NUTA BULLETIN

OFFICIAL JOURNAL OF NAGPUR UNIVERSITY TEACHERS' ASSOCIATION

Regd. No. MAHBIL/2001/4448 : Postal Registration No. ATI/RNP/078/2015-2017

YEAR : 41) **15th September 2016 (No. of Pages 16)** **(No : 09**

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9051 OF 2013

The State of Maharashtra ..Petitioner
versus
Smt. Meena A. Kuwalekar ..Respondent

WITH WRIT PETITION NO. 8166 OF 2013 The State of Maharashtra..Petitioner versus Smt. Vaishali V. Kadu..Respondent **WITH WRIT PETITION NO. 9048 OF 2013** The State of Maharashtra..Petitioner versus Smt. Jayananda Sanjay Hire & Ors... Respondents **WITH WRIT PETITION NO. 8295 OF 2013** The State of Maharashtra..Petitioner versus Smt. Swati D. Tiwramkar & anr...Respondents **WITH WRIT PETITION NO. 9042 OF 2013** The State of Maharashtra..Petitioner versus Shri Tukaram K. Kedare & Ors...Respondents **WITH WRIT PETITION NO. 9040 OF 2013** The State of Maharashtra..Petitioner versus Smt. Vidya Vilas Temkar ..Respondent **WITH WRIT PETITION NO. 8149 OF 2013** The State of Maharashtra..Petitioner versus Shri Kamalakant Gajanan Sinkar & Anr...Respondents **WITH WRIT PETITION NO. 9039 OF 2013** The State of Maharashtra..Petitioner versus Shri. Sunil Laxman Parab & Ors...Respondents **WITH WRIT PETITION NO. 8674 OF 2013** The State of Maharashtra..Petitioner versus Shri. Prakash Motiram Keny & Ors...Respondents **WITH WRIT PETITION NO. 9049 OF 2013** The State of Maharashtra .. Petitioner versus Smt. Rekha Namdeo Gajarmal & Ors. .. Respondents **WITH WRIT PETITION NO. 8272 OF 2013** The State of Maharashtra .. Petitioner versus Smt. Namrata Uday Vaidya & Ors. .. Respondents **WITH WRIT PETITION NO. 9038 OF 2013** The State of Maharashtra .. Petitioner versus Shri Mahadev R. Shinde & Anr. .. Respondents **WITH WRIT PETITION NO. 7779 OF 2013** The State of Maharashtra .. Petitioner versus Shri Vijay Tukaram Paste & Anr. .. Respondents **WITH WRIT PETITION NO. 8119 OF 2013** The State of Maharashtra .. Petitioner versus Smt. Anjali A. Bhatkar & Anr. .. Respondents **WITH WRIT PETITION NO. 7549 OF 2013** The State of Maharashtra .. Petitioner versus Smt. Bhagyashree B. Malap & Anr. .. Respondents **WITH WRIT PETITION NO. 8120 OF 2013** The State of Maharashtra .. Petitioner versus Smt. Sneha Sanjay Choughule .. Respondent **WITH WRIT PETITION NO. 9043 OF 2013** The State of Maharashtra .. Petitioner versus Smt. Sneha Sunil Shiwanekar .. Respondent **WITH WRIT PETITION NO. 9047 OF 2013** The State of Maharashtra .. Petitioner versus Shri Vasant R. Sawant & Anr. .. Respondents **WITH WRIT PETITION NO. 8150 OF 2013** The State of Maharashtra .. Petitioner versus Shri. Phoolchandra S. Chaurasia .. Respondent **WITH WRIT PETITION NO. 9041 OF 2013** The State of Maharashtra .. Petitioner versus Shri Sunil S. Pagare & Ors. .. Respondents **WITH WRIT PETITION NO. 7328 OF 2013** The Commissioner Of Sales Tax, Maharashtra State .. Petitioner versus Shri Kashinath M. Sawant & Ors. .. Respondents **WITH WRIT PETITION NO. 9044 OF 2013** The State of Maharashtra .. Petitioner versus Smt. Pranita Prakash Sarang & Ors. .. Respondents **WITH WRIT PETITION NO. 1248 OF 2014** The State of Maharashtra .. Petitioner versus Shri Suresh Shantaram Satam .. Respondent **WITH WRIT PETITION NO. 10929 OF 2013** The State of Maharashtra .. Petitioner versus Shri Suresh Subrao Kokitkar & Ors. .. Respondents **WITH WRIT PETITION NO. 4645 OF 2014** The State of Maharashtra & ors. .. Petitioners versus Mr. Akaram Pandurang Patil & Ors. .. Respondents **WITH WRIT PETITION NO. 9974 OF 2014** The State of Maharashtra & Ors. .. Petitioners versus Shri Dattatraya Tukaram Jadhav & Ors. .. Respondents **WITH WRIT PETITION NO. 9975 OF 2014** The State of Maharashtra & Ors. .. Petitioners versus Shri Sopan Bhikaji Gargote & Anr. .. Respondents **WITH WRIT PETITION NO. 9976 OF 2014** The State of Maharashtra & Anr. .. Petitioners versus Shri Anil Shantaram Deorukhakar & Ors. .. Respondents **WITH WRIT PETITION NO. 9977 OF 2014** The State of Maharashtra & Ors. .. Petitioners versus Shri Mangesh S. Parab & Ors. .. Respondents **WITH WRIT PETITION NO. 9978 OF 2014** The State of Maharashtra & Ors. .. Petitioners versus Shri Sahadu Martand Gorde & Anr. .. Respondents **WITH WRIT PETITION NO. 1506 OF 2015** The State of Maharashtra .. Petitioner versus Smt. Lata D. Aragade & Ors. .. Respondents **WITH WRIT PETITION NO. 745 OF 2016** The State of Maharashtra & Anr. .. Petitioners versus Mr. Suresh G. Mulik & Ors. .. Respondents **WITH WRIT PETITION NO. 8553 OF 2012** The State of Maharashtra & Anr. .. Petitioners versus Mr. Ramchandra Vithoba Patil .. Respondent

****

Mr. A. A. Kumbhakoni – Special Counsel / Senior Advocate with Mr. P. G. Sawant – AGP and Mr. Akshay Shinde for petitioners in all petitions. Mr. P. P. Chavan with Mr. R. R. Chile for respondent nos. 1 to 14 and 16 in WP 9051 of 2013. Ms Vaishali Jagdale for respondents in WP 8553 of 2012 and 4645 of 2014. Mr. B. A. Bandiwadekar with Mr. Sagar Mane for respondents in all other petitions.

for grant of benefits under Time Bound Promotion Scheme (TBPS) and/or Assured Career Progression Scheme (ACPS) by taking into consideration their services from the date of their initial appointments.

TBPS

See Para 3 of the High Court Judgment dated 28th April 2016

ACPS

CORAM :

D. H. WAGHELA, C. J. AND M. S. SONAK, J.

Date of Reserving the Judgment : 07 April 2016

Date of Pronouncing the Judgment : 28 April 2016

JUDGMENT

(Per : M. S. Sonak, J.)

[1] Rule in each of these petitions. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

[2] Learned counsel for the parties state and agree that the common issues of law and fact arise in this batch of petitions and therefore, it will be appropriate if the same are disposed of by common judgment and order. Learned counsel for the parties further state and agree that the facts as set out in writ petition no. 9051 of 2013 may be adverted to, as the same are representative of the facts in this batch of petitions. Accordingly, this batch of petitions is being disposed of by common judgment and order by reference to the facts as set out in writ petition no. 9051 of 2013 for sake of convenience.

[3] The challenge in each of these petitions is to the orders (impugned orders) made by the Maharashtra Administrative Tribunal (MAT). The impugned orders have directed the State Government to consider the cases of the respondents-employees (Group 'C' employees) **for grant of benefits under Time Bound Promotion Scheme (TBPS) and/or Assured Career Progression Scheme (ACPS) by taking into consideration their services from the date of their initial appointments.**

[4] The main issue involved in this batch of petitions is therefore, whether the period of 12 years or 24 years service, prescribed as prerequisite for availing benefits under TBPS and/or ACPS is to be reckoned from the **date of the initial appointment of the respondents employees or from 1 December 1994, which is the date from which their services were treated as regularised** in terms of Government Resolution (GR) dated 1 December 1994?

The petitioner – State Government contends that the latter date i.e. 1 December 1994 is relevant, whereas, the respondent - employees contend that it is the former date i.e. the date of their initial appointments, which is relevant. The MAT, relying inter alia upon its previous decisions, as also the decision of the Division Bench of this Court in **The Director of Technical Education vs. Kum. Nanda C. Chavan & Ors.**[1] (1 Writ Petition No. 9962 of 2010 and other connected matters decided on 6.2.2012) and connected matters has ruled in favour of the respondent – employees. Hence, the present petitions by and on behalf of the petitioner – State Government.

[5] Mr. Kumbhakoni, learned Senior Advocate, who appears for the petitioner – State, has emphasized the expression 'regular service' used in the GRs dated 8 June 1995 and 20 July 2001 to submit that the respondents – employees can claim benefits under the TBPS or ACPS only w.e.f. 1 December 2006 i.e., upon the date of completion of 12 years of service after regularization w.e.f. 1 December 1994, in terms of the GR dated 1 December 1994. Mr. Kumbhakoni, by relying upon the decisions of the Hon'ble Supreme Court in **State of Rajasthan vs. Surendra Mohnot**[2] (2 (2014) 14 SCC 77), **State of Rajasthan & Ors. vs. Jagdish Narain Chaturvedi**[3] (3 (2009) 12 SCC 49), **State of Haryana vs. Haryana Veterinary & Ahts Association & Anr.**[4] (4 (2000) 8 SCC 4), **Punjab State Electricity Board & Ors. Vs. Jagjiwan Ram & Ors.**[5](5 (2009) 3 SCC 661), has submitted that the **expression 'regular service' means and implies the services rendered by an employee after he is appointed or admitted to a cadre or after he is appointed or admitted to the membership of the service** and therefore, any service rendered by such employee before such date, can never be regarded as "regular service", even though, it may be regarded as "continuous service". Mr. Kumbhakoni assailed the impugned orders made by the MAT for what he described as **"confusion between the concepts of regular service and continuous service"** and on this basis, submitted that the impugned orders warrant interference under Articles 226 and 227 of the Constitution of India.

