in his chamber in supreme court.

7.2 Maharashtra Government was represented by Advocate Marlapalle. He raised five important questions in chronological order about the NET/SET issue and UGC also submitted its affidavit. MFUCTO's legal committee studied those document in their meeting held in 1.2.2015 and 15.2.2015 at Amravati and prepared the reply which came in the form of resolution (Circulated page no 2015/MFUCTO/GS/1-11). Legal Committee continue to remain alert further meetings took place on 05.04.2015 at Amravati, 11.10.2015 at Amravati, 16.11.2015 at Mumbai.

It was decided in the meeting that the documents in support of our views to be collected systematically and this would be submitted to the Supreme Court lawyer for strengthening the rejoinder. Before submission all the documents were verified, checked, analysed in the proper context by Prof. B.T. Deshmukh along with Legal Committee members His three decades experience in Legislative Council and enriched wisdom become the real strength for this legal battle of MFUCTO

7.3 Supreme Court gave interim order in 25/3/2015 Civil Appeal No 10759/2013 Applicant(s)- **State of Maharashtra & Ors** Versus Respondent (s)- **Asha Ramdas Bidkar & Ors.**

The order stated in para 3

**“Accordingly, we request Hon’ble the Chief Justice of the High Court of Judicature at Bombay to constitute or nominate a Bench at the Principal Bench, to which all pending Writ Petitions should be transferred, and which Bench should forthwith take up the matters, in expeditious, and decide all the Writ Petitions preferably within a period of six months from today.”**(emphasis added)

Hence, the case got shifted to Mumbai High Court. Legal committee review the judgment and resolution was prepared about the benefit of the judgment which was circulated in EC meeting held on 31st May 2015.

7.4 Special bench constituted headed by Justice Anoop Mohta and justice A.A Sayyed. All the cases from Nagpur and Aurangabad bench are shifted to Bombay high court. MFUCTO E.C had taken the decision to appoint senior counsel to fight the main petition. All other units are requested to appoint senior counsel for their respective cases. Hearing began on 16th July 2015 and continuing till date. So far 18 hearing took place several issues were raised by the lawyers and the judges and the affidavits filed by the University Grants Commission, (First Affidavit dated 13.10.2015, Second Affidavit dated 23.10.2015 and Third Affidavit filed on 23.11.2015) and Affidavit in reply filed by Respondent No 4 & 5 i.e HRD, Ministry Govt. of India dated 25.11.2015 and also Affidavit in reply filed by State Government dated 01.10.2015.

(A) After taking into consideration the Affidavits filed by (1) University Grants Commission (2) Ministry of HRD and (3) Department of Higher Education, Govt of Maharashtra as stated above there are different conflicting positions coming out of the aversion made by the above mentioned Authorities. The Legal Committee derived the following observations . Agreed positions emerging out of the above Affidavits are as follows :-

(1) **Agreed Position:-** Any Regulation issued by the University Grants Commission, including the Regulation of 1991 and 2000, cannot be implemented **retrospective** and can be implemented only Prospectively.

(2) **Given period or period under reference :-** To decide the applicability of prospective or retrospective implementation, the period under the present Litigation is from 19th September 1991 to 3rd April 2000 which may be described as a given period under reference.

(B) **Issue before the honorable Court:-** (a) whether the non NET/SET teachers appointed during the given period are lawfully appointed teachers or not? and (b) if they are so lawfully appointed then what about the applicability of CAS.

7.5 Following are the details of the Legal Committee meetings:-

(A) The Meeting of the Legal Committee was held on 15th February, 2015 at Shikshak Bhavan, Amravati. The Affidavit submitted by UGC on 3rd February, 2015 in the Supreme Court was considered. Reply on that Affidavit titled as “सर्वोच्च

That it is settled position of law that a party cannot aprobe and reprobe at the same time and cannot change stand as and when it feels to do so. In fact, the act of fixing a date other than the effective date communicated by the UGC is contrary to the affidavit filed before this Hon'ble Court and in fact amount resiling from the undertaking and is contemptuous.

(1) See Para 5(E) of "Notes of Arguments" on Page 36 of this Bulletin.

न्यायालयातील घडामोडी, राज्यशासनाच्या अधिवक्त्यांनी विद्यापीठ अनुदान आयोगाकडून मागितलेल्या माहिती बाबत ठराव” was considered and approved. This document consist of 25 Paragraphs. Along with this it was resolved that the Affidavit of the State Government submitted before Nagpur Bench on 29.03.2011 in W.P.No.4909 of 2010 also be submitted.

(B) The Meeting of the Legal Committee was held on 14th June, 2015 at Shikshak Bhavan, Amravati. The detailed Resolution consisting of 11 Paragraphs titled as “नुसत्या बिनशर्त क्षमायाचनेला काय अर्थ आहे? महाराष्ट्र प्राध्यापक महासंघाच्या कार्यकारी मंडळाच्या रविवार दिनांक २८ जून, २०१५ रोजीच्या बैठकीत संमत झालेला ठराव” was considered and approved. This was further placed for approval before the Executive Committee of MFUCTO held on 28th June, 2015 and was considered and approved.

(C) The next Meeting of Legal Committee was held at Shikshak Bhavan, Amravati on 11th October, 2015. In this Meeting "points of reply to be filed by MFUCTO on the Affidavit in reply of Respondents No.1 & 2 i.e. State Government submitted in the Bombay High Court in W.P.No.2082 of 2013" were considered and adopted. Specially Para 5, 6, 7, 10, 11, 12 & 25 of the State Government Affidavit were considered carefully and the detailed reply to each Paragraph was drafted and approved. In the same meeting "Issues 1 to 6 raised by BESTA in the High Court bench at Bombay" were considered and issuewise reply was prepared and approved. The list of documents enclosed to this reply is as follows :-

(i) AIR 1995 SUPREME COURT 336, A.M. AHMADI AND S.P. BHARUCHA, JJ. Civil Appeal No. 1819 of 1994, D/-8-9-1994. University of Delhi, Appellant v. Raj Singh and others, Respondents.

