

**निवडश्रेणीमध्ये ३ वर्षे किंवा त्यापेक्षा जास्त सेवा होऊन १ जानेवारी, २००६ ते  
२७ फेब्रुवारी, २००९ या कालावधीत सेवानिवृत्त झालेल्या  
अधिव्याख्यात्यांना भेदभावपूर्ण वागणूक : ४**

- डॉ. प्रवीण रघुवंशी, अध्यक्ष, 'नुटा'

ज्या तारखेपासून वेतन आयोग लागू होतो त्या तारखेनंतर निवृत्त होणाऱ्या सर्व शिक्षकांना व कर्मचाऱ्यांना सम सुविधा दिल्या जातात. सहावा वेतन आयोग राज्यशासनाने १ जानेवारी, २००६ पासून लागू केला. पण प्रत्यक्षात अंमलबजावणी करतांना अनेक बाबतीत विद्यापीठीय व महाविद्यालयीन शिक्षकांचे तसेच शासकीय कर्मचाऱ्यांचे व माध्यमिक शिक्षकांचे सुद्धा दोन गट करून त्यांना वेगवेगळी वागणूक देण्यात आली.

२. खरे म्हणजे "२० वर्षांची अर्हताकारी सेवा पूर्ण केल्यानंतर नियतवयोमानानुसार सेवानिवृत्त होणाऱ्या कर्मचाऱ्यांना सेवानिवृत्तीच्या शेवटच्या १० महिन्यात अर्जित केलेल्या सरासरी मूळ वेतनाच्या किंवा शेवटच्या महिन्यात घेतलेल्या मूळ वेतनाच्या ५०% टक्के यापैकी जी रक्कम कर्मचाऱ्यास लाभदायक ठरेल, ती रक्कम निवृत्तीवेतन म्हणून अनुज्ञेय होईल." अशी तरतूद १ जानेवारी २००६ नंतर निवृत्त होणाऱ्या सर्वांना लागू करणे आवश्यक होते. पण दिनांक १ जानेवारी, २००६ रोजी किंवा त्यानंतर परंतु दिनांक २७ फेब्रुवारी, २००९ पूर्वी सेवानिवृत्त झालेल्या कर्मचाऱ्यांना शेवटच्या १० महिन्यांच्या सरासरीच्या ५० टक्के सेवानिवृत्ती वेतन लागू होईल असा शासनाने निर्णय काढला.

३. याबाबतची तपशीलवार माहिती दिनांक ११.१.२०१६ रोजी झालेल्या आमसभेसमोर विषय क्रमांक ६८८ अन्वये ठेवण्यात आली होती. त्यातील नोट्समध्ये पुढील माहिती समाविष्ट होती :-

"Notes :- (1) A meeting of those teachers who retired after 1 January, 2006 and before 27 February, 2009 after 3 years or more service in Selection Grade was held at Shikshak Bhavan, Amaravati on 4 October, 2015 in which it was decided to file a Writ Petition in the High Court seeking the **fixation of beneficial pension** by undertaking the exercise of computing pensions of such teachers by considering their 50% of the **average salary of last 10 months** or 50% of the **last month's salary**.

(2) As per the decision in this meeting, initially a Representation was sent on 26-04-2016 to the Principal Secretary, Higher and Technical Education under a copy to

the Accountant General (Accounts & Entitlement), Maharashtra, Pension Branch office, Nagpur, Director of Higher Education, Pune, The Joint Director of Higher Education, Nagpur and Amaravati. However since there was no response from the above respondents, Writ Petition consisting of 19 paras has been filed in the High Court of Judicature at Bombay, Nagpur Bench on 05-08-2016. **The Writ petition No. of the petition is 4908 of 2016.** The petition has been filed on behalf of NUTA and 26 petitioners."

४. ही जी सन २०१६ ची याचिका क्रमांक ४९०८ मा. नागपूर खंडपीठासमोर दाखल करण्यात आली होती. त्यामध्ये प्रमुख विनंती पुढीलप्रमाणे होती :-

"(3) The prayers in the petition are as below -

"It is, therefore, most humbly and respectfully prayed that this Hon'ble Court may kindly be pleased to issue suitable writ, order or direction and be pleased to.....

a) hold and declare that the Govt. resolution dated 27.02.09 (Annexure-B) is applicable to the petitioner lecturers who have been retired prior to 01.01.09 and further direct to implement the same in favour of the petitioner lecturers in its letters and spirits;

b) Command the Respondent no. 2-the State of Maharashtra to undertake the exercise of computing pensions of the petitioner lecturers by considering their 50% of the **average salary** of last 10 months or 50% of the last month's salary and further direct to fix and release the pension **which is beneficial in their favour within a stipulated period;**

c) Direct the Respondent no.2- the State of Maharashtra to release the arrears thereof after the completion of the above said exercise along with interest at the rate of 12%

**However, the respondent State of Maharashtra did not offer any tangible explanation for fixing 27th February, 2009 as "cut-off" date for grant of benefit of revised pension.**

**Therefore, in our view, in absence of any rational for fixing 27th February, 2009 as the cut-off date for grant of revised pension to the employees who retired between 1.1.2006 to 26.2.2009, said action of State Government is discriminative.**

( See Para 20 of the Judgment on Page 191 of 2016 NB )

per annum within a stipulated period;"

५. ऑगस्ट २०१६ मध्ये ही याचिका दाखल झाल्यानंतर सम प्रकरणी औरंगाबाद खंडपीठापुढे काहीतरी निर्णय यापूर्वी झालेला आहे असे वारंवार सांगितले जात होते. पण त्याबाबतचे अधिकृत तपशील उपलब्ध होत नव्हते. संघटनेच्या काही सहकाऱ्यांनी आपल्या इतर सहकाऱ्यांच्या मदतीने बरीच शोधाशोध केल्यानंतर असे आढळून आले की, सन २०११ च्या याचिका क्रमांक ८९८५सोबतच्या इतरही याचिकांमध्ये मा. औरंगाबाद खंडपीठाने दिनांक ९ मे २०१४ रोजी या शिक्षक कर्मचाऱ्यांच्या बाजूने निर्णय दिलेला आहे. तो निर्णय या अंकात प्रसृत करण्यात आला आहे.