[6] Mr. Kumbhakoni, relying upon the decision of this Court in **Arjun Vasant Rane & Ors. vs. Secretary, Government of Maharashtra, Higher and Technical Education Department & Anr.**[6] (6 2004 (4) Mh.L.J. 1041), submitted that "regular service" in terms of GR dated 1 December 1994 will commence from 1 December 1994 and not from the date of initial appointment of the employee on temporary basis. He submitted **that benefit**

have been granted benefits of TBPS and ACPS by counting service from the date of initial appointment and the styling of such acts as "mistake" or "illegality", is clearly in the nature of an afterthought to avoid compliance with the mandate of Article 14 of the Constitution of India.

See Para 8 of the High Court Judgment dated 28th April 2016

under TBPS and ACPS extended by the State Government itself to its various employees by counting the period of 12 years of regular service from the date of initial appointment on temporary basis, was a mistake or an illegality committed by the State Government. In the name of equality, the State Government cannot be forced to perpetuate such mistake or illegality. Relying upon the decisions of the Hon'ble Supreme Court in **Gursharan Singh & Ors. vs. New Delhi Municipal Committee & Ors.**[7] (7 (1996) 2 SCC 459) and **Directorate of Film Festivals & Ors. vs. Gaurav Ashwin Jain & Ors.**[8] (8 (2007) 4 SCC 737), Mr. Kumbhakoni submitted that wrong decision does not create a right and there is no question of any negative equality.

[7] With reference to the decision of the Division Bench of this Court in **Nanda Chavan** (supra) and connected matters, Mr. Kumbhakoni submitted that the State Government had instituted Special Leave Petitions (C) Nos. 17927-17930 of 2012 before the Hon'ble Supreme Court against the same. Although, the special leave petitions were dismissed, the Hon'ble Supreme Court kept open the questions of law raised in the special leave petitions. On this basis, Mr. Kumbhakoni submitted that the law laid down by the Division Bench of this Court in **Nanda Chavan** (supra) was not approved by the Hon'ble Supreme Court and and therefore, neither the MAT nor the subsequent benches of this Court were bound to follow the decision in **Nanda Chavan** (supra).

[8] On the other hand, Mr. P. P. Chavan, Ms Vaishali Jagdale and Mr. B. A. Bandiwadekar and other learned counsel who appeared for respondents - employees submitted that the decision of the Division Bench in **Nanda Chavan** (supra) concludes the issue in favour of respondents-employees. They submitted that several State Government employees **have been granted benefits of TBPS and ACPS by counting service from the date of initial appointment and the styling of such acts as "mistake" or "illegality", is clearly in the nature of an afterthought to avoid compliance with the mandate of Article 14 of the Constitution of India.** They submitted that the State Government has adopted "pick and choose" approach in the matter. Although, the MAT has granted relief to several employees, the State Government has chosen to question only some of the orders made by the MAT. They submitted that the State Government has also been selective in the matter of questioning the decisions of this Court in the matter of grant of benefits under TBPS and ACPS to its employees. Relying upon the decision in **Nanda Chavan** (supra) and even after the issue of law was directed to be kept open by the Hon'ble Supreme Court, the Division Bench of this Court in **Smt. Sushma Kumar Arya vs. The State of Maharashtra & Ors.**[9] (9 Writ Petition No. 212 of 2013 decided on decided on 6.3.2013.) has granted relief to the employees by reckoning 12 years service from the date of initial appointment. **The State Government has accepted and implemented the said decision. As a result therefore, there are several employees in receipt of benefit under TBPS and ACPS, who are identically placed.** They contend that this is not some isolated case in which the State Government can be said to have committed a mistake or acted illegally. Rather, upon due and proper considerations of the GRs as also the legal position arising therefrom, the State Government has extended the benefit under TBPS and ACPS, to large number of its employees and therefore, the State Government cannot resist the extension of the very same benefit to the respondents-employees, if the principle of equality enshrined in Article 14 of the Constitution of India is to be complied with. Learned counsel for the respondents-employees pointed out that the decisions relied upon by Mr. Kumbhakoni are clearly distinguishable on facts and in any case, the issue raised in this batch of petitions is substantially covered by the decisions of the Hon'ble Supreme Court in **Union of India & Ors. vs. M. Mathivanan**[10] (10 (2006) 6 SCC 57), **Dwijen Chandra Sarkar & Anr. vs. Union of India & Ors.**[11] (11 (1999) 2 SCC 119) and **Union of India & Anr. vs. V. N. Bhat**[12] (12 (2003) 8 SCC 714).

[9] Learned counsel for respondents-employees submitted that their initial appointments were not on work charge basis, ad-hoc basis, daily wage basis, but rather, they were on temporary basis against clear permanent, substantive and sanctioned vacancies. **They point out that the names of the respondents-employees had been sponsored by employment exchange and the selection process was itself fair, transparent and above board.** They point out that such appointments were made by the State Government, as it was in dire need of such services and there were, at the relevant time, difficulties in involving the Maharashtra Public Service Commission (MPSC). The GR dated 1 December 1994, upon which reliance has been placed by Mr. Kumbhakoni itself makes reference to the circumstances in which such appointments were made on temporary basis and the resultant discrimination practised against the respondents-employees. The GR dated 1 December 1994, ultimately records the decision of the State Government to treat the services of such respondents-employees "as regularised" w.e.f. 1 December 1994 . Relying upon the expression used in GR dated 1 December 1994, learned counsel for the respondents-employees contend that the State Government had not committed any mistake or illegality in counting the services before 1 December 1994 for the purposes of grant of benefit under TBPS and ACPS to several of its employees.

[10] In any case, learned counsel for the respondents-employees submitted that since the GR dated 1 December 1994 having acknowledged discrimination on the part of the State Government, **in the matter of delayed regularization of services, the State Government cannot itself be permitted to take advantage of its own delay in such matters.** Learned counsel for the respondents-employees emphasized the purpose and

The record also suggests that the past services of the employees covered under the GR dated 1 December 1994 have been taken into consideration by the State Government for extending the benefits of increment, pay fixation, pension and several other matters

See Para 33 of the High Court Judgment dated 28th April 2016

objectives of TBPS and ACPS and urged such purpose and objective be borne in mind whilst interpreting the GRs concerning the schemes. For all these reasons, learned counsel for the respondents-employees submitted that these petition may be dismissed.

[11] Rival contentions now fall for our determination.

[12] The respondents-employees, in the present cases came to be appointed on temporary basis to various clerical posts like clerktypists, etc., (Group – C employees) upon diverse dates in the mid eighties or thereafter. The respondent-employee in writ petition no. 9051 of 2013 came to be appointed as a typist on 1 October 1984. Although, the appointments were stated to be on temporary basis, there is no dispute that the same were to permanent, clear, substantive and sanctioned vacancies

[13] In paragraph 6.3 of the original application no. 595 of 2012 instituted by Smt. Meena A. Kuwalekar – respondent in writ petition no. 9051 of 2013, it is averred as follows :

"The Petitioners state that as stated above, all of them came to be appointed on different dates as Clerk, Typist and Clerk Typist. ***That appointment of all the Petitioners in these posts happened to be on permanent, clear, substantive and sanctioned vacancies, though on temporary basis that too through the recognized recruiting the relevant time,*** *matter in the form of such grievances of the Petitioners had shown positive progress at the Government level including at the level of the office the Hon'ble Chief Minister. That in such a circumstances, the Petitioners were extremely hopeful that some day or the other, the Respondents of their own would grant to the Petitioners the said benefits after counting 12 years from their initial dates of appointment and that too if necessary, by partially modifying the earlier orders of years 2006-2007 under which the Petitioners came to be granted the time bound promotion. Thus, the Petitioners remained hopeful for a long time, but to no avail." (emphasis supplied)*

[14] Shri Sanjay Dagadu Khedekar, Under Secretary (Finance), in his affidavit-in-reply filed on behalf of the State, has not denied the aforesaid averments. At paragraph 3 of the affidavit-in-reply, it is averred as under:

"3. With reference to para no. 6.3, I say and submit that the initial appointment of the applicants were purely on temporary basis. The details are enclosed by applicants with the petition."

[15] Similarly, in paragraph 26 of the affidavit in rejoinder filed by Smt. Meena A. Kuwalekar in original application no. 595 of 2012 it is averred that even in respect of the service rendered prior to 1 December 1994, she was given all service benefits such as yearly increments, salary in the regular pay scale, leave, transfer, opening of GPF account, opening of service book, including the counting of the said service period for purposes of pension except seniority.

[16] Shri Uddhav Rabhaji Dahiphale, Under Secretary (Finance), in his affidavit in sur rejoinder filed on behalf of the State, in response to the aforesaid affidavit in rejoinder filed by Smt. Meena A. Kuwalekar has purported to deal with the averments in paragraph 26 of the affidavit in rejoinder in paragraph 17 of the affidavit in sur rejoinder. The averments in paragraphs 25A to 25F of the affidavit in rejoinder have also been dealt with in the same paragraph. Paragraph 17 of the affidavit in sur rejoinder, reads thus :

"17. With reference to Paras 25A to 25F & 26 of the Rejoinder, I say that the temporary appointed non-M.P.S.C. clerks were regularized by General Administration Department vide various orders. As per the averment made in the para 25A to 25F it is admitted that the Petitioner herself is a temporary appointed back-door entry candidate. The service rendered by her before regularization is of temporary nature and same cannot be taken into account for the benefits of the Time Bound Promotion for the reasons mentioned in the remarks given to para 25 above."