(ii) U.G.C. Regulations, 1991

(iii) UGC Regulations, 2000

(iv) The University Grants Commission Act, 1956 (3 of 1956) [3rd March, 1956]

(v) महाराष्ट्र विधानपरिषद कार्यवाही शुक्रवार, दिनांक ३ ऑगस्ट २००९ अधिकृत प्रतिवेदन, खंड १२५, क्रमांक १५, पृष्ठ १३८ व १३९

(vi) महाराष्ट्र विधानपरिषद कार्यवाही शुक्रवार, दिनांक ३ ऑगस्ट २००९ अधिकृत प्रतिवेदन, खंड १२५, क्रमांक १५, पृष्ठ १४१

(vii) महाराष्ट्र विधानपरिषद कार्यवाही गुरुवार, दिनांक १७ मार्च १९९४ अधिकृत प्रतिवेदन, खंड १०१, क्रमांक ०३, पृष्ठ ४५

(viii) Agreement Reached In The Discussions Of The Representatives Of The Maharashtra Federation Of University And College Teachers' Organisations (MFUCTO) With The Chief Minister Of Maharashtra

(ix) University Grants Commission Bahadurshah Zafar Marg, New Delhi 110 002. phone : 331 7143 Grams : Unigrants Telex : 3165913 Fax : 331 5288 D.O.No. F.4-12/90 (NET) June 3, 1992

(x) Y. N. Chaturvedi, Secretary, University Grants Commission Bahadurshah Zafar Marg New Delhi 110 002 Telex 3165913 Grams Unigrants Phone Off. 331 8849 Fax 331 5288 D.O. No. F. 4-2/90 (NET) 15th June, 1993

(xi) राज्य स्तरीय पात्रता परीक्षा (सेट) प्रादेशिक भाषेतून घेण्याबाबत... महाराष्ट्र शासन : उच्च व तंत्र शिक्षण आणि सेवायोजन विभाग शासन निर्णय, क्रमांक : युएसजी-१३९१/२०६६/विशि-४, मंत्रालय विस्तार भवन, मुंबई ४०००३२ : दिनांक : १४ जुलै, १९९४.

(xii) ISSUES

(xiii) 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

Notified on 19th September, 1991, by the University Grants Commission

(xiv) विधानपरिषद आश्वासन समितीची बैठक मंगळवार, दिनांक १२ मे १९९८ बैठकीचे कार्यवृत्त : “नेट-सेट परीक्षा उत्तीर्ण असणे ही अधिव्याख्याता पदावर घेण्यापूर्वी धारण करावयाची पात्रता आहे” असे शासनाने मान्य केले. २७ मे, १९९८ चे पत्र

(xv) अ.मा.भट्टलवार, अवर सचिव महाराष्ट्र शासन यांनी सचिव (१) महाराष्ट्र विधानमंडळ सचिवालय विधान भवन मुंबई यांना दिनांक २७ मे १९९८ ला दिलेले पत्र

(xvi) मा.दत्ता राणे उच्च व तंत्र शिक्षण मंत्री यांनी डॉ.मुरली मनोहर जोशी, मानव संसाधन मंत्री, नवी दिल्ली यांना दिनांक ६ मे १९९८ ला दिलेले पत्र

(D) During the Course of hearing before the Hon'ble Bench of the Bombay High Court at Bombay on the NET-SET cases, different development were taking place and it was necessary to give detailed reply to each Affidavit, Counter Affidavit or Rejoinder or Affidavit filed in reply by UGC or State Government. In view of the development it was not possible to hold the Formal Meeting of the Legal Committee. Members of the Committee were constantly in touch with each other by Phone, by Mobile & Internet Communications and Prof.B.T.Deshmukh and Dr.P.B.Raghuwansi were authorised to prepare the necessary Drafts. Following documents were accordingly prepared and finalised and submitted to the respective Advocates representing the different units through members of the Legal Committee.

(1) "Points of Rejoinder to the further Additional Affidavit on behalf of Respondent No.3 University Grants Commission Dated 23.10.2015", In the High Court Judicature at Bombay Ordinary Original Civil Jurisdiction Writ Petition No. 2082 Of 2013

(2) "TABLE Showing Comparison of the words chosen by the Apex Court and this court regarding the legal structure (framework) related to CAS and the words used in the prescribed structure related to the CAS applicable to Non-NET/SET teachers" appointed during 1991-2000 period shown in tabular form.

(3) "AFFIDAVIT IN REPLY to the Affidavits filed by the University Grants Commission, (First Affidavit dated 13.10.2015, Second Affidavit dated 23.10.2015 and Third Affidavit filed on 23.11.2015) and Affidavit in reply filed by Respondent No. 4 & 5 i.e. HRD, Ministry Govt. of India dated 25.11.2015 and also Affidavit in reply filed by State Government dated 01.10.2015."

The list of documents enclosed to this reply is as follows:-

(i) No.F.1-21/87-UI Government Of India Ministry Of Human Resource Development Department Of Education New Delhi, The 17th June, 1987

(ii) No. F. 1-21/87-U.1 Government Of India Ministry Of Human Resource Development (Department Of Education) New Delhi, Dated 22nd July, 1988

(iii) (December 18, 1989/ Revised March, 1990) University Grants Commission Bahadurshah Zafar Marg New Delhi-2 \* Guidelines For Career Advancement Of Lecturers In Universities And Colleges

(iv) Discussion Of The Representatives Of The Maharashtra Federation Of University And College Teachers' Organisations (MFUCTO) With The Chief Minister Of Maharashtra.

(V) Agreement Reached In The Discussions Of The Representatives Of The Maharashtra Federation Of University And College Teachers' Organisations (MFUCTO) With The Chief Minister Of Maharashtra

That, in the light of the order of the Hon'ble Supreme Court, in humble submission of the petitioners the recourse available for this Hon'ble Court is to either follow the previous decisions which are in favour of the petitioners or refer the matter to a Larger Bench if the already articulated terms of the Coordinate Benches are found to be unacceptable.

(vi) Amravati University : Statute No. 1 of 1989. Implementation of pay scales of teachers and other measures for maintenance of standards In Higher Education statute, 1989. (Received assent of the Chancellor vide his office letter No. CS/AU/STT/89/B/(194)/1807 dated 25.9.1989)

(vii) University Grants Commission Bahadurshah Zafar Marg New Delhi - 2 D.O. No. F.1-11/87(CPP) 28th October 1991

(viii) U.G.C. Regulations, 1991 Regarding Minimum Qualifications For Appointment Of Teachers' In Universities And Colleges. To be published in the Gazette of Indian 5th Oct. 1991. Part III Section 4 University Grants Commission Bahadurshah Zafar Marg New DELHI - 2 No. F.1-11/87 (CPP) 19th Sept. 1991

(ix) Y.N. Chaturvedi, Secretary University Grants Commission Bahadurshah Zafar Marg New Delhi 110 002 Telex 31 65913 Grams : Unigrants Phone : Off. 3118849 D.O. No. F. 14-1/92/(CPP-2) 2 June, 1992.