६. सदरहू निर्णयाच्या परिच्छेद २२ मध्ये मा. खंडपीठाने पुढीलप्रमाणे आदेश पारित केलेले आहेत :-

**"Thus, there is no justification, legal or otherwise, to deny the benefits of revised pension to the petitioners, who have retired between 1.1.2006 to 26.2.2009. In our considered view, the cut-off date i.e. 27th February, 2009 specified in the Government Resolution dated 30th October, 2009 for payment of revised pension is without any rationale or intelligible differentia, has to be declared unconstitutional"**

**"We hold the cut-off date 27th February, 2009 prescribed in Government Resolution dated 30th October, 2009 for payment of revised pension under the Maharashtra Civil Services (Pension) Rules, 1982, making it applicable to those employees who retired from 27th February, 2009 and not to those employees, who retired in between 1st January, 2006 to 26th February, 2009, as unconstitutional."**

७. परिच्छेद २३ मध्ये मा. खंडपीठाने असेही आदेश दिलेले आहेत की,

**"In the light of discussion herein above, as a sequel to the above, we direct that within three months from the date of receipt/production of copy of this order, the State Government shall pay to the petitioners and other similarly situated employees, the difference of the pension and revised pension payable."**

८. दरम्यान इकडे मा. नागपूर खंडपीठासमोर सन २०१६ च्या याचिका क्रमांक ४९०८ च्या संदर्भात झालेल्या घडामोडींची थोडक्यात माहिती करून घेणे आवश्यक आहे. मा. न्या. श्री. वी. आर. गवई व न्या. श्री. व्ही. एम. देशपांडे यांच्या खंडपीठापुढे सर्वप्रथम दिनांक ३१.८.२०१६ रोजी ती याचिका सुनावणीसाठी आली. त्या दिवशी पुढची तारीख २१.९.२०१६ देण्यात आली. दुसऱ्या तारखेला आणखी दोन आठवड्याची मुदत देण्यात आली व तिसरी सुनावणी ५ ऑक्टोबर २०१६ रोजी झाली. त्यादिवशी मा. खंडपीठाने अंतिम सुनावणीसाठी १६.११.२०१६ ची तारीख निश्चित करण्याचे आदेश पुढील शब्दात पारित केले :-

**"Issue notice for final disposal to the respondents returnable on 16.11.2016. Mr. S. A. Chaudhari, Advocate waives notice for respondent no.1. Learned A.G.P. waives notice for respondent nos. 2 to 5. Hamdast granted for service on respondent no.6."**

९. संघटनेच्या वतीने अॅड. फिरदोस मिर्झा व अॅड. अशफाक शेख हे मा.खंडपीठापुढे शिक्षकांची बाजू मांडत आहेत. औरंगाबाद खंडपीठासमोर झालेला निर्णय आपल्या अधिवक्त्यांच्या मार्फत मा. नागपूर खंडपीठाच्या लक्षात आणून देण्याचा निर्णय संघटनेच्या पातळीवर घेण्यात आलेला आहे. औरंगाबाद खंडपीठाच्या निर्णयाबाबत मा.सर्वोच्च न्यायालयाच्या स्तरावर काही घडामोडी झाल्या असल्याचे किंवा होत असल्याचे अनधिकृतपणे कळले आहे. त्याबाबतची अधिकृत माहिती मिळविण्याचा प्रयत्न संघटनेच्या स्तरावर करण्यात येत आहे.

PR : (1) P 110 NB 2015 (2) P 123 NB 2015 (3) P 141 NB 2016 (4) P 185 NB 2016

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## IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD.

### WRIT PETITION NO.8985 OF 2011

Smt. Savitribai Narsayya Guddapa, age 62 years, occu. Pensioner, r/o Uday Colony, Plot No.7, Near Khadkeshwar, Aurangabad Tq. & Dist. Aurangabad. ...PETITIONER. v/s 1. The State of Maharashtra, through its Principal Secretary, Finance Department, Mantralaya, Mumbai - 32. 2. The Chief Executive Officer, Zilla Parishad, Aurangabad. 3. The Chief Accounts & Finance Officer, Zilla Parishad, Aurangabad. 4. The Block Development Officer, Panchayat Samiti, Gangapur, Tq. Gangapur, Dist. Aurangabad. ...RESPONDENTS. ... Advocate for petitioner : Mr.Salgare Vitthal G. AGP for State / Respondent 1 : Mr.K.J. Ghute Patil. Advocate for Respondents 2 to 4 : Mr.Deelip Bankar Patil. ... **WITH**

**WRIT PETITION NO.8908 OF 2011** Mohd. Yavaralikhhan Mod. Osmanalikhhan, age 61 years, occu. Pensioner, r/o House No.1-10-39-2, Near Badi Masjid, Jaisingpura, Aurangabad Tq. & Dist. Aurangabad. ...PETITIONER. v/s 1. The State of Maharashtra, through its Principal Secretary, Finance Department, Mantralaya, Mumbai - 32. 2. The Chief Executive Officer, Zilla Parishad, Aurangabad. 3. The Chief Accounts & Finance Officer, Zilla Parishad, Aurangabad. 4. The Block Development Officer, Panchayat Samiti, Sillod, Tq. Sillod, Dist. Aurangabad. ...RESPONDENTS. ... Advocate for petitioner : Mr.Salgare Vitthal G. AGP for State / Respondent 1 : Mr.K.J. Ghute Patil. Advocate for Respondents 2 to 4 : Mr.Deelip Bankar Patil. ... **WITH**

**WRIT PETITION NO.135 OF 2012** Baburao s/o Shivraj Jadhav, age 63 years, occu. Pensioner, r/o Village Amthana, Tq. Sillod, Dist. Aurangabad....PETITIONER. v/s 1. The State of Maharashtra, through its Principal Secretary, Finance Department, Mantralaya, Mumbai - 32. 2. The Chief Executive Officer, Zilla Parishad, Aurangabad. 3. The Chief Accounts & Finance Officer, Zilla Parishad, Aurangabad. 4. The District Health Officer, Zilla Parishad, Aurangabad. ...RESPONDENTS. ... Advocate for petitioner : Mr.Salgare Vitthal G. AGP for State / Respondent 1 : Mr.K.J. Ghute Patil. Advocate for Respondents 2 to 4 : Mr.Deelip Bankar Patil. ... **WITH**

**WRIT PETITION NO.8734 OF 2011** Santuka s/o Sanduji Dhabade age 63 years, occu. Pensioner, r/o House No.8/26/54, Siddhartha Nagar, Hudco-2, Aurangabad, Tq. & Dist. Aurangabad. ...PETITIONER. v/s 1. The State of Maharashtra, through its Principal Secretary, Finance Department, Mantralaya, Mumbai - 32. 2. The Chief Executive Officer, Zilla Parishad, Aurangabad. 3. The Chief Accounts & Finance Officer, Zilla Parishad, Aurangabad. 4. The Education Officer (Primary), Zilla Parishad, Aurangabad. ...RESPONDENTS. ... Advocate for petitioner : Mr.Salgare Vitthal G. AGP for State / Respondent 1 : Mr.K.J. Ghute Patil. Advocate for Respondents 2 to 4 : Mr.Deelip Bankar Patil. ... **WITH**