[17] Mr. Kumbhakoni conceded that it was not even the case of the State Government that the appointments of the respondentsemployees were either "illegal appointments" or appointments made "through back door". Mr. Kumbhakoni, however, submitted that the appointments of the respondents-employees were regularized by the State Government by GR dated 1 December 1994 and therefore, the services of the respondents-employees prior to the said date can never be taken into consideration for the purposes of extending the benefits under TBPS or ACPS.

[18] The record in the present cases very clearly establishes the following :-

(A) That the appointments of the respondent – employees were **neither illegal nor** can the same be said to have been made through the back door;

(B) The appointments, though **styled as 'temporary'** were made to permanent, clear, substantive and sanctioned vacancies;

(C) The names of the respondent – employees were sponsored by respective **employment exchanges** or other authorised agencies;

(D) The **selection process was fair,** transparent and above board;

(E) The respondent – employees **fulfilled the qualifications** prescribed in the recruitment rules as applicable;

(F) From the date of initial appointments, the respondent – employees were placed in the **regular pay scale applicable to the posts** to which they came to be appointed;

(G) The services of the respondent – employees, **from the date of their initial appointments,** has been taken into consideration **for various service benefits,** including increments, leave, transfer, opening of GPF account, opening of service book, pension etc.

(H) The services of the respondent – employees, from the date of their initial appointments, however, do not appear to have been taken into consideration for purposes of seniority or functional promotion;

and those who are in service on the date of issue of this Government Resolution and those who fulfill all the three following conditions their services should be treated as regularized from the date of this Government Resolution.

See Para 24 of the High Court Judgment dated 28th April 2016

(I) It is not even the case of the State Government that the appointments of the respondent – employees were on **daily wage basis** or on **work charged basis;**

[19] Despite the aforesaid features, the only reason for styling the appointments of the respondent – employees as 'temporary' is that the posts to which the appointments came to be made were under the purview of the Maharashtra Public Service Commission (MPSC) and the State Government, for reasons suggested in the GR dated 1 December 1994, was constrained to make such appointments without the involvement of the MPSC. It is not even the case of the State Government that the respondent – employees were in any manner responsible for the non involvement of the MPSC in their selection. Suffice to note that the GR dated 1 December 1994 by which the services of such employees were directed to be treated as regularised inter alia makes reference to the discriminatory situation brought about by the State Government itself, in the matter of denial or delay in the regularisation process. The main issue raised in this batch of petitions is therefore, required to be examined in the light of such factual background.

[20] The State Government, initially introduced TBPS by GR dated 8 June 1995 to take effect from 22 September 1994. The said GR, after adverting to the purpose and objective of the TBPS, spells out the actual scheme in clause 2, which reads thus :

"2. Details of the scheme are as follows :

Employees serving in Group "C" and "D" (prior Class 3 & 4) and holding such posts will be given next higher pay scale in ***their promotional chain after regular service of 12 years.*** *Employees for whom no promotional posts exists in their promotional chain will be given next higher pay scale as shown in appendix "A". Other salient features of this scheme are as follows :-*

a] This scheme will come into force with effect from 1st October, 1994.

b] Regular procedure for promotion to be followed along with verification of seniority, passing of qualifying and departmental examinations is necessary for giving benefit under this scheme.

c] In case of employees who are Direct recruits or employees who are appointed by promotion, next higher pay scale will be admissible once after putting in regular service for twelve years.

d] Next higher pay scale under the scheme will not be admissible to such employees who have already received two or more promotions.

e] Retirement age for group "D" employees will remain 60 years even though, the group "C" pay scale of Rs.950-1400 is made admissible to such employees under this scheme. But retirement age for group "C" employees will remain 58 years even if such employees are promoted to other higher posts. Group "C" employees will not be considered for promotion to group "B" gazetted posts under this scheme.

f] Benefits of pay fixation as admissible in case of regular promotion will be given though there may be no addition in the duties and responsibilities. However, such benefit of pay fixation will not be admissible when giving regular promotion (functional promotion) in the same pay scale.

g] If an employee is receiving special pay in his original pay scale then after getting benefit of promotion under this scheme such special pay will not be admissible.

h] Name of the employee will remain in the seniority list of original cadre even though such employee is given benefit of this scheme. He will be considered at appropriate time for regular promotion (functional promotion) as and when vacancy is available according to recruitment rules. Employees who are ineligible for regular promotion will not get benefit of this scheme. Similarly, employees refusing regular promotion will not get benefit of time bound promotion and such employees who have already received the in situ benefit of time bound promotion will be demoted to the original post. For this an indemnity bond has to be get executed from the employees while giving benefit of this scheme. However, in such cases recovery of financial benefits will not be done.

These orders will apply mutatis – mutandis to employees of Zilla Parishads.

There orders are issued as per consent of Finance Department UOR having number PSF 1954, dated 27th March 1995." (emphasis supplied)

[21] The TBPS was substituted by ACPS vide GR dated 20 July 2001. Again, the details of the scheme are set out in clause 2, which reads thus :

"2. Therefore, the Government now orders that the "Time Bound Promotion Scheme" implemented vide orders mentioned as reference (1) above shall be closed, and instead "Assured Career Progression Scheme" should be implemented.

(1) This scheme will be applicable to officers/employees drawing salary pay scale upto Rs.8000-13500 and not more than this.

(2) Benefit of this scheme will be admissible only after twelve years of regular service on concerned post.

(3) Employees who have already received two or more promotions in service are not eligible to get benefit of this scheme.

(4) Pay scale of promotional post will be given under this scheme. Where promotional post is not available in such cases and in case of employees on isolated post the pay scales mentioned in Appendix "A" will be given.

(5) As the pay of promotional post is made admissible in this scheme, therefore the required qualifications, eligibility, seniority, passing qualifying examinations/departmental examination all these requirements has to be fulfilled, also procedure which is followed while giving regular promotions has to be followed. Cases where pay scales as mentioned in Appendix "A" are to be given then for such cases eligibility has to be decided on the basis of confidential reports.

(6) Benefit of this scheme will be admissible only once in whole service. Employees who have already received the benefit of higher pay scale as per the Government Resolution dated 8th June, 1995 then the benefit under this scheme is not admissible to such employees.

(7) When higher pay scale is given under this scheme the pay fixation on higher pay scale will be done as per the procedure followed for pay fixation while giving regular promotion. However, benefit of pay fixation can not be given again in case of regular/functional promotion in same pay scale.

(8) Employees who refuse regular promotion and employees who are ineligible for regular promotion will not get benefit of this scheme. Employees to whom the higher pay scale is given under the scheme and such employees have refused or declared ineligible for regular promotion then

date of the initial appointment of the respondents employees or from 1 December 1994, which is the date from which their services were treated as regularised

See Para 4 of the High Court Judgment dated 28th April 2016

benefit of this scheme will withdrawn. However recovery of the accrued benefits cannot be done." (emphasis supplied)

[22] The objective and the purpose for introduction of TBPS or ACPS is to relieve the employees, at least partially, from the frustration which normally arises on account of stagnation in a particular post for long years on account of limited availability of promotional opportunities. The scheme does not involve actual, functional promotion to the next higher post, but provides for the award of "next higher pay scale in the promotional chain" or "pay scale of promotional post" or where promotional posts is unavailable "the pay scales as mentioned in Appendix A" (to GR dated 20 July 2001) to employees, who may have completed "regular service of 12 years" or "12 years of regular service". The GR dated 8 June 1995 which concerns TBPS uses the expression "after regular service of 12 years". The GR dated 20 July 2001, which concerns ACPS uses the expression "after twelve years of regular service on concerned post". None of learned counsel appearing for the respective parties have made any distinction between the two expressions.

[23] Learned counsel have, however, joined the serious issue with one another in the matter of interpretation of the expression "regular service" for the purposes of TBPS and ACPS. According to Mr. Kumbhakoni, this expression means and implies service after regularization in terms of the GR dated 1 December 1994 and excludes altogether any service prior to the said date. On the other hand, learned counsel for the respondents-employees, by reference to the phraseology employed in the GR dated 1 December 1994 as also the several other factors, contend that the service of the respondentsemployees even prior to 1 December 1994 qualifies as "regular service" for the purposes of TBPS and ACPS. Since, learned counsel for either parties have made extensive reference to the GR dated 1 December 1994, it is necessary to consider the same for the purpose of deciding the issue raised in this batch of petitions.

[24] The GR dated 1 December 1994, at the outset, makes detailed reference to the manner and circumstances which led to the appointments of respondents-employees and the consequent decisions of the State Government in the matter of regularization of their services. The GR recites that the clerical posts of Mantralaya as well as other departments were within the purview of MPSC from the year 1952. However, as a temporary arrangement, the appointments on temporary basis came to be made from amongst the candidates sponsored by employment exchange or similar agencies. Taking note of the circumstances in which such appointments came to be made, the State Government in consultation with the MPSC took decision to regularize the services of employees who were appointed upto 17 June 1983. On 2 December 1985 orders were issued to terminate the services of such employees appointed after 17 June 1983. The termination order was, however, stayed by the High Court in writ petition no. 204 of 1986. From 4 September 1986 to 9 January 1990, there was a ban upon direct recruitment. Thereafter, the MPSC made recommendations for appointments. Considerable time, in the meanwhile, was spent in litigation on the issue. Upon review the State Government realized that the terminations, at this stage, would constitute discrimination for reasons referred to in clause 4 of the GR. Upon due consideration of all such facts and circumstances, the State Government in consultation with the MPSC, took the following decision:

"5. After due consideration of all the above circumstances and in consultation with Maharashtra Public Service Commission in this regard, the Government took the following decision.

