

Let the Love Letter era come to an end

A NOTE

submitted by

- (1) Prof. B. T. Deshmukh, Ex-MLC
(2) Dr. P. B. Raghuwanshi, President, NUTA

*Both members of a five member MFUCTO delegation
appearing before the Pay Review Committee on 20.10.2016 at Pune*

To
Prof. V. S. Chauhan
Chairman,
UGC 7th Pay Review Committee,
Camp, Pune

Subject :- Regarding justification on a particular submission included in the "Submissions on the issue of pay revision and other related matters" by All India Federation of University & College Teachers' Organisations (AIFUCTO)

Esteemed Sir,

We are submitting in the following paragraphs, justification in favour of a particular submission made by the All India Federation of University & College Teachers' Organisations (AIFUCTO) in its "Submissions on the issue of pay revision and other related matters" on 21.09.2016 to the PRC. In the last paragraph of the submission of AIFUCTO this particular submission is mentioned in the following words :-

"A very important point needs to be mentioned here that for uniform implementation of revised UGC scales of pay in all the states simultaneously, the GOI must provide 100 % financial assistance of the additional expenditure to all the states for ten years."

2. Since the date of coming into force of the Constitution of India till today, "**Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.**" has been a subject at Entry 66 in the Union List i.e. List I of Seventh Schedule of the Constitution of India.

3. Brief history regarding Financial Assistance provided in this respect can be reproduced from the book "Sixty years of the University Grants

Commission" published by UGC in the following words :-

"The UGC had been concerned with the important issue of teachers since 1955. A committee chaired by Humayun Kabir had suggested that the salaries of university teachers should receive the highest priority."

"The issue of adequate remuneration to teachers had been going on since 1955. The UGC consistently felt that improvement in the salaries of teachers should receive the highest priority and that steps should be taken to procure minimum requirements with regard to the teachers' salaries in university departments and colleges which may be brought under the purview of the commission in accordance with the provisions laid down in the UGC bill."

"The Commission agreed to share 50 per cent of the increased expenditure of men's colleges and 25 per cent of the women's colleges. Initially in 1956, the Ministry of Education turned down the UGC proposal in this regard."

"The UGC resolved that in view of the fundamental importance of revision of salary scales of teachers of affiliated colleges, a sub-committee consisting of Dr. A.L. Mudaliar, John Mathai and N.K. Sidhanta could be requested to re-examine the issue and find a practical solution." (Page 70-72)

"The Commission agreed to bear the entire cost of upgrading the salaries of teachers in the central universities, and 80 per cent of the increased cost of the state universities, the remaining 20 per cent being payable by the state government or the university concerned." (Page 72)

4. Since the date of coming into force of the Constitution of India till 03.01.1977 "**Education, including technical education, medical education and universities,**" was the Subject at Entry 11 in the State List i.e. List II. Education including universities was a State subject until, by the 42nd Amendment of the Constitution in 1976, that entry was omitted from the State List and was taken into entry 25 of the Concurrent List. But the UGC Act essentially intended to make **provisions for the**

Not even once in the History of Independent India, the entire proposal recommended by PRC was implemented by mandatory Regulations.

(See Para 10 of this Note)

coordination and determination of standards in universities and that it stood squarely covered under entry 66 of List I. While legislating for a purpose germane to the subject covered by that entry establishing a University Grants Commission, using powers granted by Entry 66 in the Union List, UGC Act, 1956 was enacted and it came into force with effect from 05.11.1956. Under the provisions of that Act the mechanism of 80:20 Financial Central Assistance continued to be in force with a view to maintain the standards of higher education and that formula of 80:20 remained in force even after the constitutional provisions have undergone a sea change.

5. Even after the constitutional change the old formula of Central Assistance of 80:20 remained unchanged. In accordance with the powers conferred on Government of India by Entry 66 of the Union List and by Entry 25 of the Concurrent List and despite the powers further delegated to UGC by the UGC Act, **the responsibility of making mandatory regulations in that behalf could not be carried out till date.** This power must be accompanied by a commensurate responsibility of providing Financial Assistance and hence AIFUCTO proposed that for uniform implementation of UGC scales of pay throughout India, the GOI must provide 100% financial assistance of the additional expenditure to the states for 10 years.

6. At this stage, we would like to bring to the notice of the committee some important observations recorded in the Report of "The Committee to Advise on Renovation and Rejuvenation of Higher Education" (Prof. Yashpal Committee). Following are the extracts from para 2.3.1 of the report :-

"2.3.1 State universities and affiliated colleges : State universities are still the backbone of higher education in India. Majority of our students get enrolled there and yet, it is the State universities, which are meant to be the responsibility of State Governments to maintain and develop, **which have been treated very shabbily in the matters of allocation of funds** or creation of more facilities to help them in enriching their existing academic programmers..... Even though State Universities are primarily the responsibility of States, because state legislatures create them, development of all young people, **be they in state-run institutions or central institutions, is a national responsibility and there cannot be any discrimination between the two. Ideally all benefits, which are thought to be essential for a central university, should be made available to the state universities.** To achieve this state governments would need to significantly enhance their support to the universities while the Centre should make matching incentivizing allocations available in a sense of a joint national enterprise..... It has been a plea of many academic planners that the colleges need to be treated as the foundation of higher education similar to the way primary schools are for school education. Qualitative development of these colleges should be our priority. While the initiative by the Central government to create more Central facilities in the field of higher education should be welcomed, one must not forget that money needs to be made available for the qualitative development of colleges. Or, that even when new universities are created, they should begin with undergraduate education and build on this base their postgraduate programmes, thus becoming not only role models for the colleges in their States but also a resource for them."

7. History is full of instances wherein UGC has been constantly compelled not to use the mandatory Regulatory powers conferred upon it by Law. Instead it issued recommendatory instructions to the State Govts, that created total chaos in the field of Higher Education throughout the Nation at the State Level.

(A) Every time the PRC recommendations were accepted and implemented by the UGC, not in the form of a mandatory Regulations despite using the powers conferred on it by Law, but in the form of **'Love Letters'** addressed to the State Government requesting the State Government and the State Universities to amend their GRs or Statutes for implementing the Pay Revision, if they so wish to

implement.

(B) Because of this **Love Letter policy**, a very dignified attempt of introducing NET-SET as a compulsory condition at the recruitment level made by the UGC towards **Co-ordination and determination of standards in institutions for higher education** proved to be a total failure which resulted in an instrument in creating a total chaos in the field of Higher Education, during the 1991-2000 period.

(C) 1991 Regulations were issued by UGC on 19.09.1991. Enabling powers quoted in the beginning of the Regulation reads:-

"In exercise of the powers conferred by **clause (e) of Sub section (1) of section 26** read with section 14 of University Grants Commission Act, 1956 (3 of 1956) and in Suppression of the Regulations issued under University Grants Commission letter No.1-93/74(CP) part (V) dated 13th June, 1983 and Notifications No. 1-93/47(CP) dated 19th February 1985 and 26th November, 1985, the University Grants Commission hereby makes the following regulations"

(D) Everybody from the UGC was requesting his counterpart in the State Government or in the University to amend the Statutes. We quote herewith para 1 out of letter (D.O.No. F.4-12/90 (NET) June 3, 1992) written by Prof. G. Ram Reddy Chairman, UGC to Shri Anantrao Thopte, Minister of Education, Technical Education and Rehabilitation, BOMBAY 400 032, which reads:-

"1. The universities must be **persuaded and urged** by the State Government to amend their statutes forthwith requiring appointment of Lecturers through interview only out of the candidates who have passed UGC or State-NET."

(E) Such was the nature of 1991 Regulation which was said to be mandatory. Nobody was there in the field to answer the question as to how it was mandatory when it was not mandatory, and how was it compulsory when it was not compulsory. Total chaos was created and so many litigations were the product of this chaotic conditions.

(F) At the end of this, the entire show of enforcing Regulation which was said to be mandatory but which was not actually a mandatory one reached and was settled in the Supreme Court. In the matter of University of Delhi vs Raj Singh and Others (**AIR 1995 Supreme Court 336**), following is the extract from para 21 of the Judgment delivered on 8.9.1994:-

"21. We now turn to analyse the said Regulations,The first proviso to Cl.2 permits relaxation in the prescribed qualifications by a University provided it is made with the prior approval of the U.G.C. **This is because the said Regulations, made under the provisions of S. 26(1) (e), define the qualifications that are ordinarily and not invariably required of a lecturer..... The provisions of clause 2 of the said Regulations are, therefore, recommendatory in character.....** Yet again, it would be open to the University not to comply with the provisions of clause 2, in which case, in the event that it failed to satisfy the U.G.C. that it had 'done so for good cause, it would lose its grant from the U.G.C..... There is, therefore, no element of selection in the process. The University's autonomy is not entrenched' upon by the said Regulations."

8. Reluctance or the compulsions of the UGC in not using the mandatory powers are noteworthy. Contrary to this, the performance of CCIM is also equally worth noting. It used its powers to make the matters mandatory by issuing 1989 (Amending) Regulations, after completing all formalities and after using powers conferred on it by Section 36 of IMCC Act 1970.

(A) Following is the extract from the letter dated 16.8.1989 addressed by Registrar-cum-Secretary of CCIM to the State Governments and to Registrars of all the Universities :-

"The undersigned is directed to inform you that the Central Council of Indian Medicine in exercise of the powers conferred on it under clauses (i) and (j) of Section 36 of Indian

Medicine Central Council Act, 1970 has revised Schedule I of the Indian Medicine Central Council (Minimum Standards of Education in India Medicines) Regulations, 1986 after consulting all State Governments under Section 22 of IMCC Act, 1970..... The prior sanction of the Central Government under Section 36 of IMCC Act, 1970 has been obtained to the revised regulations of undergraduate courses of Ayurveda.”

(B) 1989 Regulations were duly notified in the Gazette of India, Part III Section 4 dated 5-8-1989 bearing serial No. 31. Enabling powers quoted in the beginning of the Regulation reads:-

“In exercise of the powers conferred by clause (i) and (j) of section 36 of the Indian Medicine Central Council Act, 1970 (48 of 1970), the Central Council of Indian Medicine with the previous sanction of the Central Govt., hereby makes the following regulations further to amend the Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine) Regulations”

(C) Due to the issuance of mandatory Regulations as stated in sub-para (A) & (B) above, the Post of a demonstrator was abolished in one stroke, every demonstrator who was qualified to be a lecturer was upgraded in the same stroke, the posts of Professors were sanctioned and filled in all aided Ayurvedic Colleges. Everybody fell in line, no chaos, no litigation.

9. However, for University and College teachers, in the absence of a mandatory Regulation, even after 2006, the posts of professors in the affiliated colleges under the jurisdiction of UGC are said to have been created but have not actually been created.

10. This game of to be or not to be, in other words, to be mandatory or not to be mandatory continued because of **Love Letter policy** followed during September 1991 to April 2000. In April 2000 UGC issued appropriate Regulation by using appropriate power granted by an appropriate Section of the UGC Act. In 1991 only Clause (e) of subsection (1) of Section 26 of the UGC Act was used. Now in 2000, Clause (g) of Subsection (1) of Section 26 of the UGC Act also was used. Following is the enabling power quoted in the beginning of the 2000 Regulation:-

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

Since that was the Regulation issued after using appropriate power, everybody fell in line. No challenge, no litigation, but this was in respect of NET-SET only. **Not even once in the History of Independent India, the entire proposal recommended by PRC was implemented by mandatory Regulations.**

11. Once the respective PRC report was accepted by the UGC and the final decision was taken by the HRD, the way in which the proposals were communicated by UGC to the States or by HRD to the States represents a total picture of Love Letter writting.

(A) Deputy Secretary, Ministry of Human Resources Development Department of Education writes a letter (No. F-1-21/87 U.I) dated 17th June 1987 to The Education Secretaries of all the States/ U.Ts. regarding “Revision of Pay scales of Teachers in Universities and colleges and other measures for maintenance of standards in Higher Education.” Opening Para of this letter reads:-

“I am directed to say that in fulfillment of the **constitutional responsibility for coordination,**

determination and maintenance of standards in higher education, the Central Government and the University Grants Commission have taken from time to time several measures.”

But in para 5 of the same letter following affectionate message is communicated :-

“The State Governments, after taking local conditions into consideration, may also decide in their discretion to introduce scales of pay different from these mentioned in the scheme, and may give effect to the revised scales of pay from January 1, 1986 or a later date.”

(B) Performance of 1987 was repeated in 1998. Director in Ministry of Human Resource Development : (Department of Education) writes a letter (No.F 1-22/97-U-1) dated 27th July, 1998 to The Education Secretaries, of all States /Union Territories regarding “Revision of pay scales of teachers in Universities and Colleges following the revision of pay scales of Central Government employees on the recommendations of Fifth Central Pay Commission.” Opening Para opens with the following words :-

“I am directed to say that in fulfilment of the constitutional responsibility for **coordination, determination and maintenance of standards in higher education**, the Central Government and the University Grants Commission (UGC) have taken, from time to time, several measures.”

But in Para 3 it was mentioned :-

“The State Governments, after taking local conditions into consideration, may also decide in their discretion, to introduce scales of pay different from those mentioned in the scheme, and may give effect to the revised scales of pay from January 1, 1996, or a later date.”

(C) Lip service was the only service by HRD towards coordination, determination and maintenance of standards in higher education at the time of 4th and the 5th Pay Revision. UGC was also not in a position to give any more service to that end except providing bound volume of compilation of all HRD orders.