**WRIT PETITION NO.132 OF 2012** Rajaram @ Rajasaheb s/o Bhaurao Kawhale, age 64 years, occu. Pensioner, r/o H.No.96, Ashtivinayak Nagar, Taroad Naka, Tq.& Dist. NANDED. ...PETITIONER. v/s 1. The State of Maharashtra, through its Principal Secretary, Finance Department, Mantralaya, Mumbai - 32. 2. The Director of (Secondary & Higher Secondary) Education Maharashtra State, Pune - 1. 3. The Regional Deputy Director of Education, Latur Division, Latur. 4. The Principal, Peoples College, Nanded. ...RESPONDENTS. ... Advocate for petitioner : Mr.Salgare Vitthal G. AGP for State / Respondents 1 to 3 : Mr.K.J. Ghute Patil. R.No.4 Served. ... **WITH**

**WRIT PETITION NO.3934 OF 2013** 1. Rambilas s/o Ramgopal Soni, age 65 years, occu. Pensioner, r/o Moti Nagar Latur, Tq. And Dist. Latur. 2. Nardev s/o Narayan Gude, age 65 years, occu. Pensioner Nandanvan Colony Kava Road, Latur, Tq. & Dist. Latur. 3. Laxman s/o Shankarrao Shinde age 62 years, occu. Pensioner, r/o Deshpande Galli, Tq. & Dist. Latur. 4. Bharat s/o Vinayak Chavan, age 62 years, occu. Pensioner, r/o Gandhi Chowk, Tq. & Dist. Latur. 5. Sanjay s/o Jadavsing Chandele, age 47 years, occu. Pensioner, r/o Sahyog Colony, Latur, Tq. & Dist. Latur. 6. Ashok s/o Pralhad Narhare, age 48 years, occu. Pensioner, r/o Shanti Cooperative Society Latur, Dist. Latur. 7. Ram s/o

Pandharinath Biradar, age 49 years, occu. Pensioner, r/o Vishal Nagar Latur, Tq. & Dist. Latur. **8.** Waman s/o Keshav Jadhav, age 62 years, occu. Pensioner, r/o Ankoli, Tq. & Dist. Latur. **9.** Trimbak s/o Sahebrao Gaikwad, age 64 years, occu. Pensioner, r/o Prakash Nagar Latur, Dist. Latur. **10.** Dr. Vishwanath s/o Kondaji Jadhav, age 66 years, occu. Pensioner, r/o Old AUSA Road, Latur, Dist. Latur. ...PETITIONERS. v/s **1.** The State of Maharashtra, through its Principal Secretary, Finance Department, Mantralaya, Mumbai. **2.** The Accountant General-II (A&E), Pension Wing Old Building, in front of Ravi Bhavan, Nagpur. ...RESPONDENTS. ... Advocate for petitioner : Mr.Kendre N.D. AGP for State / Respondents 1 & 2 : Mr.K.J. Ghute Patil.

## CORAM: S.S. SHINDE & V.K. JADHAV, JJ.

Reserved On : 28th April, 2014. : Pronounced On : 9th May, 2014.

### JUDGMENT: ( Per S.S. Shinde, J )

**1.** Rule. Rule made returnable forthwith. With the consent of the parties, taken up for final hearing.

**2.** These petitions are filed with following prayers, -

*“B) By writ, order or directions the Government Resolution dated 30.10.2009 issued by the Department of Finance kindly be quashed and set aside to the extent of denying the benefits of revised pension provisions of M.C.S. (Pension) Rules, 1982 to the petitioner and similarly situated employees retired in between 1.1.2006 to 26.2.2009 in respect of 20 years minimum qualifying service and formula of 50% pay on average 10 months pay or 50% last months pay which is beneficent to the retired employees.*

*C) By writ, order or directions to quash and set aside the impugned order of fixation of pension of the petitioner dated 3.3.2010 issued by the respondent No. 3 Zilla Parishad on the basis of G.R. Dated 30.10.2009.*

*D) By writ, order or directions the respondent No.1 to 4 be directed to apply revised provisions of pension modified in M.C.S. (Pension) Rules, 1982 to the petitioner and other similarly situated employees retired in between 1.1.2006 to 26.2.2009 in respect of calculation of qualifying service, pension pay and other pensionary benefits as per G.R. Dated 22.6.2009 and restore the fixation of pension order dated 3.11.2009 of the petitioner.”*

**3.** The petitioners in all these petitions have been retired from service of the respondents - Zilla Parishads / schools / colleges. It is the case of the petitioners that they are pensioners, retired from the respective posts on superannuation, from Zilla Parishad service. The petitioners being Zilla Parishad employees, the provisions of M.C.S. (Pay) Rules, 1981, M.C.S. (Pension) Rules, 1982, M.C.S. (Commutation of Pension) Rules, 1984 are applicable to the petitioners. After their retirement, pensionable pay was fixed as per the M.C.S. (Pension) Rules, 1982 in then existed unrevised pay scale i.e. pre-six pay commission. The pensionable pay of the petitioner/s was calculated on the basis of last 10 months average pay admissible to the extent of 50% as basic pension pay.

**4.** It is submitted that the respondent No.1 State of Maharashtra revised the pay scale of the State Government and other employees covered under these rule on par with the employees of the Central Government under the M.C.S. (Revised Pay) Rules, 2009 and also revised provisions of pension by issue of G.R. Dated 22.6.2009 by modifying M.C.S. (Pension) Rules, 1982 with certain modifications. It is submitted that the provisions of the M.C.S. (Revised Pay) Rules, 2009 and the the M.C.S. (Pension) Rules, 1982 are made applicable from 1.1.2006 to all the State employees and other employees covered under the said rules.

**5.** As per the the M.C.S. (Revised Pay) Rules, 2009 the pay of the petitioner/s was revised and as per the revised provisions of pension as per the G.R. Dated 22.6.2009 modifying the M.C.S. (Pension) Rules, 1982 made applicable to the petitioner and basic pension pay of the petitioner in Writ Petition No. 8985/2011 was at Rs.6705/- by order dated 3.11.2009 issued by the respondent Zilla Parishad, Aurangabad and difference between unrevised basic pension pay and revised basic pension pay was Rs.2501/-.