After 17th June 1983, but upto 10th January 1990 those who were given temporary appointments or reappointments against the Clerical posts which are within the purview of Maharashtra Public Service Commission, the un-sponsored commission candidates mentioned in the appendix C, ***and those who are in service on the date of issue of this Government Resolution and those who fulfill all the three following conditions their services should be treated as regularized from the date of this Government Resolution.***

1] The concerned person who is appointed originally against the post, fulfills the eligibility qualification of education and age limit prescribed for appointment against the post under recruitment rules.

2] The appointment of the concerned person should have been made after due consideration of various orders issued for reservation of posts and sponsored through the office of the District Collector, Employment Exchange, Social Welfare Department or similar authorised agency (The services of unsponsored commission employees who are not sponsored by any agency and appointed directly, will not be regularized.)

3] The record of service of the person concerned should be satisfactory.

6. The seniority of the un-sponsored commission candidates whose services are regularized under the Government Resolution should be fixed from the date of this Government Resolution. The seniority of the employees who are in service in the same department/office and the employees whose services are regularized the inter se seniority of these employees will be fixed on the basis of the services rendered by them. Further in the concerned cadre the employees who are appointed/will be appointed through other source/ the inter se seniority will be fixed as below :

(a) Before issue of this Government Resolution, the commission sponsored candidates of the Clerical cadre of examination of 1993 who were allotted and who accepted appointment and who are senior in merit, but allotted/will be allotted after them and the commission sponsored candidates who accepted the appointment within prescribed time limit will be senior to these un-sponsored commission candidates whose services are regularized.

(b) Before date of issue of this Government Resolution, the candidates appointed on compassionate grounds or who are promoted on the concerned posts on regular basis will be senior to the employees whose services are regularized.

(c) The commission sponsored candidates who accepted appointment after date of issue of this Government Resolution (those who are not covered under the provision of (a) above) and the candidates appointed after date of issue of this Government Resolution on compassionate grounds or the

The State Government has accepted and implemented the said decision. As a result therefore, there are several employees in receipt of benefit under TBPS and ACPS, who are identically placed.

See Para 8 of the High Court Judgment dated 28th April 2016

candidates given promotion after date of issue of this Government Resolution on regular basis on the concerned post, will be treated as junior to these un-sponsored commission candidates whose services are regularized.

7. The Government have issued instructions again and again that un-sponsored commission candidates should not be appointed, but the appointing authorities taking support of one or the other orders or rules make such appointments which is a serious lapse and the question of the services of the un-sponsored commission employees come up again and again due to such appointments, hence in view of this situation the powers to make temporary appointments delegated to the head of the department/office in Greater Mumbai vide Government Resolution Political and Services Department No. 4124/34 dated 18th September 1952 are hereby cancelled, with the result that hereafter in the offices of the Greater Mumbai the appointments against the post of Clerical cadre as provided in the recruitment rules shall be made through Public Service Commission, or on the compassionate grounds and by promotion etc. and except this, appointment cannot be made through any source/procedure.

8. All the Mantralaya Departments and heads of departments/offices in Greater Mumbai should verify the cases of un-sponsored commission candidates in their offices with reference to the orders of this Government Resolution and in cases of the employees whose services can be regularized orders may be issued in the Form 'Kha'. A copy of the order and the information of all un-sponsored commission employees whose services cannot be regularized under orders of this Government Resolution (in the Form G) should be submitted to this department before 31st January, 1995.

9. If any of the conditions prescribed in para 5 above, is not fulfilled by the un-sponsored commission candidate and if it is noticed by the Government that services of such un-sponsored commission candidates is regularized by the appointing authority, then the concerned appointing authority will be liable for disciplinary action." *(emphasis supplied)*

[25] In relation to the aforesaid GR dated 1 December 1994, the learned counsel have suggested two constructions. The first interpretation, as advocated by Mr. Kumbhakoni emphasises upon the expression **'from the date of this government resolution'** to suggest that the date of regularisation would be 1 December 1994 uniformly. As per this interpretation, the services rendered by the employees covered under the GR prior to 1 December 1994 cannot be treated as 'regular service' for any purposes whatsoever. The second interpretation as advocated by the respondent – employees emphasises upon the expression **'their services should be treated as regularised'** in the very same GR to suggest that the services rendered by the employees covered under the GR prior to 1 December 1994 stand regularised from the date of the government resolution. This means that the services of such employees prior to 1 December 1994 should be treated as 'regular service' for all purposes, except perhaps for the purposes of seniority, since the GR dated 1 December 1994 makes specific provisions with regard to determination of seniority. On this basis, the learned counsel for the respondent – employees contend that there is no case made out to interfere with the view taken by the MAT or to review the decisions of this Court directly on the issue.

[26] The crucial expression in the GR dated 1 December 1994, upon which both the sides have placed emphasis reads thus :

".....and those who are in service on the date of issue of this Government Resolution and those who fulfill all the three

The record in the present cases very clearly establishes the following :-

(A) That the appointments of the respondent – employees were **neither illegal nor** can the same be said to have been made through the back door;

(B) The appointments, though **styled as 'temporary'** were made to permanent, clear, substantive and sanctioned vacancies;

(C) The names of the respondent – employees were sponsored by respective **employment exchanges** or other authorised agencies;

(D) The **selection process was fair,** transparent and above board;

(E) The respondent – employees **fulfilled the qualifications** prescribed in the recruitment rules as applicable;

(F) From the date of initial appointments, the respondent – employees were placed in the **regular pay scale applicable to the posts** to which they came to be appointed;

(G) The services of the respondent – employees, **from the date of their initial appointments,** has been taken into consideration **for various service benefits,** including increments, leave, transfer, opening of GPF account, opening of service book, pension etc.

(H) The services of the respondent – employees, from the date of their initial appointments, however, do not appear to have been taken into consideration for purposes of seniority or functional promotion;

(I) It is not even the case of the State Government that the appointments of the respondent – employees were on **daily wage basis** or on **work charged basis;**

See Para 18 of the High Court Judgment dated 28th April 2016

following conditions ***their services should be treated as regularized from the date of this Government Resolution".***

[27] The aforesaid expression in GR dated 1 December 1994 does not in so many terms state that the services of the employees covered under the GR are being regularised with effect from the date of the GR and that the services rendered prior to the said date will not be regarded as 'regular service' for any purposes whatsoever. Therefore, at least the plain reading of the GR, does not fully support the construction suggested by Mr. Kumbhakoni. Rather, the expression makes use of the past tense i.e. **'regularised',** lending support to the construction that the past services were also intended to be regularised. Similarly, the use of the expression **'should be treated as'** once again lends support to the construction that the past services were intended to be treated as regularised. The use of the past tense coupled with the fiction introduced, at least does not render the view taken by the MAT as grossly erroneous or untenable. In matters of interpretation, the use of past tense is required to be assigned some meaning. So also, it is fairly well settled that the deeming provision may be intended to enlarge the meaning of a particular word or to include matters which otherwise may or may not fall within the main provision. The effect of such fiction is also quite well known. **If one is bidden to treat an imaginary state of affairs as real, then one must, unless prohibited from doing so, also imagine as real, the consequences and the incidents which inevitably flow from such a situation.** One must not permit ones imagination to boggle when it comes to inevitable corollaries of the state of affairs.[13] (13 East End Dwellings Co. Ltd. Vs. finsbury Borough Council -1951 (2) ALL ER 587 and M. Venugopal V. Divisional Manager, LIC – (1994) 2 SCC 323)

[28] The GR dated 1 December 1994 makes no special provisions as to the manner in which the services of the employees covered under the GR, prior to 1 December 1994 are to be treated for various purposes, other than seniority. However, when it comes to the aspect of seniority, the GR dated 1 December 1994, in terms provides that the relevant date shall be 1 December 1994. This is significant, because if the intention was to treat the date 1 December 1994 as relevant for all purposes like increments, pay scale, pension, TBPS, ACPS etc., then there was no necessity to make special provisions in the matter of treatment to be accorded to such service, when it comes to determination of seniority. The circumstance that special provision has been made in the matter of determination of seniority, lends support to the interpretation that there was no bar to the taking into consideration of service prior to 1 December 1994 as 'regular service' for purposes of TBPS and /or ACPS. The State Government has itself adopted such interpretation in respect of several of its employees. In any case, **the State Government has accepted the decisions of the MAT based on such interpretation in case of several of its employees, since, not all the decisions rendered by the MAT were challenged by the State Government before this Court.** Further, the State Government has also not challenged the decision of this Court in the case of **Sushma Kumar Arya** (supra) even after its challenge to the decisions of this Court in case of **Nanda Chavan** (supra) and connected matters failed before the Hon'ble Supreme Court.