12. It would not be out of place to mention here one historical reference. Parliamentary Secretary to the Minister of Education introduced a Bill (The UGC Bill) in Parliament on September 30, 1954 to make provision for the coordination and determination of standards in universities and for that purpose, to establish a University Grants Commission as a statutory body.

(A) Earlier Hon’ble Shri. Maulana Azad introduced the statement of object and reason on September 24, 1954. Following is the extract from that statement:-

“The Constitution of India vests Parliament with **exclusive authority in regard to coordination and determination of the standard in institution for higher education** or research and scientific and technical institutions. It is obvious that neither coordination nor determination of standards is possible unless the central government has some voice in the determination of standards of teaching and examination in universities, both old and new.”

(B) The motion for the reference of the Bill to a joint committee of both the Houses was moved and after its acceptance by both Houses, the first sitting of the Committee was held on April 2, 1955. The Committee considered and adopted the report on July 26, 1955. A very interesting observation is recorded on page 29 of the book “Sixty Years of the University Grants Commission” published by UGC :-

“The Committee was of the opinion that : **University education is a state subject and the states should be responsible for the maintenance of the universities, their constituent and affiliate colleges.** The Centre should not take upon itself any responsibilities in the matter.”

(C) Observations made by the members of the Joint Committee of both the Houses were

appropriate in as much as in 1955 University education was a subject in the State List. The fact that by 42nd Constitution amendment Act, on and from 03.01.1977 the subject was shifted from State List to Concurrent List, was totally ignored and neglected for so many years thereafter. Letters mentioned in para 11 above clearly indicates that position.

13. However, at the time of the report of the Sixth PRC matter was slightly changed. Deputy Secretary, Ministry of Human Resource Development Department of Higher Education, issued a letter (No.1-32/2006-U.II/U.I(i)) dated 31st December, 2008 to the Secretary, University Grants Commission regarding "Scheme of revision of pay of teachers and equivalent cadres in universities and colleges following the revision of pay scales of Central Government employees on the recommendations of the Sixth Central Pay Commission."

(A) Opening Para is as follows :-

"I am directed to say that the Government of India have decided, after taking into consideration the recommendations made by the University Grants Commission (UGC) based on the decisions taken at the meeting of the Commission held on 7-8 October 2008, to revise the pay scales of teachers in the Central Universities. The revision of pay scales of teachers shall be subject to various provisions of the Scheme of revision of pay scales as contained in this letter, and **Regulations to be framed** by the UGC in this behalf in accordance with the Scheme given below. The revised pay scales and other provisions of the Scheme are as under:"

(B) In this letter sub-para (g) of para 8 was as below :-

"(g) Payment of Central assistance for implementing this Scheme is also subject to the condition that **the entire Scheme of revision of pay scales, together with all the conditions to be laid down by the UGC by way of Regulations and other** guidelines shall be implemented by State Governments and Universities and Colleges coming under their jurisdiction as a composite scheme without any modification except in regard to the date of implementation and scales of pay mentioned herein above."

(C) There is slight improvement in the situation reflected by this letter of 31.12.2008 in as much as:-

(i) Traditional Lip service of only mentioning of that phraseology of "constitutional responsibility for coordination, determination and maintenance of standards" was dropped from the opening para.

(ii) In the opening para itself there is an assurance that **Regulation would be framed by UGC**. It is another matter that Regulations incorporating the entire composite scheme were never issued by the UGC.

(iii) The following phraseology used in sub-para (g) of para 8 was consistent with the constitutional obligations and hence comparatively satisfactory. :- "Payment of Central assistance" "entire Scheme of revision of pay scales, together with all the conditions to be **laid down by the UGC by way of Regulations**" "as a composite scheme" "without any

modification"

(D) Now at this stage and in this background, academic community is facing the 7th PRC. We hope and trust that this committee will take into consideration the constitutional framework involved in this exercise.

14. One Judgment by the Apex Court delivered in Civil Appeal No. 1819 of 1994, on 8-9-1994 (AIR 1995 Supreme Court 336) Delhi University & ors vs. Raj Singh & ors proved the hollowness of NET-SET conditionality, in as much as it was declared to be of a recommendatory nature. Another Judgment delivered by the Apex Court on 24th March 1992 in T.P. George & Ors. Vs. State of Kerala & Ors. (1992 SCR (2) 311 1992 SCC Supl. (3) 191) declared that the **age of superannuation prescribed by UGC with the approval of the Government of India is of no use.**

(A) Proven recommendatory nature of NET-SET condition was converted into mandatory condition by using appropriate power granted by the Constitution and the law after a period of six years from the date of the Judgement. In case of an age of superannuation corrective measures are not employed even after a period of 23 years from the date of the Judgment.

(B) After considering the 4th PRC report University Grants Commission scheme for pay revision was prepared by UGC with the approval of MHRD wherein the age of superannuation was prescribed at 60 years. In Kerala, as in other Universities, different superannuation age for teachers of Universities and affiliated colleges was prescribed. When the matter came up before the Kerala High Court in Writ Appeal No. 233 of 1991 the Kerala High Court decided in 1991 as follows:-

"Firstly, as already stated the UGC **Scheme does not become applicable because of any statutory mandate making it obligatory for the Government and the Universities to follow the same.** Therefore the State Government had the discretion either to accept or not to accept the scheme."

(C) When the matter by way of SLP was decided by the Supreme Court of India on 24.03.1992, the Supreme Court held that the High Court was right in holding that the UGC Scheme did not become applicable because of any statutory mandate making it obligatory for the Government and the Universities to follow the same.

(D) The following findings of the High Court were also upheld by the Supreme Court :-

"That is a matter entirely between the State Government on the one hand and the University Grants Commission on the other. Teachers of the private institution concerned are governed by the Statutes framed under the relevant statutory enactment. As long as the superannuation remains fixed at 55 years and as long as the State Government has not accepted the UGC's recommendation to fix the age of superannuation at 60 years, teachers cannot claim as a matter of right that they are entitled to retire on attaining the age of 60 years."

**see to it that the love letter era came to an end and
with that the mockery of a constitutional
mandate regarding the determination
and coordination of standards
in Higher Education
is also brought to an end.**

(See sub Para (D) of Para 16 of this Note)

(E) In this case Supreme Court also made it clear that the adoption of the scheme was voluntary and the only loss to the State Government for not adopting the scheme might be that of a loss of 80 percent of the additional expenditure, in the following words :-

“We may further point out that it is clear from paragraph 4 of the circular dated 17th June, 1987, addressed by the Ministry of Human Resources Development, department of Education, to the Education Secretary of all States/UTs (Union territories) that **the adoption of the scheme was voluntary**, and the only result which might follow from the State Government not adopting the scheme might be that it may not get the benefit of the offer of reimbursement from the Government to the extent of 80 per cent of the additional expenditure involved in giving effect to the revision of pay scales as recommended by the Scheme.”

(F) Actually Supreme Court was not at all in favour of an early retirement at the age of 55 years and that opinion of the court was recorded in the Judgment in the following words :-

“Although the appeals and the writ petitions, in our view, cannot succeed, **we do feel that age of retirement fixed at 55 years in the case of teachers of affiliated colleges is too low. It is only after a teacher acquires several years of teaching experience that he really becomes adept at his job and it is unfortunate if the students have to lose the benefit of his experience** by reason of an unduly early age of retirement.”

(G) At the same time Apex court also recorded the mechanism of prescribing the correct age of retirement and also recorded the hope that in near future it may be corrected. This was stated in the following words :-

“However, it is not for the court to prescribe the correct age of retirement but that is a policy function requiring considerable expertise which can properly be done by the State Government or the State Legislature or the Universities concerned. We hope that some time in near future, the State Government will be able to consider the question and determine the age of retirement as it best thinks fit.”

Unfortunately nobody from Government of India or UGC could bring it to the notice of the Apex Court that the subject “University Education” since long has been shifted from State List to Concurrent List.

(H) For the expression of hope by the Apex Court that the ailment may get corrected in near future, now after a long period of 23-24 years, we feel that the 7th PRC is the nearest future. In both instances (NET-SET & superannuation) fault lies **firstly** in Financial Assistance formula of 80:20 and **secondly** in not using the power of issuing mandatory Regulations.

15. (A) Eventhough that part of the recommendations was not accepted by the HRD, we place on record our full appreciation in respect of the recommendations in that behalf made in the “Report of the Committee to Review the Pay Scales and Service Conditions of University and College Teachers, 2008” i.e. Sixth PRC. Full Text of para 5.5.2, 5.5.3 and para 5.5.4 of the report are as follows:-

“However, keeping in mind the importance of uniform implementation of its recommendations and the past experience about such recommendations, The Pay Review Committee recommends the following :

5.5.2 Full Funding for Five Years : The Pay Review Committee Recommends that the **central government provide hundred per cent assistance** to the state governments towards the additional expenditure involved in implementing the recommendations of the Pay Review Committee in toto as a package uniformly throughout the country. Such assistance should be made available to states for a period of five years.

5.5.3 Additional Assistance on Successful Implementation of the Recommendations Package : The Pay Review Committee recommends further that those states that implement its recommendations fully as a package in toto within a reasonable time frame, may be given additional

assistance to the extent of **fifty percent of the additional expenditure for a further period of five years.** For this, the Pay Review Committee recommends that the University Grants Commission monitor and review the progress of implementation in the fifth year and make a recommendation in this regard to the central government.

5.5.4 Implementation from a Single Date : The Pay Review Committee reiterates that its recommendation be implemented by all universities and colleges in all states fully as a package and not partially. Further, these recommendations should be implemented with effect from a single date, namely, 1.1.2006 and not from any date later than this. However, various allowances except Dearness Allowance shall be admissible with effect from 1.9.2008.”

(B) This Journey taken forward by Sixth PRC towards the implementation of Constitutional provisions of coordination and determination of standards in Higher Education must reach to an appropriate end. Our submission to the Seventh PRC is to see to it that their entire proposal contained in their recommendations is converted and implemented through instrumentality of binding Regulations.

16. Whereas It is true that Since the date of coming into force of the Constitution of India till today, Coordination and determination of standards in institutions for higher education is a subject at Entry 66 in the Union List i.e. List I of Seventh Schedule of the Constitution of India AND;

Whereas It is also true that after 03.01.1977 Education, including technical education, is the Subject at Entry 25 in the Concurrent List i.e. List III of the Seventh Schedule of the Constitution of India AND;

Whereas Further it is also true that using the Constitutional and Regulatory Powers the report of any PRC and the entire pay package recommended by it, was never implemented hereinbefore by the UGC in the form of a mandatory Regulations throughout the nation simultaneously from the same day;

Now therefore, We request the 7th PRC :-

(A) to accept fully and totally the following submission submitted by AIFUCTO :-

“that for uniform implementation of revised UGC scales of pay in all the states simultaneously, the GOI must provide 100 % financial assistance of the additional expenditure to all the states for ten years.”

(B) to consider, accept and recommend the improved version of the form and formula proposed in para 5.5.2, 5.5.3 and 5.5.4 of the Sixth PRC report.

(C) to recommend to the UGC that entire proposal contained in recommendations of the 7th PRC be implemented through the instrumentality of mandatory Regulations.

(D) to see to it that the love letter era came to an end and with that the mockery of a constitutional mandate regarding the determination and coordination of standards in Higher Education is also brought to an end.

SUBMITTED BY

(1) **Prof. B. T. Deshmukh** : Ex-MLC, Founder member of and Ex-President of Maharashtra Federation of University & College Teachers’ Organisations (MFUCTO) and President of Nagpur University Teachers’ Association (NUTA) from 1974 to 2011, Member of Maharashtra Legislative Council from 1980 to 2010, Life member of AIFUCTO, Member of the editorial board of “Teachers Movement” official Journal of AIFUCTO.

(2) **Dr. P.B. Raghuvanshi** : President of Nagpur University Teachers’ Association (NUTA) since 2012 onward, Joint Secretary of Maharashtra Federation of University & College Teachers’ Organisations (MFUCTO), Prof. and Head of the Department of Chemistry Brijlal Biyani Science College, Amravati.

**Memorandum from Maharashtra Federation of University and
College Teachers' Organisations (MFUCTO)
to the 7th Pay Review Committee**

To
The Chairman,
7th UGC Pay Review Committee,
New Delhi

PREAMBLE:

The UGC 7th Pay Review Committee under the chairmanship of Prof V S Chauhan will recommend the revision of pay of academic staff of Central Universities, Colleges and Autonomous Colleges including Deemed Universities whose maintenance expenditure is met by the UGC. The committee is empowered to make recommendations on ways and means for attracting and retaining talented persons in the teaching profession, for their career advancement, for encouraging quality research and in the process improving the quality of higher education.

The MHRD notification on pay scale dated 31st Dec 2008 provided for removal of anomalies of pay scale 1996. The recommendations of the Anomalies committee appointed by UGC were examined and approved by UGC. They still await approval of MHRD. In fact, these anomalies should be removed before recommending the pay scales under the Seventh Pay Commission to prevent further anomalies. In fact, the anomalies of Fifth Pay Commission and Sixth Pay Commission are yet to be fully addressed and needs urgent attention.