**6.** It is submitted that to the shock and surprise of the

petitioners, the respondent No.1 State issued subsequent Government Resolution dated 30.10.2009 superseding the Government Resolution dated 22.6.2009, taking away all the benefits of the revised provisions of pension incorporated /modified in M.C.S. (Pension) Rules, 1982 and basic pension pay of the petitioner was again refixed under the revised provisions of M.C.S. (Pension) Rules, 1982 as provided in the G.R. Dated 30.10.2009. It is submitted that due re-fixation, the petitioners are suffering loss in pension pay.

**7.** It is submitted that G.R. Dated 30.10.2009 provides revised pay scales under the M.C.S. (Revised Pay) Rules, 2009 from 1.1.2006 to all the State Government Employees and other employees under the said rules but provides that the revised provisions of pension modified under M.C.S. (Pension) Rules, 1982 are applicable only to those employees retired from 27.2.2009 and thereafter but denies the provisions of revised pension to those employees who retired in between 1.1.2006 to 26.2.2009.

**8.** It is submitted that the Government Resolution dated 30.10.2009 proposes revised provisions of minimum qualifying service of 20 years for getting full benefits of pension, calculating pensionable pay to the extent of 50% on the basis of last 10 months average basis pay or 50% of the last months basic pay which would be beneficial to retired employee. These benefits of minimum qualifying service of 20 years for getting all pension and pensionable benefits are applicable to the employees who retired on 27.2.2009 and subsequently but denied the said benefits to those employees who retired in between 1.1.2006 to 26.10.2009. It is submitted that the revised provisions of pension incorporated in Government Resolution dated 30.10.2009 are totally illogical and unreasonable, discriminative between the employees who are in service and who are out of service (retired) and who are retired on 27.2.2009 and thereafter, those who retired in between 1.1.2006 to 26.2.2009.

**9.** It is submitted that the said government resolution is not only illogical,unreasonable and discriminative but, it is totally contrary to the provisions of Article 14 of the Constitution.

**10.** One Sukhdeo Kondaji Bankar, Chief Executive Officer, Zilla Parishad, Aurangabad **has filed affidavit on behalf of respondent No.1.**

In para 4 of the said affidavit, it is stated that the quantum of pension of the Maharashtra Government Employees is fixed and calculated on the basis of the provisions of Maharashtra Civil Services (Pension) Rules, 1982. In para 5 of the affidavit, it is stated that the State of Maharashtra is not implementing the recommendations of pay revision commission appointed by the Government of India in toto for the purpose of revision of pay and / pension right from beginning but, **every time the policy decision is taken at the State Government level as to what extent recommendation of the pay revision commission appointed by the Central Government is to be followed in toto or is to be followed to what extent depending upon the financial condition of the State.** It is further stated that the State Government has not implemented recommendations of 5th pay and 6th pay commissions appointed by the Government of India for

reviewing the pay and allowances of the pay and allowances of the Central Government Employees, in toto. It is stated in para 6(iii) that the State Government through the Finance Department had set up the State Pay Revision Committee vide Government Resolution dated 23.9.2008 under the Chairmanship of Shri P.M. Hakim, Retired Secretary, Government of India, to recommend the pay scale as well as revision in pension/family pension as per the recommendations of Central 6th Pay commission. It is stated in para 6(iv) that the committee has recommended following reliefs for the pensioners :

"a) 40% increase in basic pension;

b) Maximum limit for death-cum-retirement gratuity is Rs.5 Lacs;

c) Revised rate of commutation w.e.f. 27.2.2009 i.e. From the acceptance of report of Hakim Committee;

d) Linkage of full pension with 33 years qualifying service is dispensed w.e.f. 27.2.2009. Once a Government servant has rendered the minimum qualifying service of 20 years, pension shall be paid 50% of the basic pay w.e.f. 27.2.2009. The provision of addition of qualifying service is deleted from 27.2.2009."

**11.** It is further stated that the State Government accepted Hakim committee recommendations w.e.f. 27.2.2009. Hakim Committee through its recommendations removed condition of 33 years qualifying service for full pension and recommended that once a Government servant has rendered minimum qualifying service of 20 years, pension shall be paid 50% of the basic pay. State Government accepted Hakim committee recommendations with effect from 27.2.2009 and the provision of addition of qualifying service is deleted from 27.2.2009. It is further stated in para 7 of the affidavit that, the Finance Department

of the State Government has accepted the said recommendations and issued Government Resolution dated 22nd June, 2009. Earlier Government resolution was not exactly as per the recommendations of Hakim Committee and therefore, resulting in difficulties while finalizing pensionary benefits. Therefore, Government had decided to supersede earlier said Government resolution dated 22.6.2009 and introduced modification as per the recommendations of Hakim Committee. It is stated that the said decision taken by the Government by issuing Government Resolutions dated 30.10.2009 and revised M.C.S. (Pension) Rules 1982 and M.C.S. (Commutation of Pension) Rules, 1984, **is a policy decision of the Government.** Government resolution dated 30.10.2009 has been issued by the finance department for modification in the M.C.S. (Pension) Rules 1982 is a self explanatory and justified for giving benefits from 27.2.2009 instead of 1.1.2006.

**12.** In para 8 of the affidavit, it is stated that the Finance Department had sought opinion from Law & Judiciary Department and said department opined that, whatever changes and formulas are laid down are as a consequence of acceptance of revised 6th Pay Commission. Therefore, benefits occurring to the employees serving on the date of acceptance of revised 6th Pay Commission may not be extended to the employees who are retired prior to the acceptance of 6th Pay Commission. **It is further stated that the employees who were in service on the date of acceptance of 6th Pay Commission and not retired on the date, therefore, forms a separate class.** Therefore, formula given in Finance Department's Government Resolution dated 30.10.2009 for **determination of pension, for employees in service**

*Arrears of Dearness Relief on Pension /Family Pension w.e.f. 1st January, 2016 to 31st August, 2016*

## **Government of Maharashtra : Finance Department**

### **GOVERNMENT RESOLUTION**

No.: DRP-2016/ CR 66/SER-4 : Hutatma Rajguru chowk, Madam Cama Road, Mantralaya, Mumbai-400 032.

**Date : 18 October, 2016.**

**Read -** Government Resolution No.: DRP-2016/CR.66/SER-4, dated 07 September, 2016.

#### **RESOLUTION**

The rate of dearness relief with effect from 1st Jan, 2016 to the State Government pensioners /family pensioners on their Basic Pension/Family Pension and Dearness pension/ Dearness family pension(if any) have been enhanced from 119% to 125% vide Government Resolution referred above. The amount of Dearness relief have been paid in cash w.e.f. 1st September, 2016.