[29] In fact, the record indicates that the State Government has adopted a 'pick and choose' approach in such matters. As per the statistics provided by the respondent – employees, the State Government has extended the benefit under TBPS and/or ACPS to several of its employees by taking into consideration services from the date of their initial appointment. Such statistics have not been disputed by the State Government, despite opportunity. At a belated stage the State Government has placed on record a letter addressed to Mr. Kumbhakoni to suggest that the benefits were extended only in compliance with the orders made by the MAT or this Court. The information furnished neither appears to be complete nor candid. In any case, even if this position is to be accepted, **it is quite clear the State Government has again adopted a 'pick and choose' approach in the matter of challenges to the decisions of the MAT in favour of the employees. In some cases, the State Government has challenged the decisions of the MAT before this Court but in others, the decisions have been implemented without demur.** Similarly, even after the challenge to the decisions of this Court in the case of **Nanda Chavan** (supra) and connected matters failed before the Hon'ble Supreme Court, though the issues of law raised in the special leave petitions were kept open, the State Government did not challenge the subsequent decision in the case of **Sushma Kumar Arya** (supra), thereby extending the benefit of TBPS and/or ACPS to the said employee, placed in a situation similar to the respondent – employees in the present case. Similarly, there is no record of the State Government questioning the decision of this Court in the case of **Pushpalata Sonawale** (writ petition no. 4455 of 2009), who was again, an employee placed in a similar situation to the respondent – employees in the present case. In the light of such 'pick and choose' approach on the part of the State Government, we do not feel that this is a fit case to interfere with the impugned orders, particularly as interference might result in discrimination between a uniform class of employees, in the matter of extension of benefits under TBPS and/or ACPS. **The record indicates that such benefit has been extended by the State Government to hundreds of its employees by taking into consideration service from the date of initial appointment.**

[30] There are decisions of the MAT extending benefit to the employees, which do not appear to have been questioned by the State Government before this Court. The decision of the MAT in **Pushpalata Sonawale** (supra) was questioned by the State Government vide writ petition no. 4455 of 2009, but the petition was dismissed by this Court on 22 July 2009. The decisions of the MAT in case of **Nanda Chavan** (supra) and connected matters were also questioned by the State Government vide writ petition no. 9962 of 2010 (and connected petitions). However, the petitions were dismissed by this Court by a detailed judgment and order dated 6 February 2012. Although, the State Government had not questioned the decision in the case of **Pushpalata Sonawale** (supra), the decision in the case of **Nanda Chavan** (supra) and connected matters was questioned by the State Government before the Hon'ble Supreme Court vide special leave petition nos.

in the matter of delayed regularization of services, the State Government cannot itself be permitted to take advantage of its own delay in such matters.

See Para 10 of the High Court Judgment dated 28th April 2016

17927-17930 of 2012. The grounds raised in the special leave petitions appear to be almost identical to the grounds now urged by and on behalf of the State Government in the present batch of petitions. The Hon'ble Supreme Court however, by its order dated 28 September 2012 dismissed the said special leave petitions. However, the questions of law raised in the special leave petitions were kept open.

[31] The State Government, perhaps relying upon the order dated 28 September 2012 made by the Hon'ble Supreme Court in special leave petition nos. 17927-17930 of 2012 whilst dismissing the special leave petitions challenging the decision of the Division Bench of this Court in **Nanda Chavan** (supra) and connected matters, once again, urged the very same grounds, which had been raised in the special leave petitions or for that matter, in the present batch of petitions before the MAT in case of **Smt. Sushma Kumar Arya** (supra) in original application no. 113 of 2009. MAT, on this occasion, by its order dated 23 August 2011, in fact accepted one of the contentions raised by the State Government and dismissed original application no. 113 of 2009. Smt. Sushma Kumar Arya then instituted writ petition no. 212 of 2013 before this Court. The Division Bench of this Court, by its judgment and order dated 6 March 2013, set aside the MAT's order dated 23 August 2011 and following the earlier decision in **Nanda Chavan** (supra) and others directed that the services w.e.f. 1 October 1985 had to be taken into consideration for the purposes of award under TBPS and ACPS. Significantly, even though the decision of the Division Bench in case of **Smt. Sushma Kumar Arya** (supra) was delivered on 6 March 2013, there is no record of the State Government questioning the same before the Hon'ble Supreme Court, either relying upon the order dated 28 September 2012 (in **Nanda Chavan**) or otherwise.

[32] Considering the 'pick and choose' approach by the State Government coupled with the plausible interpretation adopted by the MAT, **we do not deem it appropriate to exercise our jurisdiction under Articles 226 and 227 of the Constitution of India, which if exercised, might have the effect of denial of benefits of TBPS and /or ACPS to the respondent – employees, when, several State Government employees, placed in virtually identical position, have already been extended such benefits.** The MAT, in the impugned orders has also made reference to the cases of certain employees, who have already retired and whose services have been taken into consideration for the purposes of pay and pension fixation, amongst other service benefits.

[33] The record also suggests that the past services of the employees covered under the GR dated 1 December 1994 have been taken into consideration by the State Government for extending the benefits of increment, pay fixation, pension and several other matters, except perhaps seniority. This practice is also not an irrelevant circumstance. In case of any ambiguity, actual practice or contemporary official statements throwing light on construction of a statute or a statutory instruments is a permissible exercise. In a case relating to construction of service rule which enabled section officers possessing a recognised Degree in Civil Engineering or equivalent to claim eligibility for promotion if they had put in three years service in the grade (six years' service in case of Diploma Holder), the question arose as to the point of time from which the period of three years was to be counted in a case, where the section officer obtained the degree during the course of service. The practice in the department was to count the period of three years from the date the officer obtained the degree and this practice was relied upon in construing the statutory rule. The Hon'ble Supreme Court in **N. Suresh Nathan Vs. Union of India**[14] (14 1992 Supp (1) SCC 584), held that the past practice, if based on one of the possible constructions which can be made of the rules, is an useful tool in the matter of interpretation of such rule. In effect therefore, the doctrine of contemporanea ex-positio was applied even in the matter of construction of recent statute or statutory instruments.

[34] Besides, when it comes to interpretation of the expression **'regular service'**, it is necessary to keep in mind that such expression takes colour of the context in which the same is employed. As noted earlier, entire purpose and objective of TBPS and ACPS is to relieve the employees of the frustration which they face on account of stagnation. Therefore, the expression 'regular service' will have to be construed and interpreted in the light of such purpose and such objective having regard no doubts to the phraseology employed in GRs dated 8 June 1995 and 20 July 2001.

[35] In **Dwijen Chandra Sarkar** (supra) the appellants were appointed as lower division clerks in the Department of Rehabilitation, Government of India on 18 November 1970 and 5 February 1965 respectively. Subsequently on 7 December 1976 and 13 December 1976 the appellants were transferred to P&T Department in public interest as postal assistants. The scheme which provided for TBPS stated that all officials belonging to group 'C' and group 'D' to which where is direct recruitment either from outside and/or by means of limited competitive examination from lower cadres, and who have completed 16 years of service in that grade will be placed in the next higher grade. The Union of India declined to take into consideration the appellants' services in the Department of Rehabilitation by relying upon the appellants transfer order which provided that the past services will be counted for all purposes i.e. fixation of pay, pension and gratuity etc. except seniority. The Tribunal upheld the view taken by Union of India that the appellants did not have the requisite service of 16 years in the same grade and thereby denied the appellants benefit of TBPS from the date of their initial appointments. **The Hon'ble Supreme Court, relying upon its three earlier precedents, reversed the order of CAT and held that, for purposes of TBPS, the services of the appellants even before they came into cadre of employees in P&T Department is required to be taken into consideration.** In paragraphs 11 to 19, the Hon'ble Supreme Court has observed thus :

"11. However, the position in regard to "time-bound" promotions is different. Where there are a large number of

If one is bidden to treat an imaginary state of affairs as real, then one must, unless prohibited from doing so, also imagine as real, the consequences and the incidents which inevitably flow from such a situation.

See Para 27 of the High Court Judgment dated 28th April 2016

employees in any department and where the employees are not likely to get their promotion in the near future because of their comparatively low position in the seniority list, the Government has found it necessary that in order to remove frustration, the employees are to be given a higher grade in terms of emoluments — while retaining them in the same category. This is what is generally known as the time-bound promotion. Such a time-bound promotion does not affect the normal seniority of those higher up.

12. If that be the true purpose of a time-bound promotion which is meant to relieve frustration on account of stagnation, it cannot be said that the Government wanted to deprive the appellants who were brought into the P&T Department in public interest — of the benefit of a higher grade. The frustration on account of stagnation is a common factor not only of those already in the P&T Department but also of those who are administratively transferred by the Government from the Rehabilitation Department to the P&T Department. The Government while imposing an eligibility condition of 16 years' service in the grade for being entitled to time-bound promotion, is not intending to benefit only one section of employees in the category and deny it to another section of employees in the same category. The common factor for all these employees is that they have remained in the same grade for 16 years without promotions. The said period is a term of eligibility for obtaining a financial benefit of a higher grade.

13. If the appellants are entitled to the time-bound promotion by counting the service prior to joining the P&T Department, the next question is whether treating them as eligible for timebound promotion will conflict with the condition imposed in their transfer order, namely, that they will not count their service for seniority purposes in the P&T Department.

14. The words "except seniority" in the 1983 circular, in our view, mean that such a benefit of a higher grade given to the transferees will in no way affect the seniority of employees in the P&T Department when the turn of the P&T employees comes up for promotion to a higher category or post. The said words "except seniority" are intended to see that the said persons who have come from another Department on transfer do not upset the seniority in the transferee Department. Granting them higher grade under the Scheme for Time-bound Promotion does not, therefore, offend the condition imposed in the transfer order. We are, therefore, of the view that the appellants are entitled to the higher grade from the date on which they have completed 16 years and the said period is to be computed on the basis of their total service both in the Rehabilitation Department and the P&T Department.