We believe that a Pay-revision should bring benefits to all incumbents and future entrants in the profession. The manner in which 6th Pay revision was implemented by the state government of Maharashtra, has led to hundreds of Court cases. Thousands of teachers are battling the anomalies and discrimination caused by decisions of state government in the matters of Pension, Gratuity, Ph.D. Increments, CAS benefits for teachers appointed during 1991-2000, Arrears. In most cases verdicts have gone against the government and some cases are still pending in High Court and Supreme Court. We take this opportunity to draw your attention to the multiple deprivation caused to various sections of teaching community due to unresolved anomalies of 6th Pay revision as well as the serious anomalies caused by the decisions of the state government.

I. ANOMALIES OF 6th PAY REVISION

1. Incentive increments for post-2006 M.Phil./Ph.D.

(a) The UGC had extended the benefit of two advance increments to teachers who acquired Ph.D. during service prior to 1.1.96. These advance increments were payable with effect from 27.7.98. But these increments subsequently merged during the fixation of Rs.14940/-.

(b) The Pre-2006 M.Phil. and Ph.D. holders who did not get the benefit of incentive increments in the 1996 pay revision are denied the incentive increment even in the 2006 pay revision.

(c) The Senior Ph.D. holders also suffered from stagnation in the Selection grade for 2-3 years prior to 6th Pay- revision.

(d) The Ph.D/ M.Phil. incentive increments were granted only from 1-9-2008. Due to this, those who got Ph.D. between 1-1-2006 and 31-8-2008 were given the incentive increments only from 1-9-2008, resulting in a huge loss for them.

(e) The above situation resulted in multiple anomalies and led to :

> Juniors getting more pay than the Seniors (X1 compared to Y)

> Substantial difference in pay within the peer group (A compared with B, X2 compared with Y)

> Consequential lower levels of Pension

Teacher	Appointed on	Ph.D. awarded on	6th Pay Basic as on 01/01/2006	Basic Pay on 01/12/2010
A	June 1980	19.9.1989	43,390 +9000	48260+9000 (Retired on 31.1.2009)
B	June 1980	20.4.2006	40890+9000	50440+9000 (on 31.1.2009)
X 1	14-09-1982	20-12-1995	40890+ 9000	50280+9000
X 2	29-07-1986	20-11-1987	38530+ 9000	46120+9000
Y	01-09-1986	01-07-2007	38530+ 9000	51080+9000

**MAHARASHTRA FEDERATION OF UNIVERSITY & COLLEGE
TEACHER'S ORGANISATION**

University Club House, B-Road, Churchgate, Mumbai 400 020

1. Prof. Dr. Tapati Mukhopadhyay, President

2. Prof. Dr. S.P. Lawande, General Secretary

20th Oct 2016

**To
The Chairman,
7th UGC Pay Review Committee,
New Delhi
Respected Sir,**

We on behalf of the Maharashtra Federation on University and College Teachers' Organization (MFUCTO), take this opportunity to present our views before the 7th pay review committee with regard to the pay scales and service conditions of teachers working in 11 Non Agricultural universities in Maharashtra.

We request that the committee to please look into the points highlighted by MFUCTO and incorporate the relevant part in their report. We also hope that this Committee would bring out attractive and comprehensive recommendation of

package of pay scales and service conditions to all the teachers working in colleges and university Departments in India and would remove the existing anomalies continuing in Maharashtra since the last pay fixation.

We hope and pray that the committee would also give honorable and dignified recommendations for the contractual teachers. This will help to retain the young talent in the field of Higher Education.

Thank you.

Yours Sincerely

Prof. Dr. Tapati Mukhopadhyay
(President)

Prof. Dr. S.P. Lawande
(General Secretary)

2. (i) Anomaly due to no minimum in Pay Band at AGP 7000 and AGP 8000.

	Teacher A	Teacher B	Government Employee
First Promotion	28-12-2005	02-01-2006	02-01-2006
Basic Pay			
27-12-05	9100	9100	9100
28-12-05	10000	9100	9100
1-01-06	1.86x10000 + 7000=25600	1.86x9100 + 6000=22930	1.86x9100 + 5400=22330
02-01-06	25600	22930+690 +1000=24620	18750+6600 +670=26020

Teachers A and B were ahead/at same level of Government employee on 1-1-2006 but fell behind after promotion. Similar is the case with AGP 8000 also.

(ii) Anomaly in the case of Associate Professors

	Government Employee	Teacher
GP/AGP	8700	9000
Minimum Pay in PB	37400	40200
BP at the entry	46100	49100

Teachers were at higher AGP 9000 but no commensurate higher minimum pay in Pay Band. Instead they were given the same minimum pay as for GP 8700. If this anomaly is not rectified, teachers may be downgraded to GP 8700 (i.e level 13 in the Pay matrix of VII CPC)

(iii) Dual emoluments for Professors at AGP 10000.

Government Employees	Professors	Professors
GP/	AGP	
10000	10000	10000
	(Direct Recruitment)	(Promoted)
Minimum Pay in PB 43000	43000	Not given

3. In the case of DPEs and Librarians there was no provision for the incentive increments for acquiring M.Phil. and Ph.D. in 1996 Scheme and they could not get the same. But for those who acquire after 2006 got the incentive increments. This is a serious anomaly.

4. No remission in workload is given to heads of departments, Post-graduate teachers and Ph.D. supervisors in colleges

5. Injustice is caused to those Associate Professors in colleges who were eligible to be promoted as Professors in the 10% quota but retired prior to 1st July 2010 and did not get the opportunity to compete for the Professors' posts.

6. The recent decision of the UGC to allow only regular teachers to be research supervisors is a regressive step as it excludes the pool of research supervisors who are working in re-employed capacity or retired teachers who are willing to continue research in post-retirement period. In the past, eminent teachers continued to be research supervisors many years after retirement. Such regulations need to be amended.

7. Anomaly is created by Unification of increment date on 1st July, whereby those whose date of appointment/promotion falls between 2nd January and 30th June are deprived of one

increment.

II. REVISION OF PAY STRUCTURE:

In this section our submissions are identical to **SUGGESTIONS REGARDING REVISION OF PAY SCALES & RELATED ISSUES with reference to TOR (II)** (pages 3-9) submitted by All India Federation of University and College Teachers' Organisations (AIFUCTO) in their representation dated 21-09-2016 (Copy attached)

III. PENSIONERS' ISSUES

In this section too we reiterate the position of AIFUCTO as included in their submission

- Presently there is a lot of discrepancy in the pension of the pre and post 2006 retirees in spite of the fact that these pensioners have the same length of service and same qualification. To rectify this, weightage equivalent to the number of increments one had earned in the existing scale should be given in the revised pay Matrix i.e OROP should be ensured.

- In its judgment in D.S. Nakara and others Vs Union of India (AID 1983 SC130) the Supreme Court held that a pension Scheme must provide that a pensioner would be able to live free from want, with decency, independence and Self-respect and Standard equivalent at the pre-retirement level and also held that the pension is not an ex-gratia payment but payment for past services rendered. The Supreme Court Judgment in Vasant Gangaram Sathandan Vs State of Maharashtra & others (1996 10SSc 148) case also reiterated the same. These judgments greatly support our demand for Defined Pension Scheme for post 1-1-2004 appointees. The NPS will not serve the purpose. Hence NPS should be scrapped. Defined Pension Scheme should be restored to post 1-1-2004 appointees also.

- The Commutation period should be reduced from 15 years to 12 years. For a commuted amount of Rs.10000/- an employee gets a commutation amount of Rs.10 Lacs. But he/she repay an amount of 18 lacs in the course of 15 years, which is more than a Bank Loan repayment. When the commutation factor was reduced in 2006, the commutation period has not been reduced.

- The Minimum Pension should be fixed at Rs.13,000/- (50% of Rs.26000/- as demanded by the Unions).

- The upper limit of Gratuity should be increased by Rs. 1 Lakh every year. The present system of increasing it once in 10 years or 25% increase when DA rises by 50% (7th CPC) is detrimental to the employees, particularly for those who retire just before the raise.

- Additional pension of 15% should be granted every 5 years starting from the age of 65 years subject to the maximum of 100%.

- Pension should be exempted from Income Tax since the ability to repay tax gets reduced as one gets older and older.

- Pensioners should be assured of cashless treatment in Hospitals near to their places of living. Further to meet the regular medical expenses, a fixed medical allowance of Rs.1000/ per month should be paid.

- Revision of pension should be based on length of service and not on the basis of designation as the designation changes in every pay revision.

IV. STATUS OF IMPEMENTATION OF 6TH PAY REVISION IN MAHARASHTRA

1. ARREARS: All Arrears were paid to University teachers and teachers from Arts, Science, Commerce and Education colleges after two major protracted struggles in 2012 and 2013, followed by an Order of the Bombay High Court. But three categories of teachers remained left out and deprived. These are :

• Part time teachers with long years of service

• non-NET/SLET teachers appointed during September 1991 to March 2000, on regular basis as per then existing statutes in the universities in Maharashtra

• Teachers from Ayurvedic colleges.

In many aided technical colleges all arrears are not paid. Most of self-financing colleges have not given arrears to their faculty. Some of the Social work colleges have not received arrears. The total number of teachers who have remained deprived of 6th Pay Arrears in Maharashtra is more than 15,000.

2. ALLOWANCES : As per 6th Pay Commission, existing rates of most of the allowances, including HRA for non-A1 cities were increased and the uniform date of implementation of all allowances was fixed as 01/09/2008. The recommendation of Chadha committee to extend the same rates of allowances to teachers as Central government employees was accepted by the MHRD. However, the state government has revised the allowances in a subjective manner with effect from arbitrarily decided different cut-off dates for different allowances as shown below:

(a) **House Rent Allowance (HRA)** as per recommendations of 6th Central Pay Commission was revised in Maharashtra from 1.09.2009 and until then the HRA was computed as per old rates on the basis of unrevised pay.

New Category of cities:	X	Y	Z	w.e.f.
As per UGC	30%	20%	10%	1/9/2008
As per State (Old Rates)	30%	15%	7.5% & 5%	-----
As per State (New Rates)	30%	20%	10%	1/8/2009

The decision of the state government has resulted in monthly loss of up to Rs. 10000 per month for a period of 11 months (1/9/2008 to 31/7/2009)

(b) **Travelling allowance (TA) revised under 6th Pay scheme for Grade Pay Rs. 5400 and above :**

	A1/A cities	Others	w.e.f.
As per UGC	Rs. 3200+ DA thereon	Rs.1600+ DA thereon	1/9/2008
As per State	Rs.1600	Rs.800	1/4/2010

The above has resulted in more than 50% loss in TA for a period of 19 months. Not granting the D.A component on TA has defeated the purpose of 6th Central pay commission of making the allowance inflation- proof.

(c) Compensatory Local allowance (CLA) is not revised.

(d) Special Compensatory Allowances, Children's Education Allowance, Transport Allowance etc. are not given.

(e) The recommended uniform date of implementation of all allowances as per 6th pay viz. 01/09/2008 is violated by the state government. This has severely affected the total revised pay and arrears of the teachers, especially those who retired prior to August 2009

3. MULTIPLE LOSS OF SENIOR TEACHERS:

(i) Stagnation increments were not given to senior teachers before fixation in 6th Pay.

(ii) Two increments for those Lecturers with Ph.D. who moved into Selection Grade as Reader was not implemented.

(iii) The Pre-2006 M.Phil. and Ph.D. holders did not get the benefit of incentive increments in the 2006 pay revision.

(iv) Rectification of Junior getting more pay than seniors is done only within the college and not within the university. Thus stepping up does not benefit those seniors who are drawing less than juniors within the jurisdiction of the same University.

4. AGE OF RETIREMENT: The MHRD had accepted the recommendation of the Chadha Commission to enhance the superannuation age of all University and College teachers to 65 years without any distinction. However, the age of retirement for university and college teachers in the State is 60 and for Principals it is 65. By a GR issued in 2011, the age of retirement for Principals was made 62. Provision was made to extend the retirement age of Principals from 62 to 65 and of teachers from 60 to 62 subject to fulfilment of certain conditions. The provision for extension of teachers' retirement age was recently withdrawn

by a GR on 12th July 2016, while there is no change in the extension granted to Principals.

The imposition of arbitrary conditions, the non-transparent manner of giving the benefit to some and depriving others and then unilateral withdrawal of the provision for extension to teachers has led to several litigations in the High Court.

5. PROFESSORS' POSTS: Ten percent Professors' posts were created in colleges but not filled in most of institutions e.g. among the 180 aided colleges affiliated to University of Mumbai, only one or two institutions have appointed Professors till date.

6. NON-IMPLEMENTATION OF LEAVE PACKAGE:

a. The Leave package as notified by MHRD was not implemented in 5th and 6th Pay-revisions.

b. There are no Earned leaves, Study leave, Sabbatical leave and Child care leave. Some universities extend sabbatical leave to university teachers by statutes.

c. Non-appointment of regular faculty has increased the overall workload of teachers. Simultaneously, holding of multiple examinations in vacation, due to Semester system, has become a regular feature. This has effectively reduced the vacation period. In this situation, the non-implementation of leave package has severely affected research work of college teachers.

d. The Faculty Improvement Programme (FIP) leave, meant for up to three years, is now available for barely one year with college managements refusing to relieve the research scholar in the absence of qualified substitute teachers.

7. Teachers who reached Selection grade during 1.1.2009 and 30.6.2010 are not treated as incumbents for promotion to PB 4. They are deprived of the benefit extended by MHRD clarification dated 26 August 2010.