(x) University Grants Commission Bahadurshah Zafar Marg : New Delhi - 110 002 D.O.No.F.3-1/2000 (PS) : March,2000 / 4 April, 2000 Sub : UGC Regulations on minimum qualifications for appointment and for Career Advancement of Lecturers, Readers and Professor in the universities & colleges.

(xi) UGC Regulations, 2000 regarding Minimum Qualifications for Appointment and Career Advancement of Teachers in Universities and Colleges. To be published in the Gazette of India Part III Sector 4 University Grants Commission : Bahadur Shah Zafar Marg : New Delhi - 110 002. No.F.3-1/2000 (PS) NOTIFICATION March, 2000

(xii) Teachers in Non-Agricultural Universities Affiliated Colleges, Government Institutes of Science / Management Studies / Social Science Revision of pay scale of teachers and other measures for maintenance of standards in Higher Education. Government Of Maharashtra Higher & Technical Education Department, Resolution No.NGC-1298/(4619)/UNI.4, Mantralaya Annexe,Mumbai-400 032 Dated : 11th December,1999.

(4) Different queries were raised by our respective counsels in this respect. "The list of questions containing 8 questions and replies prepared" were submitted to the Our Counsels through members of the Legal Committee.

**8. MFUCTO's Day to Day Activities : Dates of Executive Committee Meeting and Legal Committee Meeting from October 2014 to October 2015**

LIST OF MEETINGS			
SN	Date	Place	Meetings
1	2nd November 2014	Mumbai	Executive Committee
2	19th November 2014	Mumbai	Executive Committee
3	2nd December 2014	Mumbai	Executive Committee
4	14th December 2014	Mumbai	Executive Committee
5	28th December 2014	Mumbai	General Body
6	1st February 2015	Amravati	Legal Committee
7	15th February 2015	Amravati	Legal Committee
8	29th March 2015	Mumbai	Executive Committee
9	5th April 2015	Amravati	Legal Committee
10	31st May 2015	Pune	Executive Committee
11	28th June 2015	Amravati	Executive Committee
12	11th July 2015	Mumbai	Legal Committee
13	27th September 2015	Mumbai	Executive Committee
14	11th October 2015	Amravati	Legal Committee
15	16th November 2015	Mumbai	Legal Committee

**9. Important resolutions passed by MFUCTO from Sept 2014 to Sept 2015**

(9) उच्च शिक्षणमंत्री राजेश टोपे हे या भ्रष्ट कारभारामध्ये सहभागी अथवा समभागी तरी आहेत किंवा उच्च शिक्षण विभागावरील त्यांचे नियंत्रण पूर्णपणे सुटले तरी आहे : महाराष्ट्र प्राध्यापक महासंघाच्या कार्यकारी मंडळाने रविवार दिनांक २४ ऑगस्ट २०१४ रोजीच्या पुणे येथील बैठकीत संमत केलेला ठराव

(२) दिनांक २४ ऑगस्ट २०१४ रोजीच्या ठरावान्वये सुरु करण्यात आलेले आंदोलन ठामपणे सुरु राहिल : महाराष्ट्र प्राध्यापक महासंघाच्या कार्यकारी मंडळाने रविवार दिनांक २ नोव्हेंबर २०१४ रोजीच्या मुंबई येथील बैठकीत संमत

केलेला ठराव क्रमांक : एक

(३) महाराष्ट्र प्राध्यापक महासंघाच्या कार्यकारी मंडळाने रविवार दिनांक २ नोव्हेंबर २०१४ रोजीच्या मुंबई येथील बैठकीत संमत केलेला ठराव क्रमांक : दोन : मा. सर्वोच्च न्यायालयासमोर निदेशार्थ अर्जाच्या संदर्भात सादर करावयाची महत्त्वपूर्ण कागदपत्रे या संदर्भात

(४) महाराष्ट्र प्राध्यापक महासंघाच्या कार्यकारी मंडळाने रविवार, दिनांक १४ डिसेंबर २०१४ रोजीच्या मुंबई येथील बैठकीत संमत केलेला ठराव

(५) एक : दिनांक २४ ऑगस्ट २०१४ रोजीच्या ठरावान्वये सुरु करण्यात आलेले आंदोलन मागे घेण्याचा निर्णय घेण्यात येत आहे.

दोन : महाराष्ट्र शासनाशी चर्चा होऊन काही निर्णय शब्दबद्ध करण्यात आल्याच्या परिणामी हा निर्णय घेण्यात आलेला नसून समोर असलेली परिस्थिती विचारात घेऊन महासंघाच्या कार्यकारी मंडळाने आपणहून निर्णय घेऊन ते आंदोलन मागे घेतले आहे, हेही स्पष्टपणे नमूद करण्यात येत आहे.

(६) संस्थानिक समजून कार्यरत असलेल्या सहसंचालक, उच्च शिक्षण पूर्णे, यांच्याविरुद्ध कारवाई करण्याची मागणी : महाराष्ट्र प्राध्यापक महासंघाच्या कार्यकारी मंडळाने रविवार दिनांक १४ डिसेंबर २०१४ रोजीच्या मुंबई येथील बैठकीत संमत केलेला ठराव क्रमांक - २

(७) (दिनांक २० डिसेंबर २०१४ च्या दरम्यान उपलब्ध झालेल्या) ११ नोव्हेंबर २०१४ च्या शासन आदेशानंतरच्या स्थितीचा व नेट-सेट मुक्त शिक्षकांच्या संदर्भात करावयाच्या पुढील वाटचालीचा आढावा घेणारा ठराव : (महाराष्ट्र प्राध्यापक महासंघाच्या सर्वसाधारण सभेने रविवार, दिनांक २८ डिसेंबर २०१४ रोजीच्या मुंबई येथील बैठकीत संमत केलेला)