15. There are at least three precedents of this Court to support the principle enunciated above. The first one is Renu Mullick v. Union of India [(1994) 1 SCC 373 : 1994 SCC (L&S) 570: (1994) 26 ATC 602]. In that case the appellant, a Lower Division Clerk, was transferred from the Central Services and Customs Department, on her own request, to the Central Excise Collectorate. She gave an undertaking in terms of Central departmental instruction which said: (SCC Headnote)

"[T]he transferee will not be entitled to count the service rendered by her in the former Collectorate for the purpose of seniority in the new charge."(emphasis supplied)

Now for the purpose of promotion as Inspector, she had to put in a service of 5 years as UDC or a total service of 13 years, both as UDC and LDC, subject to a minimum of 2 years as UDC. When the appellant's turn for promotion as Inspector came up, she was denied promotion on the ground that she was ineligible because she did not have the required number of years of service in the transferee Department. This view was not accepted. It was held that seniority and eligibility are different concepts. It was directed that the appellant be given promotion as Inspector only when she would fall within the zone of consideration as per her seniority reckoned in the transferee Department. When her turn based on the service seniority in the transferee Department arrived, if any question as to her eligibility for promotion should arise, i.e., whether she had 5 years as UDC or a total of 13 years as UDC and LDC, for computing the said period of qualifying service, the past service in the Central Services and Customs Department should also be counted. Kuldip Singh, J. observed: (SCC p.377, paras 10 & 11)

"We are of the view that the Tribunal fell into patent error in dismissing the application of the appellant. A bare reading of para 2(ii) of the executive instructions dated May 20, 1980 shows that the transferee is not entitled to count the service rendered by him/her in the former Collectorate for the purpose of seniority in the new charge. … But when she is so considered, her past service in the previous Collectorate cannot be ignored for the purposes of determining her eligibility as per Rule 4 aforesaid. Her seniority in the previous Collectorate is taken away for the purpose of counting her seniority in the new charge but that has no relevance for judging her eligibility….

* * *

The Rule nowhere lays down that … the service period of 5 years and 13 years is not applicable for an officer who has been transferred from one Collectorate to another on his own request."

In Scientific Advisor to Raksha Mantri v. V.M. Joseph [(1998) 5 SCC 305 : 1998 SCC (L&S) 1362]to which one of us (Saghir Ahmad, J.) was a party, it was held that service rendered in another department helps for determining eligibility for promotion though it may not count for seniority. In that case, the employee was transferred from the Ministry of Defence to the Central Ordnance Depot. Then he made a request for transfer to the Naval Physical Oceanographic Laboratory, Cochin. He was transferred to be placed at the bottom of the seniority list. It was held that he could still count his past service for the purpose of eligibility for promotion. It was observed: (SCC p. 307, para 6)

"Even if an employee is transferred at his own request, from one place to another on the same post, the period of services rendered by him at the earlier place where he held a permanent post and had acquired permanent status, cannot be excluded from consideration for determining his eligibility for promotion, though he may have been placed at the bottom of the seniority list at the transferred place." (emphasis supplied)

***16.** Again in A.P. SEB v. R. Parthasarathi [(1998) 9 SCC 425: 1998 SCC (L&S) 1195] a government servant was transferred and absorbed in the Electricity Board and it was held that the past service in the Government would count towards the requisite experience of 10 years for eligibility for promotion.*

***17.** On the facts of the present case and especially in view of the aforesaid decisions, we are of the view that when the transfer is in public interest and not on request, the two employees transferred cannot be in a worse position than those in the above rulings who have been transferred on request and who in those cases accepted that their names could appear at the bottom of the seniority list. Even in cases relating to request transfers, this Court has held, as seen above, that the past service will count for eligibility for certain purposes though it may not count for seniority.*

18. Hence the transfer order and circular concerned of 1983 which required that the past service should not count for seniority, cannot have any bearing on eligibility for time-bound promotion. Seniority and time-bound promotions are

In fact, the record indicates that the State Government has adopted a 'pick and choose' approach in such matters.

See Para 29 of the High Court Judgment dated 28th April 2016

different concepts, as stated above.

19. *For the above reasons, we hold that the past service of the appellants is to be counted for the limited purpose of eligibility — for computing the number of years of qualifying service, to enable them to claim the higher grade under the Scheme of Time-bound Promotions." [Emphasis supplied]*

[36] In **Union of India vs. V. N. Bhat** (supra), respondent employee was appointed as a lower division clerk in the Ministry of Defence in the year 1962. He sought transfer from Ministry of Defence to the Office of Chief Post Master General, which were allowed by order dated 26 April 1982. As a result, the respondent joined the post of lower division clerk at the bottom of gradation list as required in the departmental rules. On 17 December 1983 TBPS was introduced for providing relief to employees stagnating in the lower grades for period of 16 / 26 years as postal assistants. The benefit under this scheme was initially granted to respondent but later on withdrawn on the basis that the respondent had hardly one year service as postal assistants to which post he had been transferred on 26 April 1982. The CAT however allowed the respondent's original application and the Union of India appealed the Hon'ble Supreme Court. The distinction that in case of **Dwijen Chandra Sarkar** (supra) the employees concerned had been transferred in public interest and in case under consideration, the transfer was pursuant to the request of respondent V. N. Bhat was rejected by the Hon'ble Supreme Court by looking to the object and purpose of TBPS. The directions issued by CAT to take into consideration V. N. Bhat's services in the Ministry of Defence were upheld by the Hon'ble Supreme Court. In paragraphs 4, 5 and 6, the Hon'ble Supreme Court has observed thus :

"4. The submission of the learned counsel for the appellants in short is that having regard to the admitted fact that the respondent herein has not completed 16/26 years in the postal service, the One Time-Bound Promotion Scheme or BCR Scheme is not applicable in his case. The fact that the respondent herein had completed 18 years of service in the Ministry of Defence is not disputed. The question which, therefore, arises for consideration is as to whether the period of service rendered by the respondent in the Ministry of Defence should be wiped off for all purposes. The well-settled principle of law that even in the case where the transfer has been allowed on request, the employee concerned merely loses his seniority, but the same by itself would not lead to a conclusion that he should be deprived of the other benefits including his experience and eligibility for promotion. ***In terms of the Schemes aforementioned, promotion is to be granted for avoiding stagnation only within the said parties. The said Schemes have been framed because they are beneficial ones and are thus required to be implemented. The Scheme merely perused that any person having rendered 16/26 years of service without obtaining any promotion could be entitled to the benefit therefor. It is, therefore, not a case where promotion to the higher post is to be made only on the basis of seniority. Even in a case where the promotion is to be made on selection basis, the employee concerned, even if he be placed at the bottom of the seniority list in terms of the order of transfer based in his favour, he cannot be deprived of being considered for promotion to the next higher post if he is eligible therefor.*** *This aspect of the matter is clearly covered by the three decisions of this Court, namely, A.P. SEB v. R. Parthasarathi [(1998) 9 SCC 425 : 1998 SCC (L&S) 1195], Scientific Advisor to Raksha Mantri v. V.M. Joseph [(1998)5 SCC 305 : 1998 SCC (L&S) 1362] and Renu Mullick v. Union of India [(1994) 1 SCC 373 : 1994 SCC (L&S) 570: (1994) 26 ATC 602]. [Emphasis supplied]*

[37] In **State of U.P. & Ors Vs. Maqbool Ahmad**[15] (15 (2006) 7 SCC 521), several persons were selected for appointment to the post of Assistant Engineer in various departments. The respondent opted for the Irrigation Department whereas some selectees preferred to go to other departments including Public Works Department (PWD). The respondent remained in Irrigation Department from 1970 to 1977. On 4 November 1977 with the approval of U.P.PSC, he was relieved from the Irrigation Department and joined the PWD. When the issue arose of grant of selection grade after completion of 16 years of service and super timescale after completion of 18 years of service the respondent urged that his service from 1970 to 1977, though in the Irrigation Department be taken into consideration, particularly since the object of such scheme was to relieve the employees from the frustration due to stagnation and further because similar benefit had been granted to employees similarly placed. The respondent urged that welfare state could not be permitted to adopt double standards for its employees. The Allahabad High Court High Court (Lucknow Bench) upheld the respondent's contention. The Hon'ble Supreme Court whilst dismissing the appeal made the following observations at paragraphs 12 and 13.

"12. Having heard the learned counsel for the parties, we are of the view that the High Court has not committed any error which deserves interference by this Court. As stated by the High Court in the impugned judgment and is not disputed before us that selection was made by U.P. PSC. It was common selection for both the departments, namely, the Irrigation Department as well as the Public Works Department. The respondent herein joined the Irrigation Department on 30-9-1970. Up to 4-11-1977 he continued with the Irrigation Department and on approval of U.P. PSC, he was shifted to the Public Works Department in November 1977. There was no break of service and it remained continuous all throughout. In these circumstances, in our opinion, the respondent was right in submitting before the High Court as well as before us that there was no reason to deprive him of the selection grade or super timescale as per the government order. ***Ultimately, the policy decision is based on equitable principle that if an employee does not get promotion, not because of his fault, but because there were no sufficient vacancies available which resulted in his stagnation in the cadre to which he was initially appointed, it would be reasonable that he should not suffer and is allowed certain additional benefits. In such cases, an employee is deprived of promotion as the employer is unable to promote him due to limited posts/vacancies in the higher cadre. To avoid stagnation, heart-burning, demoralisation of employees and to provide boosting, a policy decision has been taken by the Government. Keeping in view the said object, it was decided by the State Government that if an employee has to remain in one and the same cadre for 16 or 18 years, he would be granted selection grade as also super timescale. In our opinion, therefore, the High Court was right in holding that it would be totally immaterial whether the employee continues to work in the cadre of Assistant Engineer***

the State Government has accepted the decisions of the MAT based on such interpretation in case of several of its employees, since, not all the decisions rendered by the MAT were challenged by the State Government before this Court.

See Para 28 of the High Court Judgment dated 28th April 2016

They point out that the names of the respondents-employees had been sponsored by employment exchange and the selection process was itself fair, transparent and above board.

See Para 9 of the High Court Judgment dated 28th April 2016

either in the Irrigation Department or in the Public Works Department. The fact remains that he could not be promoted because of non-availability of promotional avenue and hence there was no reason to deprive him of selection grade or super timescale to which he was otherwise entitled.