8. PENSION/ GRATUITY ANOMALIES IN MAHARASHTRA

(i) The Government of Maharashtra implemented 6th Pay revision for its employees vide GR dated 27/02/2009 as per recommendations of State Pay Revision Committee appointed under Chairmanship of Shri P. M. A. Hakim. In the matter of revision of Pension, Govt. accepted the revised formula for Pension, i.e. 20 years of service as qualifying service and pension as 50% of last pay drawn, prospectively (from the date of the GR). The ceiling of gratuity was raised from Rs.5 lakhs to Rs.7 lakhs as per Hakim Committee recommendation, but the same was made effective from 1.9.2009. These revised provisions of Pension and Gratuity were made applicable to University and College teachers too.

(ii) Teachers who retired between 1.1.2006 and 31.8.2009 received Gratuity of Rs.5 lakhs and those who retired on or after 1.9.2009 received the enhanced gratuity of Rs.7 lakhs. After a long tortuous legal battle by retired teachers, the government had to rectify its decision when its curative petition was dismissed in Supreme Court in August 2014. Thus, those in the above class of retired teachers started receiving the balance amount of Rs.2 lakhs as late as last year and many still await receipt of this amount.

(iii) The Supreme Court Order in case of V. Kasturi v. Managing Director, SBI, Bombay ((1998) 8 SCC 30), has clearly projected the following legal position.

"If the person retiring is eligible for pension at the time of his retirement and if he survives till the time of subsequent amendment of the relevant pension scheme, he would become eligible to get enhanced pension or would become eligible to get more pension as per the new formula of computation of pension subsequently brought into force, he would be entitled to get the benefit of the amended pension provision from the date of such order as he would be a member of the very same class of pensioners when the additional benefit is being conferred on all of them. ..."

(iv) Benefits of minimum qualifying service of 20 years for getting full pension and pensionable benefits as per 6th Pay revision are extended to the employees as well as university

and college teachers who retired on or after 27.2.2009. In a classic case of treating “equals as unequals”, the revised provision was denied to those who retired between 1.1.2006 to 26.10.2009.

Teacher	Date of Retirement	Years of Service	Basic Pension as per 5th Pay formula*	Basic Pension as per revised formula	Monthly loss in Basic Pension on Date of retirement
A	31.12.2009	33 years	29,490 (Last Pay =58,980)	29,490	Nil
X	31.01.2009	28 years 7 months	24,730 (Last Pay =57,260)	28,630	3900
Y	31.12.2008	25 years 5 months	19,850	25775	5920
Z	30.11.2006	24 years	13,300	18285	4985
Pay of X differs from A by one increment but Basic Pension differs by Rs.4760 – with DA added, the difference becomes more than Rs.9000 per month					

This discrimination has caused monthly loss of at least Rs 10,000 in monthly pension with subsequent rise in DA and has led to multiple litigations. The government has lost in the High Court and is now facing contempt of court.

v) In the case of pre-2006 retirees, the principle of modified parity, accepted by the Central Government provides that revised pension w.e.f 1.1.2006 in no case shall be lower than 50% of the sum of the minimum of the pay in the pay band and grade pay corresponding to revised pay scale, as per the fitment table, from which the pensioner had retired (Government of India Order dated 01.09.2008, subsequently revised by Order dated 30/7/2015). This is not implemented by the state government.

9. Vacant Posts:

- Only 50% of vacancies in aided colleges are allowed to be filled by the state government. Moreover, the posts are on the basis of 1998 staff justification and thus the required number of posts to be filled is much more than 50%.

- The posts are either kept vacant or filled on contractual/ Clock-hour basis for which no grant is sanctioned. In self-financing colleges/ courses, almost all posts are filled on contractual basis. This situation is affecting the quality of higher education.

10. There is delay in approving Rosters of institutions. Thereby, both, timely regular recruitment and proper implementation of reservation policy are adversely affected.

11. Period of probation continues to be 2 years in several universities.

12. CAREER ADVANCEMENT SCHEME UNDER API SYSTEM

(a) The Academic Performance Indicators (API) scheme for Career Advancement of teachers under 6th Pay regulations was introduced by the UGC in June 2010. The government of Maharashtra implemented it with retrospective effect from 1.1.2009. The experience is that the API scheme lacks objectivity and is not feasible. As a result, most teachers are being deprived of promotions under CAS since 2009. The following difficulties that are being encountered not only make the API scheme unrealistic but also not conducive for furtherance of research:

- > Very few teachers get opportunity to teach post-graduate courses and very few are given Research Guideship for Ph.D./ M.Phil.

- > Limited number of teachers are given Minor research projects and only a handful teachers per University get Major research projects by UGC.

- > It is not possible for every teacher to get leave for

participating in National/ State level seminars/ conferences given the heavy load of Teaching and Examination duties.

- > Teachers are compelled to score points under every head of research in a shallow manner. Thus holistic and focused research is discouraged.

- > Teaching and learning activities are being relegated to the background

- > Handful of teachers get the opportunity of contributing to Extension activities NCC/NSS or to the Corporate life of the institution.

- > In the absence of a quality assessment mechanism specified by the UGC distinction between Refereed and Non-refereed is not meaningful.

- > Similarly, distinction between International and National publishers is not practicable.

- > This scheme has led to mushrooming of journals of dubious qualities

b) On account of above constraints, the unrealistic API scheme is creating hurdles for the career advancement and promotion prospects of teachers. The PBAS of UGC regulations 2000 for CAS is satisfactory as this takes care of all requirements and has worked well since 1987 with minor modifications. It should be continued and API scheme should be scrapped

V. (1) CONTRACTUAL TEACHERS/ GUEST FACULTY/ CLOCKHOUR FACULTY

- The phenomenon of appointing teachers on contractual/ ad-hoc basis in the higher educational institutions in Maharashtra began in 1996 when the state government brought a ban on recruitment of lecturers. Initially such teachers were primarily appointed in self-financing institutions such as private Engineering colleges. With the introduction of self-financing courses in aided institutions, it became a norm to appoint full-time lecturers on contract/ ad-hoc basis even though no such provision exists in the Universities' ACT. Subsequently contractual appointments began to be made in aided colleges. At present their proportion in the teaching staff of aided institutions is nearly 50%. Overall, their proportion across universities in Maharashtra is more than 60% severely compromising the quality of education imparted in the institutions.

- It has been observed that for full-time work-load contractual teachers are paid a consolidated salary or clock-hour basis (CHB) remuneration @ Rs.300 per hour. While in government colleges and University departments the monthly remuneration for contractual teachers varies from Rs. 24000 to Rs. 29000, in most colleges the same varies from Rs 6000 to Rs. 18,000 pm. Many of these teachers have worked for several years and many are Paper setters/ Examiners/ Moderators and even Chairpersons of Examination in their respective subjects. They suffer from deprivation of all statutory service conditions such as security of service, increments, allowances, leaves, vacation salary, Career Advancement, PF, terminal benefits etc.

- *Full-time contractual teachers should be paid not less than the minimum consolidated salary of a regular teacher at entry point. The fully qualified contractual teachers should be absorbed as regular faculty and Regulations should be prescribed for their absorption.*

(2) SELF-FINANCING COLLEGES/ COURSES

- The self-financing institutions are run in an unregulated manner. Though the managements agree to follow all statutory norms and UGC pay scales/ terminal benefits/allowances to teachers at the time of getting affiliation, in most cases these norms are violated. The private Engineering colleges were allowed by the state government to implement 5th Pay scheme w.e.f. June 2000, thereby depriving the faculty of 54 months' arrears. The 6th Pay implementation has taken place in an arbitrary manner. Several institutions are still paying scales/ allowances as per 5th Pay scheme. Most of the institutions do not extend PF and other terminal benefits

- Teachers in self-financing institutions are denied any support for pursuing research. In the absence of sponsorship, most of the teachers engaged in Ph.D. work have to take leave for 1-2 years without pay. It is urged that the 7th UGC Pay Review Committee should give concrete recommendations to

ensure proper service conditions for teachers working in unaided institutions.

VI. GENERAL

1. UNIFORM IMPLEMENTATION FOR BENEFITS TO ALL:

(a) For uniform implementation of UGC scales of pay throughout India, the GOI should provide 100% financial assistance of the additional expenditure to the states for 10 years. Our rationale for this demand arises from the following:

> *Since the commencement of the Constitution of India till today, "Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions." was a subject at Entry 66 in the Union List i.e. List I of Seventh Schedule of the Constitution of India. At the same time, till 03.01.1977 "Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour." was the Subject at Entry 11 in the State List i.e. List II. By 42nd Constitution Amendment Act 1976, Entry 11 was shifted from List II to Entry 25 in the Concurrent List i.e. List III of the Seventh Schedule of the Constitution of India.*

> *During this period, the UGC Act had come into force with effect from 1956 and it essentially intended to make provisions for the coordination and determination of standards in universities which was squarely covered under entry 66 of List I.*

> *Under the provisions of the UGC Act the mechanism of 80:20 Financial Central Assistance came into force with a view to maintain the standards of higher education and that formula of 80:20 remained in force even after the constitutional provisions have undergone a sea change. Now we propose that in accordance with the powers conferred on Government of India by Entry 66 of the Union List and by Entry 25 of the Concurrent List and in view of the powers further delegated, by the UGC Act to UGC, of making mandatory regulations in that behalf; this power must be accompanied by a commensurate responsibility of providing 100% Financial Assistance*

(b) Unlike in the last revision, salary arrears should be dispersed without delay and in one instalment while implementing the 7th UGC pay revision scheme. (c) All recommended allowances, incentives and Pension benefits should be implemented from the same date as implementation of revised pay. (d) Teachers who retired between 1.1.2006 and 27.2.2009 should be given the same benefits as per recommendations of 6th Pay commission. (e) The pre-2006 Pensioners be given the same benefits as given to the Pensioners by the Government of India Order dated 6th April 2016. (f) All existing vacancies in Colleges and Universities be filled immediately prior to implementation of 7th Pay revision. (g) Contractual/ Ad hoc teachers who have worked for more than two years as on 1.1.2016 should be absorbed as regular faculty through proper statutory procedure and their service be counted for all purposes. (h) The age of superannuation should be, uniformly and unconditionally, 65 years for all university and college teachers and Principals. (i) It is imperative that UGC prescribed pay scales be made legal right of each and every teacher working in the university system across all institutions including self-financing institutions and private universities.

2. The Defined Contribution Pension Scheme – DCPS is made applicable to those recruited on or after 1.11.2005. Defined Pension Scheme should be restored to post 1-11-2005 appointees.

3. INCENTIVES FOR RESEARCH:

(i) All the pre-2006 M.Phil. and Ph.D. Holders (including DPEs and Librarians) should be given one and three increments respectively on 1.1.2006 in the 6th Pay scheme before fixing their pay/pension in 7th Pay. (ii) The benefit of incentive increments to those who acquired M.Phil./Ph.D. between 1.1.2006 and 31.7.2008 should be given from the date of award. (iii) Incentive increment should be granted to Ph.D. holders in the concerned/ allied/relevant/interdisciplinary subjects. The condition of only concerned subject shall be removed. (iv) Similarly, recruitment eligibility/ recognition as Ph.D. supervisor also be given to Ph.D. in concerned/allied/relevant/

interdisciplinary subjects. (v) Study leave/ Sabbatical Leave/ Academic leave should be granted to the Teachers to pursue their research programmes/ write books. Such period should be counted for increment, CAS, pensionary benefits etc.

4. Parity for DPEs and Librarians: Total parity not only in pay but also in allowances, CAS, incentive increments for Ph.D./ M.Phil, terminal benefits, Age of retirement etc. of DPEs and Librarians should be maintained on par with teachers.

5. Academic standards: To maintain academic standards and to promote quality education for all students without discrimination, the following should be mandatory:

(a) No compromise with the requirement of minimum 180 teaching days. (b) Strict conformity with the academic calendar and efficient Examination management. (c) Strict conformity with the student teacher ratio – Creation of more posts (d) Filling up of all vacancies prior to commencement of academic year.

6. The probation period shall be one year.

7. The time limit for completion of RC/OC/STC for CAS be extended and adequate opportunities to undergo these courses be provided to all needy junior teachers.

8. The anomaly created by Unification of increment date on 1st July may be rectified by giving an advance increment to all teachers whose stage of increment/promotion falls between 2nd January and 30th June.

9. The College and University teachers should get the benefit of five (05) promotions in their career like their counterparts in civil service.

10. All ad hoc, contractual, part-time teachers should get salary for the period of vacation as a matter of right. Any break including extended break due to examination or admission activity should be considered as notional break only and shall not be the basis for denial of any legitimate dues.

To conclude we summarise our submissions as below:

(A) The removal of anomalies of 6th Pay-revision should be given serious consideration by the 7th UGC PRC in its recommendations. Particular attention is required for removing the severe discrimination caused due to denial of incentive increments for pre -2006 M.Phil./Ph.D. holders.

(B) The approach of previous PRCs to grant higher AGP/ grades vis-à-vis Central service needs to be carried forward

(C) Defined Pension scheme should be restored to post 1-11-2005 appointees also.

(D) Deprivation and discrimination has been caused to various sections of teachers in Maharashtra due to anomalies in implementation of different provisions of Pay-revision such as Pension, Gratuity, Arrears, Allowances, Age of Retirement, increments etc. by the state government. This has led to huge number of litigations. Recommendations be made to state government to rectify these anomalies.

(E) All Vacant posts be filled on an urgent basis.

(F) Full-time contractual teachers should be paid not less than the minimum consolidated salary of a regular teacher at entry point. The fully qualified contractual teachers should be absorbed as regular faculty and Regulations should be prescribed for their absorption.