2. Government has decided to pay the the amount of dearness relief to the State Government pensioners /family pensioners on their Basic Pension/Family Pension and Dearness pension/ Dearness family pension (if any) w.e.f. 1st January, 2016 to 31st August, 2016 in cash.

3. Government is pleased to decide that it will be the responsibility of the Pension Disbursing Authority, i.e. Pay and Accounts Officer, Mumbai/Treasury Officers, as the case may be, to calculate the quantum of dearness relief payable in each individual case.

4. Government is also pleased to direct that above decision should, mutatis mutandis, apply to those employees including family pensioners of Recognized and Aided Educational Institutions, Non-Agricultural Universities and Affiliated Non-Government Colleges and Agricultural Universities to whom the pension scheme is made applicable.

5. In exercise of the powers conferred by the proviso to Section 248 of the Maharashtra Zilla Parishads and Panchayat Samities Act, 1961 (Mah. V of 1962) and of all the other powers enabling it in that behalf, Government is further pleased to decide that the above decision shall apply to the pensioners including family pensioners of Zilla Parishads.

6. State Government Employees who had drawn lump sum payment on absorption in a PSU/Autonomous body/Local Bodies and have become entitled to restoration of 1/3rd commuted portion of pension as well as revision of the restored amount in terms of Government Resolution, Finance Department, No. COP1099/306/SER-4, dated 15th November 1999 will also be entitled to the payment of dearness relief on full pension as per the provisions of Government Resolution, Finance Department, No. COP-1001/50/SER-4, dated 9th April 2001, at the prescribed rate and from the date, prescribed in paragraph 1 above.

7. The expenditure on this account should be debited to the Budget Heads to which the retirement benefits of the employees mentioned in the above paras are debited and should be met from the grants sanctioned thereunder.

8. All orders in force in regard to the payment of relief on pension sanctioned by Government from time to time will, mutatis mutandis, apply to the dearness relief now sanctioned.

This Government resolution of Maharashtra Government is available at the website [www.maharashtra.gov.in](http://www.maharashtra.gov.in). Reference no. for this is 201610181736560005. This order has been signed digitally.

By order and in the name of the Governor of Maharashtra.

(N.B.Ringne)

Deputy Secretary to Government of Maharashtra

PR :- (7) NB 2011 P 130 (8) NB 2012 P 48 (9) NB 2013 P 08 (10) NB 2013 P 91 (11) NB 2013 P 141 (12) NB 2013 P 250 (13) NB 2014 P 112 (14) NB 2015 P 56 (15) NB 2016 P 85 (16) NB 2016 P 87 (17) NB2016 P 143 (18) NB 2016 P 188

on 27.2.2009 may not be made applicable to the employees retired prior to 27.2.2009.

In para 9 of the affidavit, it is stated that revision of pension as per the 6th pay commission for the employees who retired prior to 27.2.2009, will continue to be governed as per the rules/orders which were in force immediately before coming into effect of the orders dated 30.10.2009.

In para 10 of the affidavit, it is stated that the Government has revised the Maharashtra Civil Services (Pension) Rules, 1982 and the Maharashtra Civil Services (Commutation of Pension) Rules, 1984. In para 12, it is stated that the petition on same subjects have been filed on the original side as also appellate side being writ petition nos.1530 of 2009, 10440/2009 and 1597/2009 before the Bombay High Court for implementing the Government of India's order regarding revision of pension to the pensioners who retired prior to 1.1.2006 and on or after 1.1.2006 as per Sixth Pay Commission in toto. The said writ petitions have been admitted and liberty has been granted to the petitioners to move for final hearing. In Writ Petition No.10440/2009 and 1597/2010, there is order at Principal Seat on 18th March, 2010 to list all writ petitions for hearing together.

Lastly, it is prayed that the writ petitions filed by the petitioners may be dismissed.

**13. The petitioners have filed rejoinder to affidavit-in-reply** in which, it is stated that the petitions are filed challenging Government Resolution dated 30.10.2009 issued by Government by which earlier G.R. Dated 22.6.2009 has been superseded and the benefits given to the petitioner and other similarly situated employees who are retired from 1.1.2006 to 26.2.2009 are withdrawn. **It is stated that the said Government resolution is absolutely illegal, discriminatory and arbitrary and having no reasonable nexus between the policy adopted by the Government of Maharashtra as per the recommendations of the Hakim committee** and in view of the 6th Pay Commission of the Central Government and therefore the said government resolution deserves to be quashed and set aside. **In para 3, it is stated that, any policy of the Government has to be in consonance with the provisions of Constitution of India and in case, it is in contravention of the Constitutional provisions, the same is required to**

**be interfered with and set aside.** In para 4, it is stated that Hakim committee has given various suggestions to the State Government. The State Government has accepted Hakim committee recommendations by issuing notification on 22nd April, 2009 called as Maharashtra Civil Services (Revised Pay) Rules, 2009. It is further stated that the State Government has specifically accepted in the affidavit-in-reply that Hakim committee recommendations have been accepted by the State Government w.e.f. 27th February, 2009. It is stated that this position stated in the affidavit-in-reply is not correct because on the basis of the recommendations of Hakim committee, the Government of Maharashtra did issue notification dated 22nd April, 2009 declaring that all the benefits provided under the 6th pay commission and accepted by the State Government are made applicable w.e.f. 1st January, 2006 to the employees of the State Government and other employees who are also governed by the M.C.S. Rules. Thus, by the notification dated 22nd April, 2009, it is crystal clear that, the benefits of 6th pay commission are made applicable w.e.f. 1.1.2006. The petitioners have placed on record copy of the notification dated 22nd April, 2009 of Maharashtra Civil Services (Revised Pay) Rules, 2009. In para 5, it is stated that without any substantial reason, the benefits of the revised pension formula granted by the G.R. Dated 22nd June, 2009 were withdrawn by issuing subsequent G.R. Dt.30.10.2009 by the Government of Maharashtra. Therefore, the petitioners had to suffer a great loss in monthly pension when financial assistance is more needed in old age.

In para 6, it is stated that as far as employees who are retired before 1.1.2006 are concerned, admittedly, they are governed by the earlier pension scheme and formula of pension and the petitioner has no grievance about the same. That, after the recommendations of the 6th pay commission, by the Government notification dated 22.4.2009 the Government had made applicable 6th Pay commission of the Central Government with certain modification to all the State employees including the Zilla Parishad employees w.e.f. 1.1.2006 i.e. Retrospectively and the employees who are retired from 1.1.2006 are brought under the new pension scheme. Accordingly, the said pay scales are also revised and to that effect pension formula is also revised. According to that, the pensioner is given benefit of revised pension formula by G.R. Dated 22.6.2009 from 1.1.2006.