13. But, there is an additional factor also in favour of the respondent. It is not in dispute by and between the parties that along with the respondent, several other persons were also selected and appointed as Assistant Engineers. Some of them preferred the Public Works Department, but thereafter were transferred to the Irrigation Department. It was stated by the respondent that those persons were junior to him and yet they were granted selection grade and super timescale in the Irrigation Department though they were initially appointed in the Public Works Department. Names of certain persons were also placed on record before the High Court by the respondent. The said fact had not been disputed by the learned counsel for the appellant before the High Court or before this Court. In our opinion, therefore, on that consideration also, the High Court was right and justified in allowing the claim of the respondent and in granting benefits in his favour." [Emphasis supplied]

[38] In **Union of India and Anr. Vs. G. Rajanna and Ors.**[16] (16 (2008) 14 SCC 721), the Hon'ble Supreme Court in the context of ACPS formulated by the State of Karnataka has held that the object of the office memorandum related to non-functional posts and fixation of pay scales is to see that Group C and Group D employees are not allowed to stagnate in the same cadre and certain monetary benefits are fixed by noted paragraphs of the office memorandum and this being non-functional in situ promotion, even the fulfillment of educational qualifications prescribed in recruitment rules, for functional promotion could not have been insisted upon.

[39] In light of the facts and circumstances on record, we are also unable to accept Mr. Kumbhakoni's contention that the State Government has committed some inadvertent mistake or illegality in taking into consideration past service of the employees for the purposes of extending service benefits like increments, pension, TBPS, ACPS etc. and that the respondent – employees have no right to insist upon perpetuation of such mistake or illegalities in the name of equality. In the first place, the extension of such benefits is not some isolated or solitary instance. This is also not a case where only few employees have been extended such benefits. Rather, this is a case where hundreds of employees have been extended such benefits. Secondly, no steps have ever been taken by the State Government to rectify such position, if indeed, the State Government was serious with its contention that the extension of such benefits was a mistake or an illegality. Thirdly, as noted earlier, the State Government has been extremely selective, even in the matter of challenges to the decisions of the MAT and this Court, when, such benefits were directed to be extended to its employees. From the perusal of the petitions instituted by the State Government, it transpires that there is not even such specific ground raised by the State Government in the petitions. There is no explanation whatsoever as to the circumstances in which such alleged mistakes or illegalities came to be committed in so many cases by the State Government. There is no statement as to the steps, if any, taken by the State Government against the officials who were responsible for such alleged mistakes or illegalities. Undoubtedly, there is no estoppel against the law nor can any employee insist upon perpetuation of mistakes or illegalities in the name of equality. However, for this purpose, the State Government, is required to lay a proper foundation by means of proper pleadings to demonstrate and establish that the extension of benefits to so many of its employees placed in situation identical to the respondent – employees herein, was indeed some mistake or illegality. Besides, the State Government is also required to indicate the steps, if any, taken by it in regard to the rectification of such alleged mistakes or illegalities. In the absence of all this, the State Government cannot distance itself from its own acts, by styling the same as some mistakes or illegalities, when it comes to the extension of similar benefits to its similarly placed employees.

[40] The decisions in case of **Gursharan Singh** (supra) and **Gaurav Ashwin Jain** (supra) **are not applicable to the facts and circumstances of the present cases.** The State Government has failed to establish that by counting services of employees prior to 1 December 1994 it had committed any mistake or had acted illegally. Besides, this is also not a case where the State

it is quite clear the State Government has again adopted a 'pick and choose' approach in the matter of challenges to the decisions of the MAT in favour of the employees.
In some cases, the State Government has challenged the decisions of the MAT before this Court but in others, the decisions have been implemented without demur.

See Para 29 of the High Court Judgment dated 28th April 2016

expression 'regular service' means and implies the services rendered by an employee after he is appointed or admitted to a cadre or after he is appointed or admitted to the membership of the service

See Para 5 of the High Court Judgment dated 28th April 2016

Government has been consistent in its stand. Rather, the record indicates that the State Government has adopted a 'pick and choose' approach in such matters. **Gursharan Singh** (supra) was a case where the petitioners-stall holders were insisting that certain concessions in respect of licence fees and relaxation in trade zoning restrictions be extended to them on the sole basis that the same had been extended to 98 stall owners. The Hon'ble Supreme Court after concluding that the extension of concessions or relaxation from restrictions in favour of 98 stall owners was itself contrary to law observed that the petitioners stall owners cannot, in the name of equality, insist upon perpetuation of the illegalities. Similarly, in **Gaurav Ashwin Jain** (supra) the Directorate of Film Festivals had taken a categorical plea that the exemption in respect of films made by film institutes and films entered by Doordarshan was itself contrary to law and the existing policy. The Hon'ble Apex Court in paragraph 28 recorded a clear finding that the exemptions in favour of film institutes and entries made by Doordarshan were illegal. Only thereafter, the Hon'ble Supreme Court applied the principle that there cannot be any equality of illegalities and on the said basis denied the benefit of exemption to the respondents in the said matter.

[41] In case of **State of Haryana vs. Haryana Veterinary & Ahts Association & Anr.** (supra) the question which arose for consideration of the Hon'ble Supreme Court was whether services rendered by ad hoc appointee on the basis of appointment made de hors recruitment rules can be counted for earning the benefits of higher scale of pay under a relevant government memorandum. In the said case, the employee concerned, had been appointed on 4 January 1980 on purely ad hoc basis and de hors the recruitment rules. Thereafter, on 29 January 1982 the employee concerned was selected by Haryana Public Service Commission in pursuance of the application made by him to the service commission. The Hon'ble Supreme Court, in paragraph 15 entered a categorical finding that the appointment of the employee was a fresh appointment in accordance with statutory rules after the public service commission adjudged the suitability. It is in these circumstances that the Hon'ble Supreme Court held the services of the concerned employee rendered between 4 January 1980 and 29 January 1982 could never been regarded as 'regular service' for the purposes of grant of selection grade in terms of the government memorandum. In the present cases, as noted earlier, the appointments were neither purely on ad hoc basis nor de hors the recruitment rules. In fact, the appointments respondent - employees were against clear, permanent, substantive and sanctioned vacancies. The services rendered by the respondent - employees in pursuance of such appointments has been taken into consideration for the purposes of pay scale, increments, pension and host of other service benefits, except perhaps seniority and actual promotion. In these cases, no fresh appointment orders were issued to the respondent - employees. Therefore, the fact situation in the present case is **not comparable to the fact situation in which, the decision in the case** of **Haryana Veterinary & Ahts Association** (supra) came to be rendered.

[42] In case of **Punjab State Electricity Board & Ors. vs. Jagjiwan Ram & Ors.** (supra), the employees were engaged as work charged employees and the issue was whether the services rendered by them as work charged employees can at all be taken into consideration for grant of benefits of TBPS to such employees. In this regard, the Hon'ble Supreme Court observed that generally speaking, work charged establishment is an establishment of which expenses are chargeable to works. The pay and allowances of such employees who are engaged on a work charged establishment are usually shown under a specified special head of estimated cost of works. **The work charged employees** are engaged for a specified work or a project and their engagement comes to an end on completion of the work or project. The source and mode of engagement / recruitment of work charged employees, their pay, and conditions of employment are altogether different from persons appointed in the regular

we do not deem it appropriate to exercise our jurisdiction under Articles 226 and 227 of the Constitution of India, which if exercised, might have the effect of denial of benefits of TBPS and /or ACPS to the respondent – employees, when, several State Government employees, placed in virtually identical position, have already been extended such benefits.

See Para 32 of the High Court Judgment dated 28th April 2016

that benefit under TBPS and ACPS extended by the State Government itself to its various employees by counting the period of 12 years of regular service

See Para 6 of the High Court Judgment dated 28th April 2016

establishment against sanctioned posts after following the procedure prescribed under the relevant Acts or the Rules and their duties and responsibilities are also substantially different than those of regular employees. The Hon'ble Supreme Court, upon reference to several decisions, at paragraph 14 has held that the ratio of such judgments is that work charged employees constitute a distinct class and they cannot be equated with any other category or class of employees much less regular employees and further that the work charged employees are not entitled to service benefits which are admissible to regular employees under the relevant Rules or the policy framed by the employer. Taking cognizance of such factual position, the Hon'ble Supreme Court turned down the plea of the employees that the services rendered by them as work charged employees be taken into consideration for purposes of award of benefits under TBPS.

[43] Again, in the present cases the respondent - employees were admittedly **not appointed as work charged employees** or against work charged establishment. Rather, the respondent - employees, as noted earlier, were appointed against clear, permanent, substantive and sanctioned vacancies. Right from the date of their respective appointment there was no difference in the service conditions made applicable to the respondent - employees and other employees. In such circumstances, the decision in the case of **Punjab State Electricity Board & Ors. vs. Jagjiwan Ram & Ors.** (supra) is not attracted to the facts and circumstances of the present cases.

[44] In **State of Rajasthan & Ors. vs. Jagdish Narain Chaturvedi** (supra), the issue before the Hon'ble Supreme Court was whether ad hoc appointment or appointments on daily wage or work charged basis are appointments made to the cadre / service in accordance with provisions contained in the recruitment rules contemplated by the government orders dated 25 January 1992 and 17 February 1998 for the purposes of grant of stagnation benefits. In the said case, the requirement under the government orders was that the employee concerned had to become 'member of service' and only his service as 'member of service' was to be counted for the purposes of the stagnation allowances. In the present cases, the respondent - employees had neither been appointed on purely ad hoc basis, daily wage basis or work charged basis. Besides, in terms of the GR dated 1 December 1994, serviced rendered by the respondent - employees from the date of their initial appointments were directed to be 'treated as regularised'. Accordingly, the decision in **State of Rajasthan vs. Jagdish Narain Chaturvedi** (supra) **will not apply to the fact situation in the present cases.**

[45] In **State of Rajasthan & Anr. vs. Surendra Mohnot & Ors.** (supra), the Hon'ble Supreme Court has followed its earlier decision in **Jagdish Narain Chaturvedi** (supra). Therefore, for the same reasons as aforesaid, the decision in **Surendra Mohnot** (supra) is also distinguishable.