(G) Concrete recommendations be given to ensure proper service conditions for teachers working in self-financing institutions

(H) Total parity in pay, allowances, CAS, incentive increments for Ph.D./ M.Phil., terminal benefits, Age of retirement etc. of DPEs and Librarians should be maintained on par with teachers.

(I) API should be scrapped to ensure smooth promotion for all.

(J) For uniform implementation of UGC scales of pay throughout India, the GOI should provide 100% financial assistance of the additional expenditure to the states for 10 years.

Thanking you

Yours sincerely

Dr. Tapati Mukhopadhyay
President

Dr. S. P. Lawande
General Secretary

M.F.U.C.T.O

कालबद्ध पदोन्नती/सेवांतर्गत आश्वासित प्रगती योजना/सुधारित सेवांतर्गत आश्वासित प्रगती योजनेच्या प्रयोजनासाठी तात्पुरती सेवा देखील विचारात घेणेबाबत

महाराष्ट्र शासन : वित्त विभाग

शासन निर्णय क्रमांक : मप्रन्या-२०१२/प्र.क्र.६९/२०१२/सेवा-३
खो.क्र.३३५ (विस्तार), तिसरा मजला, मंत्रालय, मादाम कामा मार्ग, हुतात्मा
राजगुरु चौक, मुंबई-४०० ०३२.

तारीख : ७ ऑक्टोबर, २०१६.

वाचा :- (१) शासन निर्णय क्रमांक : सामान्य प्रशासन विभाग, क्र. एसआरव्ही-१०.९५/प्र.क्र.१/९५/वारा, दिनांक ८ जून १९९५. (२) शासन निर्णय क्रमांक : वित्त विभाग, क्र. वेतन ११९९/प्र.क्र.२/९९/सेवा-३, दिनांक २० जुलै, २००१. (३) शासन निर्णय क्रमांक : वित्त विभाग, क्र. वेतन ११०९/प्र.क्र.४४/सेवा-३, दिनांक १ एप्रिल, २०१०. (४) शासन निर्णय क्रमांक : वित्त विभाग, क्र. वेतन ११०९/प्र.क्र.४१/सेवा-३, दिनांक ५ जुलै, २०१०. (५) शासन निर्णय क्रमांक : वित्त विभाग, क्र. वेतन ११११/प्र.क्र.८/सेवा-३, दिनांक १ जुलै, २०११. (६) मा. सर्वोच्च न्यायालयातील विशेष अनुमती याचिका क्र. १४०७०/२०१२; CC १७९२७-१७९३०/२०१२ मधील दिनांक २८.९.२०१२ रोजीचे आदेश

प्रस्तावना :- महाराष्ट्र लोकसेवा आयोगाच्या कक्षेतील मंत्रालय तसेच बृहन्मुंबईतील राज्य शासनाच्या कार्यालयातील लिपिक वर्गीय, लघुलेखक संवर्गातील तसेच अन्य तत्सम संवर्गातील पदावर तात्पुरत्या स्वरूपात आयोगाच्या शिफारशीशिवाय नियुक्त झालेल्या कर्मचाऱ्यांच्या सेवा सामान्य प्रशासन विभागाच्या सामाईक आदेशाद्वारे आदेशाच्या दिनांकापासून नियमित झाल्या असल्यातरी त्यांच्या नियमित सेवेची १२ वर्षांची गणना करतांना संबंधितांची तात्पुरती अखंडित सेवा देखील नियमित सेवेस जोडून त्यांच्या १२ वर्षांच्या नियमित सेवेची गणना करावी किंवा कसे? त्याशिवाय आयोग पुरस्कृत उमेदवार म्हणून उपरोक्त पदावर नियमितरित्या नियुक्त झालेल्या कर्मचाऱ्यांना तात्पुरती पदोन्नती मिळाल्यानंतर झालेली पदोन्नतीच्या पदावरील तात्पुरती अखंडित सेवादेखील १२ वर्षांच्या नियमित सेवेची गणना करतांना विचारात घ्यावी किंवा कसे? याबाबतचा प्रस्ताव काही काळ शासनाच्या विचाराधीन होता. सदर प्रकरणी सर्वकष विचार करून पुढीलप्रमाणे शासन निर्णय निर्गमित करण्यात येत आहे.

शासन निर्णय :- महाराष्ट्र लोकसेवा आयोगाच्या कक्षेतील मंत्रालयातील तसेच बृहन्मुंबईतील राज्य शासकीय कार्यालयात लिपिकवर्गीय संवर्ग तसेच अन्य संवर्गात महाराष्ट्र लोकसेवा आयोग अपुरस्कृत उमेदवार म्हणून नियुक्त झालेल्या व सामान्य प्रशासन विभागाच्या विविध शासन आदेशान्वये दिनांक ३१.३.१९९९ पर्यंत सेवा नियमित केलेल्या कर्मचाऱ्यांची, सेवा नियमित झाल्याच्या दिनांकापूर्वीची, तात्पुरती अखंडित सेवा, तसेच महाराष्ट्र लोकसेवा आयोग पुरस्कृत उमेदवार म्हणून मंत्रालय तसेच बृहन्मुंबईतील राज्य शासकीय कार्यालयात लिपिक संवर्गात

अथवा अन्य तत्सम संवर्गात नियुक्त झालेल्या कर्मचाऱ्यांची पदोन्नतीच्या कोट्यातील तात्पुरत्या पदोन्नतीची अखंडित सेवा देखील कालबद्ध पदोन्नती/सेवांतर्गत आश्वासित प्रगती योजना/सुधारित सेवांतर्गत आश्वासित प्रगती योजनेच्या प्रयोजनासाठी १२ वर्षांच्या नियमित सेवेची गणना करतांना विचारात घेण्यात यावी. तसेच संबंधित कर्मचाऱ्यांकडून संबंधित योजनेबाबतच्या अन्य अटीची पूर्तता झाल्यानंतर त्यांना अनुज्ञेय योजनेंतर्गत यथास्थिती कालबद्ध पदोन्नती/सेवांतर्गत आश्वासित प्रगती योजना/सुधारित योजना/सुधारित सेवांतर्गत आश्वासित प्रगती योजनेचा पहिला/दुसरा लाभ मंजूर करण्यात यावा.

संबंधित कर्मचाऱ्यांना अनुज्ञेय ठरणारा पहिला लाभ हा त्यांनी यापूर्वी घेतलेल्या पहिल्या लाभाच्या रकमेशी समायोजित करून (Readjust) संबंधितास फरकाची रक्कम अनुज्ञेय ठरेल, तसेच पहिला लाभ मंजूरीच्या तारखेपासून १२ वर्षांची सलग सेवा पूर्ण झाल्यानंतर आवश्यक अटीची पूर्तता केल्यानंतर संबंधितास सुधारित सेवांतर्गत आश्वासित प्रगती योजनेचा दुसरा लाभ मंजूर करता येईल. तथापि या ही ठिकाणी ज्यांना दुसरा लाभ यापूर्वीच मिळालेला आहे, त्यांचा सदर लाभाची रक्कम सुधारित दुसऱ्या लाभाशी समायोजित करून (Readjust) संबंधितास फरकाची रक्कम अनुज्ञेय ठरेल तसेच अशा प्रकारे सुधारित दराने लाभ मंजूर झाल्यानंतर, निवृत्तीवेतन धारकाच्या/नजीकच्या काळात निवृत्त होणाऱ्या कर्मचाऱ्यांच्या निवृत्तीवेतन, उपदान, रजा रोखीकरण यांच्या रकमांची पुन्हा परिगणना करून त्यांना सुधारित दराने निवृत्तीवेतन विषयक लाभ मंजूर करण्यात यावेत.

संबंधित कर्मचाऱ्यांना त्यांच्या तात्पुरत्या सेवेचा लाभ फक्त अकार्यात्मक वेतनश्रेणीच्या प्रयोजनासाठी अनुज्ञेय राहिल.

हे आदेश मा. सर्वोच्च न्यायालयात दाखल करण्यात आलेली विशेष अनुमती याचिका क्र. १४०७०/२०१२; CC १७९२७-१७९३०/२०१२ (याचिका क्र. ९९६२/२०१० मधील ६.२.२०१२ च्या आदेशाविरुद्ध) मध्ये मा. सर्वोच्च न्यायालयाने दिलेले दिनांक २८.९.२०१२ रोजीचे आदेश तसेच याचिका क्र. ९०५१/२०१३ व इतर संलग्न याचिकांमध्ये मा. उच्च न्यायालय, मुंबई यांनी दिनांक २८.४.२०१६ रोजी दिलेले आदेश, तसेच विधी व न्याय विभागाच्या अनौपचारिक संदर्भ क्र. ५३४-२०१६/ई, दिनांक ४.७.२०१६ अन्वये प्राप्त झालेल्या त्या विभागाच्या सहमतीने निर्गमित करण्यात येत आहेत.

सदर शासन निर्णय महाराष्ट्र शासनाच्या www.maharashtra.gov.in या संकेतस्थळावर उपलब्ध करण्यात आला असून त्याचा संकेतांक २०१६१००७१६४८०७६७०५ असा आहे. हा आदेश डिजिटल स्वाक्षरीने साक्षात्कृत करून काढण्यात येत आहे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने.

(श्री. दे. लॉडे) अवर सचिव, महाराष्ट्र शासन

Maharashtra Federation of University and College Teachers' Organisations (MFUCTO)

REPORT

OF MEETING WITH UGC 7TH PAY REVIEW COMMITTEE HELD ON 20.10.2016 FOR WESTERN ZONE

UGC's 7th Pay Review Committee (PRC) headed by Prof. V.S. Chauhan, conducted their meeting for the western region on 20.10.2016. The consultation meeting was held at the IUCAA campus, Pune with the representatives from the various universities in the western region encompassing Gujrat, Maharashtra, Goa and Telengana.

2. A five-member delegation of MFUCTO, consisting of Dr. Tapati Mukhopadhyay, Dr. S.P. Lawande, Dr. Pravin Raghuvanshi, Dr. Madhu Paranjape and Prof. B. T. Deshmukh was present. At the outset, the representatives of MFUCTO have submitted a "Memorandum from Maharashtra Federation of University and College Teachers' Organisations (MFUCTO) to the 7th Pay Review Committee". Subsequently, a presentation was made by the President of MFUCTO, Dr. Tapati Mukhopadhyay, where the following points were highlighted: (A) Severe anomalies arising out of implementation of 6 th Pay revision, in general and by government of Maharashtra resulting in injustice to thousands of teachers. (B) Difficulties faced by teachers in carrying out research work and lack of support from UGC. (C) Problems arising out of large number (more than 50%) of vacant posts. (D) Severe deprivations of contractual teachers. (E) Need for 100% central financial assistance for the implementation of the recommendations to be made by PRC.

3. A NOTE titled as "Let the Love Letter era come to an end" was submitted by (1) Prof. B. T. Deshmukh, Ex-MLC & (2) Dr. P. B. Raghuvanshi, President, NUTA, on behalf of the delegation; Prof. B. T. Deshmukh, emphasised that government

of India must provide 100% financial assistance for 10 years for the additional expenditure to be incurred by all the states for the implementation of revised pay. Prof. B.T. Deshmukh further stressed that when the UGC Act 1956 was enacted, Education was in the State List and the mechanism of the formula 80:20 for central financial assistance came into force. After 42nd Constitution Amendment Act 1976, on and from 03.01.1977 Education was shifted from State List to Concurrent List. But the old formula of central financial assistance remained unchanged. Thus Prof. B.T. Deshmukh made an appeal to the PRC to recommend to the UGC for making mandatory regulations for 100% central financial support replacing the present 80:20 formula.

4. At the end, while winding up the meeting and with an interaction with participants, Prof. V.S. Chauhan asked a question, initially to all participants in general and then particularly to Prof. B.T. Deshmukh; "Whether UGC had ever issued any mandatory regulation? hereinbefore" Prof. B.T. Deshmukh replied "Yes, the UGC Regulations dated 4 April, 2000 on minimum qualifications, made NET as the mandatory entry point qualifications." Prof. B. T. Deshmukh further brought it to the notice of the Chairman of the PRC that all details about the mandatory or otherwise use of power are given in para 7 and 10 of the Note submitted by us today.