(८) सहपत्र : एक, मा.सर्वोच्च न्यायालयातील घडामोडीत राज्यशासनाच्या अधिवक्त्यांनी विद्यापीठ अनुदान आयोगाकडून मागितलेली माहिती व विद्यापीठ अनुदान आयोगाने सादर केलेली माहिती याबाबत संघटनेतर्फे मांडावयाचे मुद्दे समाविष्ट असलेला तपशीलवार ठराव

(९) नुसत्या विनशर्त क्षमायाचनेला काय अर्थ आहे ? महाराष्ट्र प्राध्यापक महासंघाच्या कार्यकारी मंडळाच्या रविवार, दिनांक २८ जून, २०१५ रोजीच्या बैठकीत संमत झालेला ठराव

(१०) नेट-सेट मुक्त शिक्षकांच्या संदर्भात मा.मुंबई उच्च न्यायालयाच्या औरंगाबाद खंडपीठासमोर सन २०१४ च्या अवमान याचिका क्रमांक २६६ च्या संदर्भात जळगाव विभागाच्या सहसंचालकांनी दिनांक १० जून, २०१५ रोजी एक शपथपत्र (P95 NB2015) दाखल केले आहे. मुळात ही अवमान याचिका सन २०१४ च्या याचिका क्रमांक ६४२ मध्ये मा.औरंगाबाद खंडपीठाने दिलेल्या निर्णयाची (P94 NB2015) (यापुढे 'मूळ निर्णय' असे म्हणू) शासनाने अंमलबजावणी केली नाही म्हणून दाखल करण्यात आलेली होती.

\*Note: These extracts are from NUTA bulletin available in NUTA website.

**10. MAHARASHTRA GOVERNMENT HIGHER EDUCATION POLICY FROM KAKORKAR TO NIGVEKAR AND FINALLY IT GOT MERGED WITH THE NEW PROPOSED UNIVERSITY ACT.**

**10.1** The effort to change the existing structure of higher education began since 1990, when Government of India accepted and introduced the economic reform as a part of the commitment to IMF loan. **The manifestation of this policy is seen in the gradual withdrawal of Government subsidy from higher education, health sector, public transport, etc.** To formalize this concept and to bring it into operation, Government had appointed many committees like Punneya Committee (1992-93), Private Universities Bill (1995), Ambani – Birla Report (2000), Modern University Act (2003) and Knowledge Commission (2007).

**10.2** In 12th Plan document, Prime Minister declared that Higher Education should be globally competitive and **private finance should flow in the higher education sector.** Reform is must. The structural reforms, which was conceptualized and introduced in the 12th Plan, will be operationalised by the RUSA scheme. RUSA is a three tier scheme from Central Government to the State Governments and finally with the Colleges through the Universities. Many state governments have shown their preparedness for the implementation of the recommendations suggested by RUSA. In the regard Maharashtra government appointed committees like Kakorkar Committee, followed by Nigvekar Committee. Based on largely the recommendations of the Nigvekar Committee, Maharashtra Government had brought the new University Act.

To bring these changes at University level Maharashtra Government is also trying to bring the new sets of regulations. The state Government also appointed the committees like Kakorkar Committee and Nigvekar Committee and combining

the reports from these committees, Government has prepared the New University Act.

### 10.3 Some Observations/ Comments on the provisions of the proposed draft ACT

(A) **The hidden agenda of the Government viz. to completely dismantle grant-in-aid system and to convert the University in to a Corporate body is exposed by the Mechanism for sustainable grant-in-aid/financial support for Higher Educational institutions (HEIs) as elaborated in Annexure 2 (pages 274- 277)**

- **Cost of degree (including salaries of staff and cost of infrastructure/books etc) to be fixed by Fee Fixation committee and cost to be fully recovered from students. Grant-in-aid to reimburse fees of only those students who are belonging to socially and/or economically backward sections.**

- **Higher and professional education funding corporation (HIPEC) to be set up with the main task of giving loans to students and HEIs and to be managed by finance professionals. The financial resources of HIPEC would include seed capital of a few thousand crores provided by government and funds/fees/deposits paid by employers, HEIs and students.**

- **It is obvious that the tax to be paid to HIPEC by employers would be extracted from every recruit in the form of his/her first month's salary. Moreover, contribution of 5% of students' annual tuition fees to HIPEC would be additional burden on students besides a compulsory deposit of Rs. 1000.**

- **Clearly, this mechanism will become the tool for generating money for the government by exploiting students and young job seekers. Besides throwing out large sections of students from higher education, it will also dry up the resources of Universities and Colleges.**

(B) Replacing Maharashtra State COUNCIL for HE with Maharashtra State COUNCIL for HE with Maharashtra state commission for HE and development (MAHED) with no teacher member. **Some of the provisions, as given below, will seriously erode the academic and administrative autonomy of the University and eventually lead to disintegration of University system:**

- **The Boards of Studies, Faculties and the Academic COUNSEL will drive reforms spelt by MAHED including uniform modular credit based programs.**

- **The APIs and KPIs recommended by the AC and adopted by the MC will have to be finally approved by MAHED**

(C) Creation of nearly a dozen Boards in the University, with overlapping purposes, each headed by a Director: **This will result in more administrative and non-academic posts not connected with the core activities on the Campus. It will lead to greater bureaucratization and eventually marginalization of academic activities.**

(D) (i) Space to be created in HEIs for private skill providers (PRISEP) in the market (training institutes for various skills) and recognition to be given to them by Academic COUNSEL and ii) Creation of BPO, KPO and EPO centres in college campuses. **This is gifting away the already squeezed space and resources created from public funds serve business interests of private enterprises.**

(E) Restructured Authorities - Most serious attack on democratic governance:

- **The Senate (now named SOUL) has provision for mainly nominated members and 9 elected Graduate representatives as against provision for elected representatives of Teachers, Principals, Managements and Graduates in the 1994 ACT. The total number of elected members will drop from 63 to 9. Presently, members from the Senate are elected to MC, BCUD, Grievance Committee, Students' Grievance committee, standing committee etc.**

- **The Senate will have no power to discuss and adopt the Budget of the University**

- **The Grievance Committee will have only nominated members and there is no Students' Grievance committee.**

- **The elected members are accountable to various stakeholders whose interests they represent. They remain vigilant against violation of rules and exercise some kind of social control while nominated persons generally follow the official line non-critically.**