[46] In **Arjun v/s. Secy. Government of Maharashtra (supra),** the issue involved was of seniority and not determination of twelve year service for availing the benefits of TBPS or ACPS. The G.R dated 1 December 1994 issued by the State Government had itself made special provisions with regard to determination of seniority. The Division Bench of this Court, in the context of such special provisions, therefore, held that there was nothing arbitrary in providing that seniority will be computed from date of G.R., i.e., 1 December 1994, as otherwise, large number of persons selected through regular channel will suffer if such employees are granted seniority from the date of their initial appointment. Again, the decision, does not assist the case of the petitioners, because **the issue involved therein was not the computation of service for purposes of availing the benefit of TBPS or ACPS.**

[47] In terms of the decisions of the Hon'ble Supreme Court in **State of M.P. and Ors. Vs. Lalit Kumar Verma**[17] (17 (2007) 1 SCC (L& S) 405), and **Secretary, State of Karnataka vs. Umadevi (3)**[18] (18 (2006) 4 SCC 1), there is no scope for regarding the service rendered by the respondent – employees prior to 1 December 1994 as illegal. This is precisely the reason which prompted the State Government to regularise such services vide GR dated 1 December 1994. As noted earlier, the services of the respondent – employees right from the dates of their initial appointments has been taken into consideration for several service benefits like regular pay scale, increment, pension etc. The very engagement of the respondent – employees was not on daily wage basis or work charged basis or purely on ad hoc basis de hors the recruitment rules. In fact, the appointments, though temporary, were against clear, permanent, substantive and sanctioned vacancies. The names of such employees were sponsored by employment exchanges or other recognised recruitment agencies. The selection process was also fair, transparent and above board. The GR dated 1 December 1994 inter alia sets out the circumstances in which such appointments came to be made and records that denial of regularisation might result in discrimination. The State Government has taken full benefit of such appointments and further, even

The record indicates that such benefit has been extended by the State Government to hundreds of its employees by taking into consideration service from the date of initial appointment.

See Para 29 of the High Court Judgment dated 28th April 2016

directed that the services of such employees should be treated as regularised. The State Government failed to involve the MPSC at the stage of making initial appointments. There is not even any allegation that the respondent – employees were in any manner responsible for this situation. The State Government, in such a situation, cannot be permitted to take advantage of its own failure to follow the procedural requirements. In these peculiar facts and circumstances, the **maxim nullus commodum capere potest de injuria sua propria,** meaning 'no man can take advantage of his own wrong', squarely applies. In Broom's Legal Maxim (10th Edn.) at p.191, it is stated:

"…. it is a maxim of law, recognised and established, that no man shall take advantage of his own wrong; and this maxim, which is based on elementary principles, is fully recognized in courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure[19]" (19 M/s. Mideast Integrated Steel Limited and anr. Vs. State of Odisha – W.P.(C) No. 17403 of 2012 decided on 16-12-2015, by Division Bench comprising Hon'ble Chief Justice Mr. D.H. Waghela and the Hon'ble Mr. Justice Biswanath Rath)

[48] In **Pratap Kishore Panda vs. Agni Charan Das**[20] (20 2016 (2) ALL MR 461 (S.C.), the issue arose as to whether the grant of benefit of regularisation to employees who were recruited without involving Orissa Public Service Commission (OPSC) was legal and valid, considering in particular, the decision of the Constitution Bench in **Secretary, State of Karnataka vs. Umadevi**[21] (21 (2006) 4 SCC 1), the Hon'ble Supreme Court after adverting to the fact situation ruled that such regularisation from the date of initial appointment was legal and valid, particularly since the recruitment made was neither capricious nor arbitrary, even though, the OPSC was not involved in the recruitment process. The Hon'ble Supreme Court observed that this was not a case of ad hoc employees being selected in a whimsical, inconsistent or haphazard manner or in order to favour some individuals. The incumbents were sponsored by employment exchange and over 400 candidates were found suitable by duly constituted selection committee which interviewed them. It was not a relaxation of the rules in order to favour a few, but was the consequence of following an alternate method of selection intended to remedy a malady in the recruitment of SC/ST candidates. The sponsorship of employment exchange and subsequent interview by a duly constituted selection committee was itself a valid alternate for recruitment by way of OPSC competitive examination. For this purpose, the Hon'ble Supreme Court also made reference to the provisions contained in Article 320(4) of the Constitution of India and Section 9 (4) of O.R.V. Act. In this batch of petitions also, we are concerned with the appointment of respondents employees appointed to permanent, clear, substantive and sanctioned vacancies, though on temporary basis consequent upon sponsorship of their names by employment exchange and in pursuance of selection process which was fair, transparent and above board. Such respondent - employees, right from the date of their initial appointment have been extended benefits of regular pay scale, increments, leave, transfer, GPF etc. The services of such respondent - employees from the date of their initial appointment has been taken into consideration for practically all purposes, including pensionary benefits (except perhaps seniority).

[49] The decisions rendered by this Court in **Nanda Chavan** (supra) and **Smt. Sushma Kumar Arya** (supra), as of today hold the field. In terms of these decisions, services of employees placed in virtually identical position as compared to respondent - employees from the date of their initial appointments, have been taken into consideration for the grant of benefits under TBPS and ACPS. The decisions of the co-ordinate benches of this Court bind us. The State Government in some cases has extended some benefit to its employees on its own. In other cases, the State Government has extended such benefit in pursuance of orders made by MAT and this Court. **The State Government has been selective in matters of extension of such benefits and further in the matter of challenging the orders made by MAT and this Court in virtually identical matters.** The peculiar expressions used by the State Government in its GR dated 1 December 1994, also render the view expressed by MAT as well as co-ordinate benches of this Court, a plausible view. This is not a case where respondent - employees were either appointed on purely ad hoc basis de hors the recruitment rules or in some whimsical, inconsistent or haphazard manner. This is also not a case where respondent - employees were appointed on work charged basis or as daily wagers. Rather, this is a case where respondent - employees, though appointed on temporary basis, were so appointed against permanent, clear, substantive and sanctioned vacancies. The services of such respondent - employees, right from the date of their initial appointment has been taken into consideration by the State Government practically for all purposes except perhaps seniority. In so far as non consideration of service prior to 1 December 1994 for purposes of seniority is concerned, the GR dated 1 December 1994 has made specific provisions. However, there are no specific provisions in the GR dated 1 December 1994 with regard to taking into consideration such services for other purposes. The practice indicates that such services has been taken into consideration practically for all purposes except determination of seniority. The GR dated 1 December 1994 directs that the services 'should be treated as regularised'. The use of the past tense as well as legal fiction employed, also suggests that the intention was always to treat such past services as regular for all purposes except perhaps in the matter of determination of seniority for which special provisions were made. Upon cumulative consideration of all such factors, including the selective approach being adopted by the State Government, we are satisfied that these are not fit cases to exercise our extra ordinary jurisdiction under Articles 226 and 227 of the Constitution of India.

[50] For all the aforesaid reasons, these petitions are dismissed. There shall be no order as to costs.

CHIEF JUSTICE : : (M. S. SONAK, J.)

The State Government has been selective in matters of extension of such benefits and further in the matter of challenging the orders made by MAT and this Court in virtually identical matters.

See Para 49 of the High Court Judgment dated 28th April 2016

ALL INDIA FEDERATION OF UNIVERSITY & COLLEGE TEACHERS' ORGANISATIONS (AIFUCTO)

Circular : 08/2015-16 : AUGUST CIRCULAR : 07.08.2016 (See Page 119 & 120 of 2016 NUTA Bulletin)

On
5th October 2016,
on the eve of 'International Teachers' Day
AIFUCTO will observe
ALL INDIA
MASS CASUAL LEAVE.
University & College teachers across the country will sit on
DHARNA
at their University Headquarters on the same day.

Prof.Arun Kumar, General Secretary

NAGPUR UNIVERSITY TEACHERS' ASSOCIATION

५ ऑक्टोबर २०१६ रोजी
प्राध्यापकांचे
देशव्यापी धरणे आंदोलन

राष्ट्रसंत तुकडोजी महाराज नागपूर विद्यापीठ क्षेत्रातील प्राध्यापक नागपूर येथे विद्यापीठासमोर
संत गाडगेबाबा अमरावती विद्यापीठ क्षेत्रामधील प्राध्यापक अमरावती येथे विद्यापीठासमोर
गोंडवाना विद्यापीठ क्षेत्रामधील प्राध्यापक गडचिरोली येथे विद्यापीठासमोर
धरणे आंदोलन करतील.
धरणे आंदोलन **दुपारी ३ ते ५** या वेळात करण्यात येईल.
ह्या आंदोलनात तीनही विद्यापीठ क्षेत्रातील प्राध्यापकांनी सहभागी व्हावे अशी विनंती करण्यात येत आहे.

Dr. A.W.Dhage — Secretary, NUTA

15.09.2016

Dr. P.B. Raghuwanshi — President, NUTA

(१) संघटनेच्या जिल्हा युनिटच्या व स्थानिक युनिटच्या तातडीच्या बैठकी घेण्यात याव्यात. (२) जिल्हा पदाधिकाऱ्यांनी आपापल्या जिल्ह्याचा दौरा करावा. सर्व महाविद्यालयाच्या ठिकाणी सभा घेऊन सर्व शिक्षकांना कार्यक्रमाची कल्पना द्यावी. (३) सर्व शिक्षकांनी सहभागी होऊन उपरोक्त कार्यक्रम यशस्वी करावे अशी त्यांना विनंती आहे.

Note :- The format and detailed instructions in due course, will be uploaded at 'Urgent Communications' on our website www.nuta.in

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 09.09.2016) Price : Rs. Five / Name of the Posting office : **R.M.S. Amravati.** Date of Posting **: 15.09.2016**

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

To,.....

.....

.....

.....