Dr. Tapati Mukhopadhyay
President

Dr. S. P. Lawande
General Secretary

M.F.U.C.T.O

महाराष्ट्र प्राध्यापक महासंघाच्या कार्यकारी मंडळाच्या रविवार, दिनांक ९ ऑक्टोबर, २०१६

रोजीच्या बैठकीत संमत करण्यात आलेला ठराव

समान प्रकरणी मा. मुंबई उच्च न्यायालयाच्या दोन खंडपीठांनी दिलेले दोन असमान निर्णय

१. आश्वासित प्रगती योजनेच्या (CAS) बाबतीत नेमणुकीच्या दिवसापासून सेवा धरण्या, न धरण्या संदर्भात मा. मुंबई उच्च न्यायालयाच्या दोन खंडपीठांनी वेगवेगळे व परस्पर विरोधी निर्णय दिल्याचे स्पष्टपणे दिसून येत आहे. **नेट-सेट मुक्त शिक्षकांच्या प्रकरणी** त्यांच्या नेमणुका मुळातच कायम स्वरूपाच्या असतांना त्यांच्या सेवा आश्वासित प्रगती योजनेच्या प्रयोजनार्थ नेमणुकीच्या दिनांकापासून धरण्यास नकार देऊन २०१३ चा शासन निर्णय निघाल्याच्या दिनांकापासून त्या धरण्याबाबत मुंबई खंडपीठांनी दिनांक २३ डिसेंबर २०१५ रोजी सन २०१३ च्या याचिका क्रमांक २०८२ या प्रकरणामध्ये निर्णय (यापुढे या ठरावात 'पहिला निर्णय' असा उल्लेख) दिलेला आहे. त्याबाबत मा. सर्वोच्च न्यायालयामध्ये पुनर्विलोकनार्थ याचिका दाखल झाल्या असून त्या सुनावणीत आहेत. राज्यशासनामध्ये नियमाप्रमाणे लोकसेवा आयोगाकडून भरती होण्याचे विहित असतांना काही अडचणीमुळे पर्यायी विधिमय मार्गांनी शोकडो कर्मचाऱ्यांची राज्यशासनाने विधिवतरित्या निवड करून त्यांना नेमणुका दिल्यात. मात्र नेमणुका देतांना 'हंगामी नेमणूक' असा शब्द वापरला. एवढ्यावरून त्यांच्या सेवा नेमणुकीच्या दिनांकापासून न धरण्याचे कृत्य बेकायदेशीर असून आश्वासित प्रगती योजनेच्या प्रयोजनार्थ ती सेवा नेमणुकीच्या दिनांकापासूनच मोजण्यात यावी असा निर्णय (या ठरावात यापुढे उल्लेख 'दुसरा निर्णय' असा) मा. मुंबई उच्च न्यायालयाच्या दुसऱ्या खंडपीठांनी २८ एप्रिल २०१६ रोजी सन २०१३ च्या याचिका क्रमांक ९०५१ मध्ये दिला.

२. राज्यशासनामध्ये हंगामी भरती झालेल्या त्या शोकडो कर्मचाऱ्यांची सेवा नेमणुकीच्या दिनांकापासून आश्वासित प्रगती योजनेच्या प्रयोजनार्थ मोजली जावी असा जो दुसरा निर्णय मा. मुंबई उच्च न्यायालयाने दिला, त्यातील कर्मचाऱ्यांची सेवा वैशिष्ट्ये काय होती? हे या निर्णयाच्या परिच्छेद १८ मध्ये नमूद करण्यात आलेले आहे. ते पुढील शब्दात :-

"[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;

(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;"

काळजीपूर्वक अवलोकन केल्यास असे दिसून येते की, ही सर्व सेवा विषयक वैशिष्ट्ये नेट-सेट मुक्त शिक्षक धारण करीत होते. एकाही बाबतीत उणेपणा नसून काहीबाबीत तर ते सरस आहेत.

३. नेट-सेट मुक्त शिक्षकांच्या बाबतीतसुद्धा जवळ जवळ ४ ते ५ हजार शिक्षकांना नेमणुकीच्या दिनांकापासून सेवा धरून CAS चे लाभ प्रत्यक्ष देण्यात आलेले आहेत.

(A) महाराष्ट्र विधानपरिषद कार्यवाही, (दिनांक ३ ऑगस्ट २००९) अधिकृत प्रतिवेदन, खंड १२५, क्रमांक १५ मधील पुष्ट १४१ चे काळजीपूर्वक अवलोकन केले तर असे दिसून येते की सन १९९१ ते २००० या काळातील नेट-सेट मुक्त शिक्षकांची संख्या दहा हजार असल्याची अधिकृत माहिती तत्कालीन मा. उच्च शिक्षणमंत्र्यांनी सभागृहात दिलेली आहे. २७ जून २०१३ रोजी काढलेल्या शासन निर्णयाच्या परिच्छेद ६ मध्ये अशा शिक्षकांची संख्या ही केवळ ५१६० असल्याचे नमूद करण्यात आलेले आहे. याचा सरळ अर्थ असा आहे की ३ ऑगस्ट २००९ ते २७ जून २०१३ या १२ वर्षांच्या कालखंडामध्ये जवळ जवळ (१००००-५१६०) = ४८४० शिक्षकांना नेमणुकीच्या दिनांकापासून त्यांची सेवा धरून CAS चे लाभ अदा करण्यात आलेले आहेत. पुढे २७ जून २०१३ नंतर, १९ सप्टेंबर १९९१ ते २३ ऑक्टोबर १९९२ या कालखंडातील अंदाजे १५०० शिक्षकांना २७ जून २०१३ च्या शासननिर्णयाने हे लाभ अदा केलेले आहेत. उर्वरित इतर शिक्षकांना हे लाभ नाकारण्याचे कोणतेही वाजवी कारण अस्तित्वात नाही.

(B) सन १९९१ ते २००० या काळातील ४८४० शिक्षकांना ११ डिसेंबर १९९९ च्या शासननिर्णयातील परिच्छेद १२ ते १५ नुसार नेमणुकीच्या पहिल्या दिवसापासून CAS चे लाभ अदा करण्यात आले. मात्र पुढील काळात त्यापैकी शोकडो शिक्षकांच्या प्रकरणी रिकव्हरी काढण्याचा राज्यशासनातील काही अधिकाऱ्यांनी प्रयत्न केला होता. मा. उच्च न्यायालयाच्या विविध खंडपीठांनी दिलेल्या अनेक निर्णयांनी असे प्रयत्न संपूर्णपणे बेकायदेशीर असल्याचे नमूद करून रद्दबादल (quashed and set aside) ठरविण्यात आले. संघटनेच्या दप्तरी उपलब्ध असलेले त्यातील काही निर्णय पुढील प्रमाणे :-

(1) **W.P. No. 1893 OF 2010 :-** IN THE HIGH COURT OF JUDICATURE AT BOMBAY CIVIL APPELLATE JURISDICTION : WRIT PETITION NO.1893 OF 2010 Pramod D.Sonawane ...Petitioner v/s. State of Maharashtra & ors. ...Respondents CORAM: D.K.Deshmukh & N.D.Deshpande, JJ DATED: 3RD SEPTEMBER, 2010 (P 8 B 2012)

(2) **W.P. No. 1991 OF 2011 :-** IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD WRIT PETITION NO. 1991 OF 2011 Sheshrao Vyankatrao Shete & another PETITIONERS VERSUS The State of Maharashtra and others RESPONDENTS CORAM : D.B. BHOSALE & M.T. JOSHI, JJ. DATED : 28th MARCH, 2011 (P 9 B 2012)

(3) **W.P. No. 5271 OF 2013 :-** IN THE HIGH COURT OF JUDICATURE OF BOMBAY BENCH AT AURANGABAD WRIT PETITION NO.5271 OF 2013 CORAM : MOHIT S. SHAH, C.J. AND SUNIL P.DESHMUKH, J. DATE : 28 th AUGUST 2013 JUDGMENT (PER SUNIL P.DESHMUKH, J.) (P 145 B 2013)

(4) **W.P. No. 4994 OF 2013 :-** IN THE HIGH COURT OF JUDICATURE OF BOMBAY BENCH AT AURANGABAD WRIT PETITION NO. 4994 OF 2013 [CORAM : R . M. BORDE AND SUNIL P.DESHMUKH, J.J.] DATE : 13 th SEPTEMBER 2013 JUDGMENT (PER SUNIL P.DESHMUKH, J.) (P 205 B 2013)

(5) W.P. No. 6659 OF 2013 :- IN THE HIGH COURT OF JUDICATURE OF BOMBAY BENCH AT AURANGABAD WRIT PETITION NO.6659 OF 2013 Dr.Uttam Pralhadrao Dolhare and Ors... Petitioners VERSUS The State of Maharashtra, through its Secretary, Higher Education Department, Mantralaya, Mumbai. and Ors....Respondents CORAM : R.M.BORDE & SUNIL P.DESHMUKH, JJ. DATE :10th October, 2013. ORAL JUDGMENT (Per Sunil P. Deshmukh, J.) (P 216 B 2013)

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

(C) ४८४० शिक्षकांना CAS चे हे लाभ नेमणुकीच्या दिनांकापासून त्यांची सेवा धरून दिनांक ११ डिसेंबर १९९९ च्या शासननिर्णयाने अदा केलेले आहेत. त्यांच्यापैकी शेकडो शिक्षकांना हे लाभ पदरी पडून पाच वर्षांपेक्षा जास्त काळ झालेला आहे. पाच वर्षांपेक्षा जास्त काळ झालेला असल्यामुळे त्यांची रिकव्हरी काढण्याचा मार्ग सर्वोच्च न्यायालयाच्या एका महत्त्वपूर्ण निर्णयामुळे कायमचा बंद झालेला आहे. मा. सर्वोच्च न्यायालयाचा हा निर्णय दिनांक १८ डिसेंबर २०१४ रोजी झालेला असून तो संपूर्ण निर्णय सन २०१५ च्या नुटा बुलेटीनमध्ये पृष्ठ ३३ ते ३९ वर प्रसृत करण्यात आला आहे. ज्या पाच प्रकारांमध्ये रिकव्हरी काढता येणार नाही, असे मा. सर्वोच्च न्यायालयाने आपल्या या निर्णयाच्या परिच्छेद १२ मध्ये नमूद केले आहे त्यातील क्रमांक (iii) वरील प्रकार पुढील प्रमाणे आहे :-

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

वस्तुतः या प्रकरणी नियमाप्रमाणेच हे लाभ देण्यात आले आहेत. मात्र वादासाठी जादा (Excess Payment) पेमेंट झाले आहे हे शासनाचे म्हणणे क्षणभर मान्य केले तरी अनेक शिक्षकांच्या बाबतीत Recovery चे आदेश पाच वर्षांनंतर काढण्यात आलेले आहेत व शेकडो शिक्षकांच्या बाबतीत ते आजही काढण्यात आलेले नाहीत, हे लक्षात घेतले पाहिजे.

४. हे लाभ देतांना राज्यशासनाने आपणहून काहीना लाभ दिले, इतरांना दिले नाहीत, एकदा लाभ दिल्यावर काहींच्या बाबतीत ‘रिकव्ह-न्या’ काढल्या इतरांच्या बाबतीत काढल्या नाहीत. सर्व ‘रिकव्ह-न्या’ काढण्याची कृती मा.उच्च न्यायालयाने रद्दबादल ठरविल्यानंतर काही बाबतीत SLP दाखल करण्यात आली. मात्र काही बाबतीत मा. उच्च न्यायालयाच्या निर्णयाला आव्हान न देता आनंदाने अंमलबजावणी करण्यात आली. या सर्व बाबी मा. खंडपीठासमोर नेट-सेट मुक्त शिक्षकांच्या वतीने मांडण्यात आल्या होत्या. मात्र पहिला निर्णय देतांना मा. खंडपीठाने या मुद्द्याकडे संपूर्णपणे दुर्लक्ष केले. राज्यशासनाला धोरणात्मक निर्णय घेण्याचा अधिकार आहे असे पहिल्या निर्णयाच्या परिच्छेद ६९ मध्ये मा.खंडपीठाने पुढील शब्दात नमूद केलेले आहे :-

"Merely because the counting of past service is necessary as per UGC Regulations, the State policy to regularise such services from the date of resolution, cannot be used against the State for CAS claim." (See Para 69 of the Judgment)

मात्र असा धोरणात्मक निर्णय घेतांना भेदभाव करण्याचा अधिकार घटनेच्या कलम १४ चा भंग करणारा आहे. याबाबत पहिल्या निर्णयात कोणतेही भाष्य करण्यात आलेले नाही.

असे आदेश पारित करतांना १९.०९.१९९१ ते २३.१०.१९९२ या कालखंडात नेमले गेलेले नेट-सेटमुक्त शिक्षक व २४.१०.१९९२ ते ०३.०४.२००० या काळात नेमल्या गेलेले शिक्षक यांच्यामध्ये वैधानिकदृष्ट्या कोणताच फरक नव्हता. सुरुवातीस व शेवटपर्यंत सर्व बाबतीत हे दोनही वर्ग एकाच प्रवर्गाचा भाग होते या गोष्टीकडे मा. खंडपीठाच्या पहिल्या निर्णयात दुर्लक्ष झालेले आहे. २३.१०.१९९२ चा राज्यशासनाचा आदेश राज्यशासनाने पुढच्या ३५ दिवसांत दिनांक २७ नोव्हेंबर, १९९२ ला रद्द केला होता. ही बाब मा. खंडपीठाच्या निर्णयाच्या परिच्छेद १६ मध्ये नमूद आहे. तरीही याबाबीकडे दुर्लक्ष केल्यामुळे सन १९९१ ते २००० या काळात सर्व अर्थाने एकाच प्रवर्गात असलेल्या या शिक्षकांचे कृत्रिमरित्या असमर्थनीय असे दोन भाग करण्याच्या राज्यशासनाच्या कृतीचे मा. खंडपीठाने पहिल्या निर्णयात समर्थन केले आहे. अशा समर्थनाला कोणताही आधार नाही. हे एक व दुसरे

म्हणजे दुसऱ्या निर्णयात मा. खंडपीठाने याबाबत अत्यंत न्याय्य भूमिका घेतलेली आहे. या बाबी विशेष अनुमती याचिकेच्या (SLP) माध्यमातून मा. सर्वोच्च न्यायालयाच्या लक्षात आणून देणे आवश्यक आहे असे या कार्यकारी मंडळाला वाटते.