राज्य शासकीय कर्मचारी व इतर पात्र पूर्णकालिक कर्मचाऱ्यांना दि. १ जानेवारी, २०१६ ते दि. ३१ ऑगस्ट, २०१६ या कालावधीतील महागाई भत्त्याची थकबाकी देण्याबाबत

## महाराष्ट्र शासन : वित्त विभाग

शासन निर्णय क्रमांक : मभवा-२०१६/प्र.क्र.४४/सेवा-९ : मंत्रालय, मुंबई ४०० ०३२ : तारीख : २० ऑक्टोबर, २०१६

वाचा :- शासन निर्णय, वित्त विभाग, क्रमांक :- मभवा-२०१६/प्र.क्र.४४/सेवा-९, दि. १ सप्टेंबर, २०१६.

### शासन निर्णय

शासन निर्णय समक्रमांक दि. १ सप्टेंबर, २०१६ अन्वये राज्य शासकीय कर्मचारी व इतर पात्र पूर्णकालिक कर्मचाऱ्यांना दि. १ जानेवारी, २०१६ पासून सुधारित वेतनसंरचनेतील मूळ वेतनावरील (वेतनबँडमधील वेतन अधिक ग्रेड वेतन) अनुज्ञेय महागाई भत्त्याचा दर ११९% वरून १२५% करण्यात आला आहे. तसेच दि. १ सप्टेंबर, २०१६ पासून सदर महागाई भत्त्याच्या वाढीची रक्कम रोखीने देण्यात आली आहे.

२. शासन आता असे आदेश देत आहे की, राज्य शासकीय कर्मचारी व इतर पात्र पूर्णकालिक कर्मचाऱ्यांना दि. १ जानेवारी, २०१६ ते दि. १ ऑगस्ट, २०१६ या कालावधीतील महागाई भत्त्याच्या थकबाकीची रक्कम रोखीने देण्यात यावी.

३. महागाई भत्त्याची रक्कम प्रदान करण्यासंदर्भातील विद्यमान तरतुदी व कार्यपद्धती आहे त्याचप्रकारे यापुढे लागू राहिल.

४. सदर आदेश सुधारित वेतनसंरचनेत वेतन अनुज्ञेय असलेल्या संस्थांमधील कर्मचाऱ्यांना योग्य त्या फेरफारासह लागू राहतील.

५. यावर होणारा खर्च संबंधित शासकीय कर्मचाऱ्यांचे वेतन व भत्ते ज्या लेखाशीर्षाखाली खर्ची टाकण्यात येतात, त्या लेखाशिर्षाखाली खर्ची टाकून त्याखालील मंजूर अनुदानातून भागविण्यात यावा. अनुदानप्राप्त संस्था व जिल्हा परिषद कर्मचाऱ्यांच्या बाबतीत, संबंधित प्रमुख लेखाशीर्षाखालील ज्या उप लेखाशिर्षाखाली त्यांच्या सहाय्यक अनुदानाबाबतचा खर्च खर्ची टाकण्यात येतो, त्या उप लेखाशीर्षाखाली हा खर्च खर्ची टाकण्यात यावा.

सदर शासन निर्णय महाराष्ट्र शासनाच्या [www.maharashtra.gov.in](http://www.maharashtra.gov.in) या संकेतस्थळावर उपलब्ध करण्यात आला असून त्याचा संकेतांक २०१६१०२०१७४२०८९००५ असा आहे. हा आदेश डिजिटल स्वाक्षरीने साक्षात्कृत करून काढण्यात येत आहे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने,

(श्री. दे. लोंढे)

अवर सचिव, महाराष्ट्र शासन

PR :- (7) NB 2011 P 130 (8) NB 2012 P 48 (9) NB 2013 P 08 (10) NB 2013 P 90 (11) NB 2013 P 140 (12) NB 2013 P 247 (13) NB 2014 P 113 (14) NB 2015 P 57 (15) NB 2016 P 84 (16) NB 2016 P 86 (17) NB 2016 P 139 (18) NB 2016 P 189

\*\*\*\*\* AF : P 153 \*\*\*\*\*

In para 7 of the rejoinder to affidavit, it is stated that the State Government has discriminated between two classes of employees i.e. The employees who are retired on or after 27.2.2009 and the employees who were retired during the period from 1.1.2006 to 26.2.2009 and for such discrimination, there is no reasonable explanation, nor there is any reasonable classification of employees by the Government and as such, classification is unreasonable and discriminatory.

In para 9, the petitioners have placed reliance in case of *D.S. Nakara vs Union of India*<sup>1</sup> ( 1 AIR 1983 SC 130(1). ) and submitted that classification in revised pension formula between pensioners on the basis of dates of retirement is arbitrary and violative of Article 14. The petitioners have further placed reliance in case of *Principal Secretary to Government, Finance and Planning Department vs Andhra Pradesh Pensionary Samaj and ors.*<sup>1</sup> ( 1 (2007) 1 SCC 845. ), in which it is held that the pensioners who are already drawing the pension cannot be denied the revised pension formula. The petitioners have also placed reliance in case of *Union of India and others vs Devikanandan Agrawal*<sup>2</sup> ( 2 AIR 1992 SC 96(1). ).

In para 10 of the rejoinder, the petitioners have placed reliance in case of *Association of College and University Superannuated Teachers vs Union of India and Ors.* (Civil Appeal No.908/2013 decided by Supreme Court).

**14.** Therefore, it is stated in the rejoinder to affidavit-in-reply that, the discrimination which is tried to be created by the **Government Resolution dated 30th October, 2009 is absolutely arbitrary, unreasonable, unconstitutional, ultravires and violative of Articles 14 and 16 of the Constitution of India and the same deserves to be quashed and set aside.**

**15.** The learned Counsel for the petitioners submitted that the revised pay scale of sixth pay commission are made applicable to all the employees from 1.1.2006 by the said rules but revised provisions of pension modified are made applicable to the employees those who were retired from 27.2.2009 but are denied to the employees retired between 1.1.2006 to 26.2.2009 by Government resolution dated 30.10.2009. **It is submitted that denying revised pension to those who are retired between 1.1.2006 to 26.2.2009, even though they are entitled for revised pay scales of sixth pay commission by notification dated 22.4.2009 is illogical, inconsistent,**

**unreasonable, unjustifiable and unsustainable in the eye of law.**

It is further submitted that the government resolution dated 30th October, 2009 is unjustifiable as it provides benefits of revised provisions of pension from 1.1.2006 to those who are in service and denies the same revised provisions of pension scheme to those who are retired between 1.1.2006 to 26.2.2009.