**It is necessary for all the university level unions to study this new Maharashtra University Act. MFUCTO will organize a brain storming session to discuss various aspects in the**

**proposed act. Finally, the E C will take a decision about organizing some strong action for preventing this anti-teachers and anti- student.**

**After lot of opposition from different sectors Government has made some amendments and brought some election component in the formation of the University authorities. But, still nomination of the member in the different bodies continue to remain as the predominant factor of the selection. The spirit of democratic functioning is curbed. The whole act needs to be reviewed and change in favor of large numbers of students and teachers belong to the different Universities in Maharashtra.**

11 AIFUCTO'S AND FEDCUTA'S APPEAL FOR WIDER UNITY TO DEFEND HIGHER EDUCATION

#### India's Higher Education : Threat of Commercialization

WTO's Ministerial Meeting will be held in Nairobi in Dec 2015. It is anticipated that Government of India will open higher education sector under WTO. AIFUCTO and FEDCUTA have given a call for wider unity and demonstration to be held in Delhi on Nov 26, 2015.

A brief note is given below on the critical issues with respect to the above :

**11.1** There are clear signals that India's higher and technical education are being thrown open to 'for profit' private entities. Under WTO the educational services, particularly the tertiary educational services like higher educational services are treated as globally tradable services. Thus, if our government fully adheres to the WTO mandate under GATS, the education sector in general, and higher and technical education sector in particular, would be considered a tradable sector only, and not a 'public good' sector.

**11.2** After Doha Ministerial Conference in 2001, the Central Government as well as some State Government showed preparedness for the opening of Higher Education. In June 2003, Cabinet Committee of WTO, Government of India, has put in place a road map for services sector opening. Eleven subsectors were offered for opening.

**11.3** In 2005, Government realized the potentiality of these services and eventually submitted an 'Offer' list for market access in the subsector of Higher Education to WTO. At the same time, while giving the 'offer' list to selected countries, those countries would be 'requested' to give opportunities to the 'offering' country for opening and managing educational services. Government has gone further ahead in 2014 when Trade Policy Division Department of Commerce, Government of India, prepared a paper on Export of Higher Education Services by India. They have clearly identified four modes of supply of Higher Education

(1) Distance Education

(2) Foreign Universities establishing campus and/or collaboration in India to cater to Indian and Foreign students.

(3) Indian universities establishing campus

(4) Indian teachers travelling to foreign country.

India also has revised offer to WTO and proposed commitment under Higher Education services (in all four modes). It is in this background the 10th Ministerial Meeting of WTO is scheduled to be held in Nairobi, Kenya, on 15 to 18 Dec 2015. India is already a signatory of GATS. At the Nairobi meet, further liberalization of GATS is expected.

This has many implications :

(i) Higher education is a 'Public Good' funded by Government. By converting the public good into a 'tradable' service, **the basic conceptual structure would be changed to profit making endeavor.**

(ii) Accessibility will be reduced because many institutions specially will be located in the urban areas, **where private investor can make profit.**

(iii) **Equity will suffer. Disparity will increase** between the rural urban areas, male female, forward the backward class. Reservation will suffer.

(iv) Classroom teaching will be reduced to e-learning and virtual learning. Such e-learning based on the technical support, **may not be possible in the distant rural areas because of the non availability of the infrastructural facility and the technological support.**

(v) Once Higher Education enters the arena of WTO, **it will be managed by the WTO regulations.** There will be no distinction between the private and public, national or foreign. Indian rules



prepared by the Assembly and Parliament will be irrelevant. Accreditation will be done by International Trade Policy Review Committee. Dispute and grievances will be settled by WTO dispute mechanism.

(vi) The academic content and the management of the institutions **will be totally in the hand of business communities where profit is the only motive.** With the profit motive in place in many cases corrupt practices will supersede the basic principal and philosophy of management of Higher Education. Private educational manager are well known as the educational shark.

It is in these circumstances, before India's 'offer' is accepted, resistance has to be built up in the country. Consolidation of the different groups like the students, teachers and the academicians of the country are needed for putting pressure on the government for withdrawing this 'offer'.

With this idea, convention took place at Mavalankar Hall Delhi on 14th October, 2015 from 11 a.m to 5 p.m. large number from different parts of country, representing different stake holders to attend the convention. Convention gave a call for the creation of a National platform to defend the Higher Education.

(Above section is derived from the speech delivered by Dr. Tapati Mukhopadhyay, General Secretary MFUCTO at Mavalankar Hall Delhi on 14<sup>th</sup> October 2015 as a resource person for the convention to Defend Higher Education in India)

## 12. AIFUCTO NEWS

### Statutory Conference news

We have already announced through mail, website, facebook & twitter postings that the 28<sup>th</sup> Statutory Conference of AIFUCTO will be held at Ambaji temple town in Gujarat hosted by Gujarat University Area Teachers' Association (GUATA) from 18<sup>th</sup> to 20<sup>th</sup> December, 2015. The first Conference Circular is being sent to you by mail & posted in our social media. Please follow the instructions & keep in touch with the GUATA & AIFUCTO leadership. In case you have any query please contact AIFUCTO G.S. and the GUATA leadership.

The theme of the Conference is "Higher Education in New Education Policy-Challenges & Prospects.

### AIFUCTO-FEDCUTA Charter of Demands

1. Immediately constitute UGC VII Pay Review Committee.
2. Grant MHRD approval of the UGC decisions on the 3rd Amendment of the UGC Regulations- 2010 and PH.D Regulations-2009
3. Ensure meeting of the Minister-HRD with AIFUCTO-FEDCUTA to discuss and resolve the long standing professional demands and fix an appointment for the same.
4. Scrap API.
5. Withdraw CBCS and Central University Bill, 2013.
6. Expedite promotions and filling of lakhs of vacant posts as per the GoI Reservation Policy for SC/ST/OBC/PWD to ensure access of inclusive quality higher education.
7. Resolve CPF-GPF issue and grant pension to all appointed before 1.1.1986 as per the GoI Policy. Withdraw New Pension Scheme-2004 and ensure regular pension to all.
8. Extend Dates for RC and OC Up to Dec 2015.
9. Grant UGC pay scales to all categories of teachers, librarians, DPEs & other academic staff.
10. Resolve anomalies of VIth Pay Commission and ensure stepping -up.
11. Consult AIFUCTO-FEDCUTA and Other Teachers' Organizations on educational policies.
12. Stop commercialization of HE & stop opening HE to private foreign and domestic capital as per WTO/GATS. Withdraw offer made to WTO in 2005 for including HE as a commercial, tradable service under GATS.