५. काही हजार लोकांना लाभ दिले व उर्वरित लोकांना दिले नाही ही गोष्ट घटनेच्या कलम १४ चा भंग करणारी आहे. मा. खंडपीठाने दुसऱ्या निर्णयाच्या वेगवेगळ्या परिच्छेदातून या गोष्टीबाबत पुढीलप्रमाणे स्पष्ट शब्दात आपले निर्णय नोंदविले आहेत :-

(A) "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)

(B) "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)

(C) "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)

(D) "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)

(E) "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)

(F) "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)

(G) "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)

(H) "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)

(I) "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)

६. हंगामी कर्मचाऱ्यांच्या सेवा नियमित करणाऱ्या १ डिसेंबर १९९४ च्या शासन निर्णयात व नेट-सेट मुक्त शिक्षकांच्या सेवा नियमित करणाऱ्या २७ जून २०१३ च्या शासन निर्णयात एक महत्त्वपूर्ण वाक्यरचना सारखी असून त्या

वाक्यरचनेचे अर्थ मात्र दोन निर्णयात वेगवेगळे लावल्या गेले आहेत. दुसऱ्या निर्णयाच्या परिच्छेद २५ मध्ये त्याबाबतचा उल्लेख आहे. तो पुढीलप्रमाणे :-

(A) "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 following conditions their services should be treated as regularized from the date of this Government Resolution". In relation to the aforesaid GR dated 1 December 1994, the learned counsel have suggested two constructions." (See Para 25 & 26 of the High Court Judgment dated 28th April 2016 on page 127 of 2016 NUTA Bulletin)

(B) त्यातील पहिला अर्थ हा शासकीय वकिलांनी मांडलेला असून न्यायालयाच्या निर्णयाच्या परिच्छेद २५ मध्ये उद्धृत करण्यात आलेला आहे. तो पुढीलप्रमाणे :-

"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." (See Para 25 of the High Court Judgment dated 28th April 2016 on page 127 of 2016 NUTA Bulletin)

(C) कर्मचाऱ्यांच्या वतीने मांडलेला दुसरा अर्थ हाही दुसऱ्या निर्णयाच्या परिच्छेद २५ मध्ये पुढील शब्दात नमूद करण्यात आलेला आहे :-

"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." (See Para 25 of the High Court Judgment dated 28th April 2016 on page 127 of 2016 NUTA Bulletin)

(D) दोनही बाजूंचे म्हणणे ऐकून घेतल्यानंतर दुसऱ्या निर्णयाच्या परिच्छेद २७ मध्ये न्यायालयाने आपला निर्णय पुढीलप्रमाणे मांडलेला आहे :-

"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." (See Para 27 of the High Court Judgment dated 28th April 2016 on page 128 of 2016 NUTA Bulletin)

७. दुसऱ्या निर्णयाच्या परिच्छेद २७ मध्ये मा. उच्च न्यायालयाने असे मत व्यक्त केलेले आहे की, प्रत्यक्ष सेवा केलेली असतांना त्या केलेल्या खऱ्याखुऱ्या सेवेची वस्तुस्थिती नजरेआड करून ती सेवा न धरणे ही काल्पनिक गोष्ट आहे. कल्पिताला खरे मानण्याचे तुम्ही जर ठरविले असेल तर जे खरे आहे त्याच्या परिणामांना सामोरे जाण्याची कल्पना तुम्हाला करता आली पाहिजे, असे ठाम मत उच्च न्यायालयाने दुसऱ्या निर्णयाच्या परिच्छेद २७ मध्ये व्यक्त केलेले आहे. ते पुढीलप्रमाणे :-

"[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)"

८. मुळात आश्वासित प्रगती योजना का सुरु करण्यात आली याविषयी मा.उच्च न्यायालयाने दुसऱ्या निर्णयाच्या परिच्छेद २२ मध्ये पुढीलप्रमाणे मत व्यक्त केलेले आहे :-

"[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".

कुठिततेमुळे येणारी निराशाजनक अवस्था टाळण्यासाठी आश्वासित प्रगती योजना असल्यामुळे तेथे सेवेची वर्षे मोजण्यावर भर देण्यात आला आहे.

९. शेकडो कर्मचाऱ्यांच्या बाबत या संदर्भात निर्णय घेण्यास शासनाने विलंब लावला. असा विलंब लावण्याचा फायदा शासनाला घेता येणार नाही असाही ठाम निर्णय मा. उच्च न्यायालयाने आपल्या दुसऱ्या निर्णयाच्या परिच्छेद १० मध्ये नमूद केलेला आहे. तो पुढीलप्रमाणे :-

"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)

नेट-सेट मुक्त शिक्षकांच्या बाबत राज्यशासनाने निर्णय घेण्यास प्रदीर्घ विलंब लावला हे तर आहेच पण त्याशिवाय सन २००२ मध्ये ४ + ४ + ४ महिन्यांच्या आत याबाबत निर्णय घ्यावा, या मा. उच्च न्यायालयाने दिलेल्या निर्णयाचा अवमान करणारे ते कृत्य आहे. मा. उच्च न्यायालयाने दिलेल्या निर्णयामध्ये अंतिम निर्णय घेण्याचे अधिकार विद्यापीठ अनुदान आयोगाला दिले होते व विद्यापीठ अनुदान आयोग जो निर्णय देईन त्याप्रमाणे आम्ही कारवाई करू असे शपथपत्र शासनाने दाखल केले होते. असे असतांना एक म्हणजे विलंबाने निर्णय घेतला, दुसरे म्हणजे न्यायालयाने ठरवून दिलेल्या मुदतीत निर्णय न घेऊन न्याय निर्णयाची अवमानना केली व तिसरे म्हणजे विद्यापीठ अनुदान आयोग नमूद करेल त्या तारखेपासून सेवा धरू असे न्यायालयात शपथपत्र दाखल करून सुद्धा विपरित निर्णय घेऊन शासनाने लाभांचित होण्याचा प्रयत्न केलेला आहे.

१०. दुसऱ्या प्रकरणांमध्ये सरकारी वकिलांनी मा. खंडपीठासमोर अशी बाजू मांडली की, 'मॅट' ने आपला निर्णय देतांना 'नियमित सेवा' आणि 'सतत सेवा' या दोन संकल्पनांचा अर्थ लावतांना गोंधळ केलेला आहे. आश्वासित प्रगती योजनेचे लाभ मिळवायचे असतील तर त्यांची सेवा ही १२ वर्षांची नियमित सेवा असली तरच ते लाभ त्यांना मिळू शकतात. एवढेच सांगून ते थांबले नाहीत तर सर्वोच्च न्यायालयाच्या काही निर्णयांच्या आधारावर नियमित सेवा म्हणजे काय? याची व्याख्या सुद्धा त्यांनी नमूद केलेली आहे. मा. खंडपीठाच्या दुसऱ्या निर्णयाच्या परिच्छेद ५ मध्ये हे सर्व तपशील नमूद आहेत. ते पुढील शब्दात :-

"[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."

Regular Service ची सरकारी वकिलांनी न्यायालयात जी व्याख्या केली, त्या व्याख्येप्रमाणे सर्व नेट-सेट मुक्त शिक्षक हे नियमित सेवेत असलेले शिक्षक आहेत. राज्य सरकारच्या वकिलांना नियमित सेवेची वेगवेगळी व्याख्या, वेगवेगळ्या प्रकरणांमध्ये, वेगवेगळ्या खंडपीठासमोर, करण्याची मुभा मा. सर्वोच्च न्यायालयाने देऊ नये असे म्हणणे मा. सर्वोच्च न्यायालयापुढे मांडण्यात यावे.

११. 'मॅट' समोर या हंगामी कर्मचाऱ्यांनी ज्या निरनिराळ्या याचिका दाखल केल्या होत्या, त्यापैकी एका याचिकेद्वारे 'मॅट' च्या असे लक्षात आणून देण्यात आले होते की :-

"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,"

त्याच याचिकेच्या मार्फत त्यांनी 'मॅट' च्या असेही लक्षात आणून दिले होते की:-

"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."

हे सर्व तपशील दुसऱ्या निर्णयाच्या परिच्छेद १३ मध्ये पुढील शब्दात नमूद केलेले आहेत :-

[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)

नेट-सेट मुक्त शिक्षकांच्या बाबतीत या दोनही मुद्यांची तुलना केली असता, नेट-सेट मुक्त शिक्षकांची बाजू या दोनही बाबतीत खूपच सरस असल्याचे दिसून

येते. एक म्हणजे त्यांच्या मूळ नेमणुका हंगामी करण्यात आलेल्या नव्हत्या, कायम स्वरूपाच्या होत्या व दुसरे म्हणजे मुख्यमंत्र्यांनी या बाबतीत महासंघाची बैठक बोलावून लेखी स्वरूपात ती गोष्ट मान्य केलेली होती. तिसरे म्हणजे विद्यापीठ अनुदान आयोग नमूद करेल त्या तारखेपासून आम्ही त्यांना हे लाभ द्यायला तयार आहोत असे शपथपत्र शासनाच्या वकिलांनी नागपूर खंडपीठासमोर सादर केलेले होते व चौथे म्हणजे त्यांनी तसे कबूल केलेले आहे असे नमूद करून मा. उच्च न्यायालयाने त्याप्रकारे आदेश दिलेले होते. तुलनेच्या प्रयोजनासाठी हे मुद्दे महत्त्वाचे आहे असे नमूद करण्यात येत आहे.

१२. (A) सेवेमध्ये विधिवतरित्या व नियमितरित्या भरती झालेल्या कर्मचाऱ्याला किंवा शिक्षकाला अनेक वर्षांच्या सेवेनंतर येणारी कुंडीतता टाळण्यासाठी किमान २ वेळा कालबद्ध पदोन्नती देण्याचा निर्णय (दुसऱ्या निर्णयातील परिच्छेद २२ पहा) चौथ्या वेतन आयोगापासून सर्व स्तरावर लागू करण्यात आला. अशा प्रत्येक पदोन्नतीच्या वेळी सेवाकालखंड हा प्रधान मानल्या गेला. सेवेत भरती होत असतांना सतत बदलत जाणाऱ्या पात्रतेच्या अटीचा पदोन्नती देण्याच्या बाबींशी कधीही संबंध जोडल्या गेला नाही. ८ जून १९९५ च्या शासन निर्णयान्वये कालबद्ध पदोन्नतीची ही व्यवस्था (TBPS) शासकीय कर्मचाऱ्यांकरिता सुरू करण्यात आली व त्यानंतर ती (ACPS) २० जुलै २००१ च्या शासन निर्णयान्वये पुढे सुरू ठेवण्यात आली. विद्यापीठीय व महाविद्यालयीन शिक्षकांकरिता महाराष्ट्रात सर्वप्रथम ही व्यवस्था (CAS) २७.०२.१९८९ च्या शासननिर्णयाने सुरू केली व ११.१२.१९९९ च्या शासननिर्णयाने ती (CAS) पुढे सुरू ठेवण्यात आली.

(B) या चारही निर्णयांचे काळजीपूर्वक अवलोकन केल्यास हे स्पष्ट होते की, सेवेतील अनुभवाचा कालखंड हीच पदोन्नतीच्या वेळी पूर्ण करावयाची प्रमुख अट म्हणून नमूद आहे. त्या पदावर प्रवेश करतांना कालांतराने बदललेल्या पात्रतेच्या अटी या पदोन्नतीच्या वेळी पूर्ण केल्या पाहिजेत अशी विक्षिप्तपणाची अट या चारही शासननिर्णयात कोठेही नाही. हंगामी सेवा कालखंड धरावा की धरू नये? याबाबत वाद निर्माण झाला होता, ही गोष्ट खरी आहे व तो वाद आता या मा. खंडपीठाच्या दुसऱ्या निर्णयाने पूर्णतः निकाली निघाला आहे. ती सेवा धरावी असे हा निर्णय सांगतो. नेट-सेट मुक्त शिक्षकांच्या बाबतीत तर त्यापैकी बहुतांशी शिक्षक पूर्णपणे स्पष्ट रिक्त पदावरील 'कन्फर्म' शिक्षक म्हणून कार्यरत होते व आहेत, ही यातील महत्त्वाची बाब आहे. क्वचित काही ठिकाणी हंगामी नेमणूक झाली असेल तर अशा नेट-सेट मुक्त शिक्षकाला पदोन्नतीच्या प्रयोजनार्थ हंगामी सेवासुद्धा मोजली पाहिजे या निर्णयाचा आधार घेता येईल.