**He submits that the said government resolution is discriminatory as it grants benefits of revised provisions of pension and pensionary benefits to those who were retired from 27.2.2009 or thereafter but denies the same to those who retired in between 1.1.2006 to 26.2.2009, without any logical or reasonable basis.** The learned Counsel for petitioners further submits that said G.R., is not sustainable in the eye of law, as it extends benefits of revised M.C.S. (Revised Pay) Rules, 2009 to those who retired in between 1.1.2009 to 26.2.2009, but imposes unrevised provisions of M.C.S. (Pension) Rules, 1982 to such employees who were retired in between 1.1.2006 to 26.2.2009.

It is therefore, submitted that the said government resolution may be quashed and set aside and the petitions may be allowed.

**16.** We have given anxious consideration to the submissions advanced by the learned Counsel for the petitioners, the learned AGP appearing for the State and the learned Counsel appearing for the respondent Zilla Parishad and its authorities. We have also perused the entire documents placed on record, affidavit-in-reply filed by respondents and also rejoinder to affidavit-in-reply filed by the petitioners and the relevant Government Resolutions and the judgments of the Supreme Court which are placed on record by the Counsel for the petitioners.

**17.** In first four writ petitions, the petitioners therein were employees of the Zilla Parishad, Aurangabad, **in writ petitions No.3934/2013, 132/2012 the petitioners were employees - teachers of various schools / colleges, aided by State government and as contended by them,** they have retired from service of the respondents - Zilla Parishad after 1st January, 2006. It is not in dispute that after retirement of the respective petitioners, quantum of pension has been fixed and calculated on the basis of Maharashtra Civil Services (Pension) Rules, 1982, as admitted by the respondents in their affidavit-in-reply in para 4. Therefore, pension of the petitioners who were working in Zilla Parishad, was fixed and calculated on the basis of Maharashtra Civil Services (Pension) Rules, 1982. It appears that Hakim Committee's recommendations have been accepted by the Government of Maharashtra and same are published by notification dated 22nd April, 2009. It is not in dispute that after accepting recommendations of the Hakim Committee, the Finance Department, Government of Maharashtra, issued Government Resolution dated 22nd June, 2009, copy of which has been placed by the petitioners at Exh.B at page 23 of the compilation of Writ Petition No.8985 of 2011. In introductory part of the said Government Resolution, it is stated that, on the basis of report of 6th Pay Commission appointed by the Central Government, Government of Maharashtra appointed the Committee headed by Shri P.M.A. Hakim to suggest amendment / improvement in pension amount of the retired State Government employees. The said committee was appointed in the year, 2008 and accordingly, on the basis of recommendations of the said Hakim Committee and taking into consideration the Government Resolution dated 27th February, 2009, the Government of Maharashtra has taken a decision to bring improvements to pensionary benefits. Accordingly, the Government of Maharashtra has taken a decision to amend/ revise the provisions of Maharashtra Civil Services (Pension) Rules, 1982 and Maharashtra Civil Services

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH AT NAGPUR  
WRIT PETITION NO.4908/2016**

Nagpur University Teachers Association, through its Secretary Anil Wamanrao Dhage and ors. ..vs.. The Union of India through its Secretary, Department of Higher Education, New Delhi and others Mr. F. T. Mirza, Advocate for petitioners. Ms. T. Udeshi, A.G.P. for respondent nos. 2 to 5.

**CORAM :**

**B.R.GAVAI & V.M.DESHPANDE, JJ.**

**DATE : OCTOBER 5, 2016**

Issue notice for **final disposal** to the respondents returnable on 16.11.2016.

Mr. S. A. Chaudhari, Advocate waives notice for respondent no.1. Learned A.G.P. waives notice for respondent nos.2 to 5. Hamdast granted for service on respondent no.6.

JUDGE

JUDGE

**CERTIFICATE**

I certify that this Judgment/Order uploaded is a true and correct copy of original signed Judgment/Order.  
Uploaded by : Y. A. Kahale.      Uploaded On:07.10.2016

(Commutation of Pension) Rules, 1984. The said government resolution was to be made applicable to the employees who retired on 1st January, 2006 or thereafter. So far as, the State Government employees, who stood retired prior to 1st January, 2006 are concerned, they will be governed by the Government Resolution dated 5th May, 2009, which is already published.

**18.** In these petitions, the question which falls for consideration is, whether the Government Resolution dated 30th October, 2009, which provides for revised pay-scales under the Maharashtra Civil Services (Revised Pay) Rules, 2009 from 1.1.2006 to all the State Government Employees and other employees under the said rules but provides that the revised provisions of pension modified under M.C.S. (Pension) Rules, 1982 are applicable only to those employees retired from 27.2.2009 and thereafter but denies the provisions of revised pension to those employees who retired in between 1.1.2006 to 26.2.2009?

**19.** The Government Resolutions dated 22nd June, 2009 mentions the date of effecting revised pension from 1.1.2006. **The Hakim Committee has never suggested any cut-off date.** However, Government Resolution 30th October, 2009, prescribed cut-off date as 27th February, 2009 for revised pension. The relevant clauses of the Government Resolution 30th October, 2009 read, thus :

*“5.1 in cases where Government servant retiring from 27th February, 2009 (the date from which recommendations of Hakim Committee has been accepted) on superannuation, retiring invalid or compensation pension in accordance with the provisions of Rule 110(2)(b) of the Maharashtra Civil Services (Pension) Rules, 1982, after completing qualifying service of ten years or more but less than twenty years, pension shall be paid at 50% of the last basic pay or 50% of average basic pay received during the last 10 months, whichever is more beneficial to him. Therefore, Rule 110(2) (b) of the Maharashtra Civil Services (Pension) Rules, 1982 is deleted from 27th February, 2009. Retiring benefits to the Government servant in such cases are explained in Annexure II. Accordingly, Rule 110(2) (b) of the Maharashtra Civil Services (Pension) Rules, 1982 shall stand modified to this extent.*