As per the AIFUCTO call, a demonstration took place at **Azad Maidan Mumbai on 5th October 12 to 4 pm**

### 13. TASKS AHEAD

Before listing the task, it is necessary to draw the attention on certain vital issues. It is pertinent to note that the Trade Union in general in the country and Teachers' organization in particular are facing tremendous crises for resolving the long standing problems. Number of full time assistant professors is either stagnant or decreasing because of the non- appointment

of teachers under regular vacancy. At present, 40% of the existing post are vacant and in those positions contractual teachers are engaged in an absolute ad-hoc manner, with a salary less than casual worker around Rs 10 to 15 thousand. In Government colleges as well as in the University departments contractual teachers get nearly Rs 30 thousand rupees lump sum. The contractual teachers in aided as well as unaided colleges are similarly situated with the government colleges. They should be equally treated.

These contractual teachers will have to be roped in the main stream of the organization. This is one of the major tasks before MFUCTO.

It has been brought to the notice in earlier part of the report that with the introduction of Economic Reform in India since 1990 many changes have come in to operation in many sectors like industry, financial sector and some service sector like Education, Health, etc.; they have come under the reforms agenda. The government, as a part of their reform operation, have started withdrawing government subsidy from the Higher and Technical Education and allowing private finance to flow. With this process of privatization, large number of Engineering and Medical colleges came into existence in Maharashtra. These colleges were not controlled by proper regulations. As a result, miss management in different vital areas like admission, appointment of the teachers, financials, etc. have been continued. The most important victims are the teachers and students. At present, with the intervention of AICTE many of the colleges were closed. Engineering teachers in the private institutions have been placed from the frying pan to the fire.. These teachers need to be organized with the proper understanding, support and protection; this is yet another major task before MFUCTO.

These apart, there are many important tasks before MFUCTO in the coming months:

- To ensure the release of salary unlawfully withheld by the Government for the period "Non cooperation in University Examination related work" agitation carried in 2013.
- CAS for the NET/SET affected teachers to be completed by the proper implementation of the interim order of Supreme Court and High Court.
- Benefit of stepping up of pay of those teachers awarded Ph.D prior to 2006.
- Differences of Gratuity those who have retired between January 2006 to August 2009 to be paid.
- Payment of arrears arising out of 6th pay commission implementation to the social work college teachers and physical education colleges teachers.
- To expedite the payment of pension and gratuity to the social work and Ayurved college teachers.
- Implementation of leave package and other benefit as per 6th pay package scheme.
- Expediting the court case for the release of 55 months arrears arising out of the 5th pay commission revision for the Private Engineering College Teachers.
- Consolidate the teachers in all the universities in Maharashtra against the implementation of proposed draft Maharashtra Public University act 2015.
- Fill up all the existing vacancies in the colleges and University Department.
- Code of conduct for the teachers brought by some universities to be withdrawn with immediate effect.
- Oppose the move of central Government to open Higher Education under WTO negotiation.
- Impose regulation to run self financing colleges.
- Oppose choice base credit system as irrelevant in the present structure of Higher Education in Maharashtra.
- Build up movement with AIFUCTO for the appointment of 7th pay review committee by UGC.
- Protect autonomy and democratic structure of the university.
- To build up massive campaign in District level/Panchayat level to expose the government attitude towards education and particularly Higher Education.

**Prof. A. T. Sanap**  
(President)

**Prof. Tapati Mukhopadhyay**  
(General Secretary)

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY : APPELLATE JURISDICTION, MUMBAI.

**WRIT PETITION NO.8026 OF 2015.**

**PETITIONERS** : Ramesh Sheshrao Sontakke & 18 Others. //VERSUS//

**RESPONDENTS** : The State of Maharashtra & 4 Others.

## NOTES OF ARGUMENTS

### IT MAY PLEASE MY LORDS

1. The petitioner has preferred this petition being aggrieved by the Clause Nos.15 and 18 of Government Resolution dated 27.06.2013 whereby the State Government has erroneously fixed the date of G.R. as date of regularization of services of the petitioners without there being any rational behind it and ignoring the date of exemption granted by the University Grants Commission (UGC). Because of the impugned act, the petitioners are being denied the opportunity of getting benefits of 'Career Advancement Scheme' (CAS), Pension Scheme and Seniority. The Fundamental Right of the petitioners guaranteed under Article 14 of the Constitution of India is being violated.

2. Similar petitions are already allowed by the Division Benches of this Hon'ble Court at Aurangabad in W.P. No.11477/2010 Smt. Asha Ramdas Bidkar and others – Vs. – The State of Maharashtra and others, W.P. No.10149/2010 Dr. Mahesh S/o. Prabhakar Kulthe and others – Vs. – The Union of India and others, W.P. No.357/2010 Atul Suresh Patil and others – Vs. – State of Maharashtra and others, etc.

3. The judgment in W.P. No.11477/2010 was challenged by the State of Maharashtra before the Hon'ble Supreme Court in Civil Appeal No.10759/2013. By order dated 25.03.2015 the Hon'ble Supreme Court was pleased to stay the order of this Hon'ble Court in order to enable the Division Bench to look into the matter and decide them a fresh by way of a judgment but the Civil Appeal was kept pending. In paragraph no.2 the Hon'ble Supreme Court was pleased to observe as follows :

*"2 In these circumstances the course which commends itself to us is to stay the operation of the Impugned Order without, in any manner, causing any disadvantage to any of the parties who are the beneficiaries to the Impugned Judgment. We are staying the operation of the Impugned Judgment since several other Writ Petitions are also pending and Co-ordinate Benches would otherwise be bound to follow the previous decision or refer the conundrum or recommend to the Hon'ble Chief Justice to constitute a Larger Bench, if the already articulated terms of the Co-ordinate Benches are found to be unacceptable. It is not controverted that Public Notice had not been given in respect of this litigation. Therefore, there is the need to stay the operation of the Impugned Order, so as to enable denovo consideration of the pending Writ Petition."*

4. That, in the light of the order of the Hon'ble Supreme Court, in humble submission of the petitioners the recourse

available for this Hon'ble Court is to either follow the previous decisions which are in favour of the petitioners or refer the matter to a Larger Bench if the already articulated terms of the Coordinate Benches are found to be unacceptable.