(C) पदोन्नतीच्या प्रयोजनार्थ हंगामी सेवासुद्धा धरण्यात यावी. या मा. खंडपीठाने दिलेल्या दुसऱ्या निर्णयाला आता "याबाबतचा कायद्यातील अंतिम शब्द" असे स्वरूप प्राप्त झाले आहे, कारण कायदेशीर मुद्यांची मजबुती लक्षात घेता या निर्णयावर सर्वोच्च न्यायालयात अपिलात जायचे नाही असा निर्णय राज्यशासनाने घेतला असून मा.उच्च न्यायालयाच्या दुसऱ्या निर्णयाची तंतोतंत अंमलबजावणी करणारा शासननिर्णय राज्यशासनाने निर्गमित केलेला आहे. "कालबद्ध पदोन्नती/सेवांतर्गत आश्वासित प्रगती योजना/सुधारित सेवांतर्गत आश्वासित प्रगती योजनेच्या प्रयोजनासाठी तात्पुरती सेवा देखील विचारात घेणेबाबत" या मथळ्याचा हा शासननिर्णय (क्रमांक : मप्रन्या-२०१२/प्र.क्र.६९/२०१२/सेवा-३) दिनांक ७ ऑक्टोबर, २०१६ रोजी निर्गमित झाला असून "महाराष्ट्र लोकसेवा आयोगाच्या कक्षेतील मंत्रालयातील तसेच बृहन्मुंबईतील राज्य शासकीय कार्यालयात लिपिकवर्गीय संवर्ग तसेच अन्य संवर्गात महाराष्ट्र लोकसेवा आयोग अपुरस्कृत उमेदवार म्हणून नियुक्त झालेल्या व सामान्य प्रशासन विभागाच्या विविध शासन आदेशान्वये दिनांक ३१.३.१९९९ पर्यंत सेवा नियमित केलेल्या कर्मचाऱ्यांची, सेवा नियमित झाल्याच्या दिनांकापूर्वीची, तात्पुरती अखंडीत सेवा, कालबद्ध पदोन्नती/सेवांतर्गत आश्वासित प्रगती योजना/सुधारित सेवांतर्गत आश्वासित प्रगती योजनेच्या प्रयोजनासाठी १२ वर्षांच्या नियमित सेवेची गणना करताना विचारात घेण्यात यावी." अशी स्पष्ट तरतूद या शासननिर्णयात आहे. त्या शासननिर्णयात पुढे असेही नमूद करण्यात आले आहे की, हंगामी काळातील सेवा धरून "आश्वासित प्रगती योजना/सुधारित योजना/सुधारित सेवांतर्गत आश्वासित प्रगती योजनेचा पहिला/दुसरा लाभ मंजूर करण्यात यावा." तसेच हा शासननिर्णय "विधी व न्याय विभागाच्या अनौपचारिक संदर्भ क्र. ५३४-२०१६/ई, दिनांक ४.७.२०१६ अन्वये प्राप्त झालेल्या त्या विभागाच्या सहमतीने निर्गमित करण्यात येत आहे." असेही या शासननिर्णयात नमूद आहे.

१३. मा. मुंबई उच्च न्यायालयाच्या दोन वेगवेगळ्या खंडपीठांनी कायद्याच्या व वस्तुस्थितीच्या एका समान प्रकरणी परस्पर विरोधी व भिन्न निर्णय दिल्याचे दिसून येते. पहिल्या व दुसऱ्या निर्णयाच्या तपशीलवार चिकित्सेनंतर उपरोक्त मुद्यांशिवाय आणखी काही विसंगतीचे मुद्दे आढळून आल्यास त्या सर्व बाबी सर्वोच्च न्यायालयातील सुनावणीच्या वेळी आपापल्या विधिज्ञामार्फत मांडण्याचा धोरणात्मक निर्णय घेण्यात येत आहे.

(डॉ. तापती मुखोपाध्याय)

(डॉ. एस. पी. लवांदे)

अध्यक्ष

सचिव

(MFUCTO)

वेतन अनुदानात कपात करण्याचा निंद्य प्रयत्न हाणून पाडण्याची आवश्यकता

महाराष्ट्र प्राध्यापक महासंघाच्या कार्यकारी मंडळाच्या रविवार, दिनांक ९ ऑक्टोबर, २०१६ रोजीच्या बैठकीत संमत करण्यात आलेला ठराव

१. विद्यापीठे, महाविद्यालये, कनिष्ठ महाविद्यालये, माध्यमिक शाळा यांना वेतन अनुदानाबाबत लागू असलेल्या मूळ तरतुदींमध्ये अनधिकाराने व बेकायदेशीरपणे सेवार्थ प्रणालीमध्ये माहिती भरतांना चुकीची माहिती भरून वेतन अनुदानामध्ये मनमानी कपात करण्याचे काही शासकीय अधिकाऱ्यांचे कुटील कारस्थान एका प्रकरणामध्ये उघडकीस आले असून ही बाब सर्व स्तरावरच्या शिक्षक कर्मचाऱ्यांनी गांभीर्याने घेतली पाहिजे असे या सभागृहाला वाटते.

२. उच्च व तंत्र शिक्षण विभागाच्या अखत्यारीत येत असलेल्या १०० टक्के अनुदानित तंत्रनिकेतने, औषधी निर्माण शास्त्र संस्था, अभियांत्रिकी महाविद्यालये, औषधी निर्माण शास्त्र महाविद्यालये इ. संस्था मधून काम करणाऱ्या शकडो शिक्षकांचे वेतन गेले अनेक महिने अनुज्ञेय असूनही अदा झालेले नाही. उपरोक्त अनुदानित संस्थांमधील शिक्षक व शिक्षकेतर कर्मचाऱ्यांच्या वेतन खर्चावर १०० टक्के अनुदान देण्याची व्यवस्था महाराष्ट्रात अस्तित्वात आहे. या व्यवस्थेचा आधार असलेले तीन मुख्य शासन निर्णय पुढीलप्रमाणे आहेत :- (१) २९ ऑक्टोबर १९७७ चा शासननिर्णय (२) १८ मे १९७८ चा शासननिर्णय (३) ४ सप्टेंबर १९९९ चा शासननिर्णय. ह्या तीन शासननिर्णयावर या संस्थांमधील आजची वेतन व्यवस्था बांधलेली आहे. महाराष्ट्र राज्यामध्ये सर्वच महाविद्यालयातील शिक्षक व शिक्षकेतर कर्मचाऱ्यांचे वेतन संगणक आधारित प्रणालीद्वारे अदा करण्याच्या चांगल्या उद्देशाने “उच्च व तंत्र शिक्षण विभागाच्या नियंत्रणाखालील शासन अनुदानित अकृषि विद्यापीठे, शासन अनुदानित अभिमत विद्यापीठे, सर्व अनुदानित महाविद्यालये, इतर अनुदानित संस्था आणि महाराष्ट्र राज्य तंत्र शिक्षण मंडळांमधील अधिकारी/कर्मचाऱ्यांची वेतन व भत्त्याची देयके एचटीई-सेवार्थ प्रणालीद्वारे अदा करणेबाबत” या मथळ्याचा एक शासननिर्णय दिनांक २१ ऑगस्ट, २०१५ रोजी निर्गमित करण्यात आला. संचालक आणि सहसंचालक यांच्याकडे या प्रणालीमध्ये अस्तित्वात असलेल्या शासननिर्णयाप्रमाणे ‘डाटा’ भरण्याचे काम सोपविण्यात आले होते. असे करीत असतांना मूळ शासननिर्णयाच्या विरोधात, प्रणालीमध्ये ‘डाटा’ भरण्याच्या संधीचा फायदा घेऊन संचालक व सहसंचालकांनी दिनांक २१ ऑगस्ट, २०१५ च्या शासननिर्णयाच्या परिच्छेद १० मध्ये पुढीलप्रमाणे मजकूर टाकण्याची व्यवस्था केली :- “१०. कला तसेच तंत्रशिक्षण संचालनालयाच्या अधिपत्याखालील ज्या अशासकीय अनुदानित संस्थेस शासनाकडून ९०% अनुदान प्राप्त होते. त्या संस्थांतील कर्मचाऱ्यांचे वेतन देयक एचटीई-सेवार्थ प्रणालीमध्ये शासनाकडून मिळणाऱ्या अनुदानातूनच सादर करण्यात यावे. उर्वरित संस्थेच्या १०% अनुदानाबाबत संस्थास्तरावर कार्यवाही करण्यात यावी.”

३. दिनांक ४ सप्टेंबर १९९९ च्या या शासननिर्णयातील पहिलेच वाक्य पुढीलप्रमाणे आहे :- “शासन निर्णय : विद्यापीठांना तांत्रिक शिक्षणासाठी व संलग्नित अशासकीय अनुदानित अभियांत्रिकी/तंत्रशास्त्र महाविद्यालये व तंत्रनिकेतने व औषध निर्माणशास्त्र संस्थांना खाली दिलेल्या सूत्राप्रमाणे अनुदान मंजूर करण्यास शासन मान्यता देत आहे.” हा शासननिर्णय (१) डॉ. बाबासाहेब आंबेडकर तंत्रशास्त्र विद्यापीठ, लोणेरे, जिल्हा - रायगड (२) मुंबई विद्यापीठ नियंत्रित सर जे. जी. वास्तुशास्त्र महाविद्यालय, मुंबई (तांत्रिक शिक्षण) (३) अशासकीय अनुदानित अभियांत्रिकी/तंत्रशास्त्र महाविद्यालये, तंत्रनिकेतने व औषध निर्माणशास्त्र संस्थांचे अनुदान सूत्र विशद करणारा आहे. या शासननिर्णयाच्या परिच्छेद ४

मध्ये सुरुवातीलाच असे नमूद करण्यात आले आहे की, “अशासकीय अनुदानित अभियांत्रिकी/तंत्रशास्त्र महाविद्यालये, तंत्रनिकेतने व औषध निर्माणशास्त्र संस्था यांना वर्ष १९७७-७८ पासून परिरक्षण अनुदान देण्याची योजना शासनाने मंजूर केली आहे. या योजनेमध्ये सुधारणा करून समान असे अनुदान सूत्र खालीलप्रमाणे लागू करण्यास शासन मंजूरी देत आहे.” या शासननिर्णयाच्या चौथ्या परिच्छेदाच्या चौथ्या उपपरिच्छेदात “शिक्षक व शिक्षकेतर कर्मचाऱ्यांच्या अनुज्ञेय पगारावरील संपूर्ण खर्च (त्यामध्ये निरनिराळ्या ८ बाबींचा समावेश आहे) हा अनुदानासाठी मान्य खर्च धरण्यात येईल” अशी तरतूद आहे. असे असतांना १८ मे १९७८ च्या शासननिर्णयाने “वेतन अनुदान १०० टक्के अनुज्ञेय असले” तरी “सेवार्थ प्रणालीमध्ये वेतन अनुदान ९० टक्के एवढे फिड केले आहे” अशी संपूर्णपणे नियमबाह्य भूमिका या संचालकांनी व सहसंचालकांनी शिक्षणमंत्र्यांच्या गळी उतरवलेली आहे व २१ ऑगस्ट २०१५ च्या शासननिर्णयात “एचटीई-सेवार्थ प्रणाली”मध्ये आम्ही तसे फिडींग केले आहे व त्यामुळे शिक्षक व शिक्षकेतर कर्मचाऱ्यांना आमच्या या चुकीचा भोग भोगावाच लागेल अशी ही एकंदर मांडणी आहे.

४. आता ४ सप्टेंबर १९९९ च्या शासननिर्णयातील “वेतनावरील संपूर्ण खर्च अनुदानासाठी मान्य खर्च म्हणून धरण्यात येईल” या तरतुदीचा अर्थ एचटीई-सेवार्थ प्रणालीच्या शासननिर्णयात फिडींग करीत असतांना “अनुदानित संस्थाना वेतन व वेतनेतर मिळून एकूण मान्य खर्चाच्या ९० टक्के” असा ‘फिड’ केला जाणार असेल तर ४ सप्टेंबर १९९९ चा शासननिर्णय हा काही फक्त अशासकीय अनुदानित अभियांत्रिकी/तंत्रशास्त्र महाविद्यालये, तंत्रनिकेतने व औषध निर्माणशास्त्र संस्था यांनाच लागू नाही तर तो (१) डॉ. बाबासाहेब आंबेडकर तंत्रशास्त्र विद्यापीठ, लोणेरे, जिल्हा - रायगड (२) मुंबई विद्यापीठ नियंत्रित सर जे. जी. वास्तुशास्त्र महाविद्यालय, मुंबई (तांत्रिक शिक्षण) यांनाही लागू आहे. मग या दोन संस्थांना सुद्धा फिडींग करताना तसेच ९० टक्क्यात ढकलून देता येईल काय? अशाप्रकारचा वेडगळपणाचा अर्थ लावण्याचा एकदा पायंडा पडला की मग एचटीई-सेवार्थ प्रणाली २१ ऑगस्ट २०१५ च्या शासननिर्णयाने “उच्च व तंत्र शिक्षण विभागाच्या नियंत्रणाखालील शासन अनुदानित अकृषि विद्यापीठे, शासन अनुदानित अभिमत विद्यापीठे, सर्व अनुदानित महाविद्यालये, इतर अनुदानित संस्था आणि महाराष्ट्र राज्य तंत्र शिक्षण मंडळांमधील अधिकारी/कर्मचारी” यांनाही लागू असल्यामुळे तेथेसुद्धा तसाच अर्थ लावण्याचा वेडपट अर्थ स्वाभाविकपणेच पुढे येईल.

५. वस्तुतः सेवार्थ प्रणालीच्या माध्यमातून अनुदान वितरण करण्याची संगणकाधारित वेतन वितरणाची व्यवस्था (ECS) ही एक अत्यंत पारदर्शक व्यवस्था व्हावी असे अपेक्षित आहे व अशा वेतन वितरणाच्या व्यवस्थेला संघटनांनी पाठिंबाच दिलेला आहे. मात्र असे करताना मूळ अनुदानाच्या सूत्राशी छेडछाड करून त्यामध्ये विघाड निर्माण करण्याचा शासकीय अधिकाऱ्यांचा प्रयत्न हा एक अत्यंत निंद्य प्रयत्न असून त्याचा तीव्र शब्दात निषेध करण्यात येत आहे. अशा प्रकारचे प्रयत्न हाणून पाडण्याचा दृढ निर्धार व्यक्त करण्यात येत आहे.

डॉ. तापती मुखोपाध्याय, अध्यक्ष

डॉ. एस. पी. लवांदे, सचिव

(MFUCTO)

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