5. That as in paragraph no.5 of its order, the Hon'ble Supreme Court has directed that this Hon'ble Court should decide the matters by way of a judgment containing reasons for the conclusion, in humble submissions of the petitioners the following points are arising for consideration.

**(A) What was the qualification for appointment as Lecturer during the relevant period i.e. 1991 to 2000?**

**Ans. :** That prior to enactment of the Maharashtra Universities Act, 1994, each University in the State was governed by independent Act. The Nagpur and Amravati Universities were having their own Acts. Under these Acts relevant Statutes were framed and the qualification was prescribed as Post Graduate with minimum Higher Second Class Marks. Reference to Statute-1 of 1989 of concerned University which was adopted by Amravati University would be helpful. The Universities Act, 1994 prescribes necessity of making of Standard Code by the State Government prescribing the qualification for appointment as Lecturers, but till this date no such 'Code' is made by the State Government and the Statutes and other legal documents made by Universities are holding the field.

The UGC through Regulations of 1991 and 1998 have prescribed the qualification and eligibility for the Teachers but these Regulations were always held to be directory.

The issue whether these Regulations of UGC are mandatory ? are no more res-integra after the judgment of Hon'ble Supreme Court in the case of University of Delhi – Vs. – Rajsingh AIR 1995 SC 336.

**(B) Whether the NET / SET is a qualification?**

**Ans. :** NET- National Eligibility Test and SET- State Eligibility Test as denotes from their name only that they are the eligibility tests and not the basic qualifications.

This issue was considered by this Hon'ble Court in the case of Sudhir Sharadrao Hunge – Vs. – State of Maharashtra 2010(4) Mh.L.J. 572. The Hon'ble Division Bench has framed following question for its consideration.

**"Whether introduction of NET / SLET as eligibility condition for recruitment and appointment of Lecturers in Universities / College / Institutions as per Gazette Notification dated 11.07.2009 prescribed by University Grants Commission (UGC) will effect the selections and appointments made in accordance with the approved**

## NOTES OF ARGUMENTS

नेट-सेटच्या प्रकरणाची सुनावणी सुरू असलेल्या मा.मुंबई उच्च न्यायालयात 'नुटा'तर्फे संघटनेचे अधिवक्ता अॅड.श्री.फिरदोस मिर्झा यांनी दिनांक ११ डिसेंबर, २०१५ रोजी "युक्तिवादाचे टिपण" "Notes of Arguments" मा.खंडपीठापुढे सादर केले. सादर करण्यात आलेला हा दस्तावेज एकूण १२७ पृष्ठांचा असून त्याच्या सुरुवातीच्या १२ पृष्ठांमध्ये "Notes of Arguments" समाविष्ट आहेत. त्यानंतरच्या पृष्ठांमध्ये निरनिराळे १३ दस्तावेज सोबत जोडण्यात आलेले आहेत. 'नुटा'च्या वतीने अॅड.श्री.फिरदोस मिर्झा यांनी "श्री.रमेश सोनटक्के विरुद्ध महाराष्ट्र राज्य" या सन २०१५ च्या याचिका क्रमांक ८०२६ मध्ये हा दस्तावेज सादर केलेला आहे. मा.उच्च न्यायालयाच्या त्या दिवशीच्या (११.१२.२०१५) आदेशपत्राच्या (Order) परिच्छेद २ मध्ये याबाबतची नोंद पुढील शब्दात झालेली आहे :- "2. The written notes of arguments have been filed by Mr.Firdos T. Mirza, the learned counsel appearing for the Petitioner, in Writ Petition No. 8026 of 2015." आज हे "युक्तिवादाचे टिपण" (Notes of Arguments) सर्व शिक्षकांच्या माहितीसाठी प्रसृत करण्यात आले आहे. - संपादक

**The issue whether these Regulations of UGC are mandatory ? are no more res-integra after the judgment of Hon'ble Supreme Court in the case of University of Delhi – Vs. – Rajsingh AIR 1995 SC 336.**

See Para 5(A) of "Notes of Arguments" on Page 34 of this Bulletin.

**advertisements / notifications published before 11.07.2009 when the eligibility condition was not compulsory NET / SLET ?**

**The above question was answered as follows :-**

*"11. For all the above reasons, therefore we answer the question framed by us holding that the selections and appointments made pursuant to the advertisement 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."*

The State of Maharashtra was party to this petition but has obtained to not to challenge it and accepted the judgment without any demur. Therefore, the judgment is still holding the field.

**Recently Hon'ble Division Bench comprising Shri. B. R. Gawai and A. A. Sayed JJ by a judgment dated 20.10.2010 in W.P. No.357/2010 revisited the same issue and considering the earlier judgment referred supra followed the same view. In paragraph no.7 it was observed that "It can thus clearly be seen that the Division Bench in unequivocal terms has held that the necessity to have NET / SET qualification have to be construed as prospective in nature and only effective from July 2009 the Court has held that what is crucial is the date of advertisement".**

The Hon'ble Division Bench had also considered the Minutes of the 471st Meeting of UGC held on 12.08.2010 and held that candidates who have acquired M.Phil. qualification on or before July 2009 and the candidates who have registered themselves for Ph.D. before 31.12.2009 are exempted from having requirement of NET qualification.

The State of Maharashtra had accepted this judgment and it has attained finality for want of any further challenge.

In the light of above settled position of law in humble submission of the petitioners it can be stated that till 11.07.2009 NET / SET was not qualification. This fact can also be seen from the copy of advertisements annexed to the petition.

There are certain courses (subjects), Home Economics, Pali, Sanskrit, etc. in which till this date NET / SET Examinations are not conducted either by the UGC or the State Government but these subjects are taught in most of the Universities and the Lecturers are being appointed. (Please see W.P. No.6003/2015 Dr. Mrs. Shubha A. Gadge – Vs. – State of Maharashtra). This fact is also sufficient to demonstrate that the NET / SET till this date even is not a mandatory qualification.

**(C) What would be the effect of grant of exemption by UGC ?**

**The State Government has erroneously fixed the date of G.R. as date of regularization of services of the petitioners without there being any rational behind it and ignoring the date of exemption granted by the University Grants Commission (UGC).**

See Para 1 of "Notes of Arguments" on Page 34 of this Bulletin.

**Ans. :** The Hon'ble Supreme Court in the case of University of Delhi – Vs. – Rajsingh AIR 1995 SC 336 had recognized the authority of UGC to grant relaxation (exemption) to the appointment of Lecturer who have not passed NET / SET Examination.

In the present matter, it is nobodies case that prior to 04.04.2000 (date of amendment of Regulations), the UGC was not empowered to grant exemption / relaxation. It is a settled law that any enactment or law is having prospective applicability unless it is specifically made retrospective. Admittedly, the Regulations are not made mandatory retrospectively, therefore, in humble submission of the petitioners all the appointments made prior to 04.04.2000 are not affected by the said Regulations.

Therefore, the effect of the exemption granted by UGC would be that all the appointments are regularized and has to be considered as legal from their initial date of appointment.

The Hon'ble Supreme Court in the case of Jagdish Kumar and others – Vs. – State of H.P. (2005) 13 SCC 606 was pleased to consider a similar issue and was pleased to hold that "The appellants are entitled to be placed in the Seniority List from the date of their initial appointment and not from the date on which they passed the Departmental Examination".

**(D) Is there any rationale in fixing the impugned date as effective one by the State Government?**

**Ans. :** No, till this date the State has not produced any document justifying its action of fixing the date contrary to the settled principles of law.

**(E) What was the stand of the State Government in earlier rounds of litigations?**

**Ans. :** Earlier, in Writ Petition No.4909/2010 the issue regarding grant of benefit of CAS to non NET / SET Lecturers was brought before the Hon'ble Division Bench at Nagpur. The petitioners have prayed for their placement under CAS taking into account their respective date of appointments. The State Government has filed its affidavit in reply stating in paragraph no.7 that the State Government issued letter dated 23.08.2010 stating that the services of the Lecturers who failed to qualify the NET / SET Examination would be considered for CAS from the date from which it has been communicated to the concerned Lecturers by the UGC that they have been exempted from passing of the NET / SET.

It was further stated in paragraph no.9 that in the exemption Notification issued by UGC the effectual date of exemption is not mentioned and after receipt of the date of exemption, the State Government can very well grant benefits of CAS to the petitioners.

Considering the stand taken by the State Government, the Hon'ble Court by order dated 20.04.2011 was pleased to direct the UGC to communicate to the State Government the date when such exemption became effective. The Hon'ble Court was pleased to record the stand of the State in Page No.4 of the judgment as follows:-

*“The State Government is ready and willing to consider the claims of petitioners for grant of benefits under Career Advancement Scheme provided University Grants Commission communicates the date from which the exemption granted vide Notification dated 05.11.2008 becomes effective”.*

Despite of the above stand the State for unknown reasons through impugned Resolution have fixed the date for granting benefits as 27.06.2013 though this date has no relevance either with the date of appointment of the petitioners or date of grant of exemption.

That it is settled position of law that a party cannot approbate and reprobate at the same time and cannot change stand as and when it feels to do so. In fact, the act of fixing a date other than the effective date communicated by the UGC is contrary to the affidavit filed before this Hon'ble Court and in fact amount resiling from the undertaking and is contemptuous.

**(F) Equal Pay and Status for equal work.**

**Ans. :** That now it is settled law that the principle ‘equal pay for equal work’ has gained force of right to equality as guaranteed under Article 14 of the Constitution of India. By the impugned G.R. the State is trying to give a much later date of effect to the monetary benefits to be given to the petitioners though they are entitled to them since their date of appointment and thereby creating a different class and indulging into an act of violation of above referred principle of equal pay for equal work. In fact, the State has violated the Fundamental Right of the petitioners guaranteed under Article 14 of the Constitution of India on one hand and on the other hand it is trying to get benefit of its own wrong. In humble submission of the petitioners the respondent cannot be benefitted by its own wrong, factually by not releasing the monetary benefits to the petitioners from the date they are entitled to it, the respondent State has been unlawfully enriched itself. In view of above, the excuse put forth by the State regards financial burden is nothing but an after thought reason pleaded to justify its illegal act which was not mentioned in the impugned GR. 2008 (1) SCC. 586. UOI-Vs-Dinesh K.K.

**(G) Whether W.P. No.10166/2013 (Bhartiya Eligible Students and Teachers Association – Vs. – The State of Maharashtra is tenable?**

**Ans. :** The petitioners in this petition are not “person aggrieved” for the purpose of the claim of the present petitioners because it is not their claim that on the date of advertisement under which the present petitioners were appointed, the petitioners of W.P. No.10166/2013 were eligible for the said post, they have applied and not considered. Therefore, in the light of the judgment of the Hon'ble Constitutional Bench of Supreme Court delivered

in the case of Jasbhai Motibhai Desai – Vs. – Roshan Kumar AIR 1976 SC 578, the petition deserves to be dismissed for want of locus.

Even otherwise the petition deserves to be dismissed for want of necessary party. The petitioners are well aware about the exemption Notifications issued by the UGC and the details of the beneficiaries of the said Notification, but they have opted to not to implead them as party respondent and are seeking relief against them.

**MUMBAI DATE : 10.12.15.**

**COUNSEL FOR THE PETITIONERS**  
(FIRDOS T. MIRZA) (ASHFAQUE I. SHEIKH)

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**NUTA BULLETIN** (Official Journal of NAGPUR UNIVERSITY TEACHERS' ASSOCIATION) **EDITOR :** Prof. Vivek S. Deshmukh, Balaji Society, Yavatmal 445 001. **PUBLISHER :** Prof. Vivek S. Deshmukh, Balaji Society, Yavatmal 445 001. Published at NUTA Bulletin Office, Shikshak Bhavan, Sant Gadge Baba Amravati University Campus, **Amravati- 444 602. PRINTED AT** Bokey Printers, Gandhi Nagar, Amravati. (M.S) **REGD NO. MAHBIL/2001/4448** Postal Registration No. ATI/RNP/078/2015-17 (Uploaded on www.nuta.in on 03.01.2016) Price : Rs. Five / Name of the Posting office : **R.M.S. Amravati.** Date of Posting : **15.01.2016**

**If Undelivered , please return to :** NUTA Bulletin Office, Shikshak Bhavan, Sant Gadge Baba Amravati University Campus, **Amravati- 444 602.**

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