*5.2 Linkage of full pension with 33 years qualifying service as per Rule 110(2) (a) of the Maharashtra Civil Services (Pension) Rules, 1982 is dispensed with from 27th February, 2009 (the date from which recommendations of Hakim Committee has been accepted). Once a Government Servant has rendered the minimum qualifying Service of twenty years, pension shall be paid at 50% of the last basic pay or 50% of average basic pay received during the last 10 months, whichever is more beneficial to him. Therefore, Rule 110(2) (a) of the Maharashtra Civil Services (Pension) Rules, 1982 is deleted from 27th February, 2009. Retiring benefits to the Government servant in such cases are explained in Annexure III. Accordingly, Rule 110(2) (a) of the Maharashtra Civil Services (Pension) Rules, 1982 shall stand modified to this extent.*

*5.3 As minimum qualifying service from 27th February, 2009 will be of 20 years, the provision of addition to qualifying service of Rule 66(A) of the Maharashtra Civil Services (Pension) Rules, 1982 is deleted from 27th February, 2009. Rule 66(A) of the Maharashtra Civil Services (Pension) Rules,*

*1982 shall stand modified to this extent.*

*5.4 The provisions in para 5.1, 5.2 and 5.3 above shall come into force with effect from 27th February, 2009 and shall be applicable to Government Servants retiring on or after that date. The government servant servants who have retired on or after 1st January, 2006 but before 27th February, 2009 will continue to be governed by the Rules/orders which were in force immediately before coming into effect of these orders.*

*8.1 Rule 5(1) of the Maharashtra Civil Services (Commutation of Pension) Rules, 1984 and existing Table of commutation value for Pension has been changed and this rule and existing table will not be in existence henceforth. The revised Rule and table will become absolute after 27th February, 2009. In cases where the date of retirement/commutation of pension is on or after this date, the revised table of Commutation Value for pension will be used for all commutations of pension. The formula of commutation is as follows :*

***Basic Pension x 40% x 12 x commutation value at age next birthday based on the date of original application of Government Servant as per revised (Annex.IV) table.***

*8.2 In the case of those pensioners, who have retired on or before 27th February, 2009, will be eligible for payment of commutation of pension based on prerevised pay/pension as per pre-revised rates of commutation value. Such pensioners shall have following two options to commute the amount of pension that has become additionally commutable on account of retrospective revision of pay/pension. The option once exercised is final.*

*8.3 The provisions in para 8 and 8.1 above shall come into force with effect from 27th February, 2009 and shall be applicable to Government Servants retiring on or after that date. The government servant, servants who have retired on or after 1st January, 2006 but before 27th February, 2009 will continue to be governed by the Rules/orders which were in force immediately before coming into effect of these orders.”*

**20.** As already observed, in para 15 of this judgment, the Government of Maharashtra by notification dated 22nd April, 2009 has made recommendations of 6th Pay Commission applicable to the State Government employees w.e.f. 1st January, 2006. **However, the respondent State of Maharashtra did not offer any tangible explanation for fixing 27th February, 2009 as “cut-off” date for grant of benefit of revised pension.** There are two different cut-off dates had been specified in the Government Resolution but, the respondents have not shown any rationale or intelligible differentia for the decision of the State Government for not granting revised pension w.e.f. 1st January, 2006 to employees retired between 1.1.2006 to 26.2.2009 and granting to employees retired on or after 27.2.2009. **Therefore, in our view, in absence of any rational for fixing 27th February, 2009 as the cut-off date for grant of revised pension to the employees who retired between 1.1.2006 to 26.2.2009, said action of State Government is discriminative.**

**21.** The Supreme Court in case of *V. Kasturi v. Managing Director, SBI, Bombay*<sup>3</sup> ( 3 (1998) 8 SCC

**We hold the cut-off date 27th February, 2009 prescribed in Government Resolution dated 30th October, 2009 for payment of revised pension under the Maharashtra Civil Services (Pension) Rules, 1982, making it applicable to those employees who retired from 27th February, 2009 and not to those employees, who retired in between 1st January, 2006 to 26th February, 2009, as unconstitutional.**

( See Para 22 of the Judgment on Page 192 of 2016 NB )

30.), examined various facets of discrimination in the matter of grant of higher pensionary benefits to the employees, referred to large number of precedents and carved out two categories of employees, one of which was held entitled to higher retiral benefits and the other was held not entitled to such benefit. The proposition laid down in that case is extracted below:

*“From the aforesaid resume of relevant decisions of this Court spread over the years to which our attention was invited by learned counsel for the respective parties, the following legal position clearly gets projected.*

**Category I**

*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. In such a situation, the additional benefit available to the same class of pensioners cannot be denied to him on the ground that he had retired prior to the date on which the aforesaid additional benefit was conferred on all the members of the same class of pensioners who had survived by the time the scheme granting additional benefit to these pensioners came into force. The line of decisions tracing their roots to the ratio of Nakara case I would cover this category of cases.*

**Category II**

*However, if an employee at the time of his retirement is not eligible for earning pension and stands outside the class of pensioners, if subsequently by amendment of the relevant pension rules any beneficial umbrella of pension scheme is extended to cover a new class of pensioners and when such a subsequent scheme comes into force, the erstwhile non-pensioner might have survived, then only if such extension of pension scheme to erstwhile non-pensioners is expressly made retrospective by the authorities promulgating such scheme; the erstwhile non-pensioner who has retired prior to the advent of such extended pension scheme can claim benefit of such a new extended pension scheme. If such new scheme is prospective only, old retirees non-pensioners cannot get the benefit of such a scheme even if they survive such new scheme. They will remain outside its sweep. The decisions of this Court covering such second category of cases are: Commander, Head Quarter v. Capt. Biplabendra Chanda and Govt. of T.N. v. K. Jayaraman and others to which we have made a reference earlier. If the claimant for pension benefits satisfactorily brings his case within the first category of cases, he would be entitled to get the additional benefits of pension computation even if he might have retired prior to the enforcement of such additional beneficial provisions. But if on the other hand, the case of a retired employee falls in the second category, the fact that he retired prior to the relevant date of the coming into operation of the new scheme would disentitle him from getting such a new benefit.”*

**22.** The petitioners’ case falls in category I identified in the judgment of **V. Kasturi v. Managing Director, SBI, Bombay** (supra), because retired employees of the Zilla

Parishad or the teachers of schools/colleges/university, grant-institutes and other categories are already getting the benefits of pension in view of provisions of M.C.S. (Pension) Rules, 1982. **Thus, there is no justification, legal or otherwise, to deny the benefits of revised pension to the petitioners, who have retired between 1.1.2006 to 26.2.2009. In our considered view, the cut-off date i.e. 27th February, 2009 specified in the Government Resolution dated 30th October, 2009 for payment of revised pension is without any rationale or intelligible differentia, has to be declared unconstitutional** and it has to be held that, the employees, who are already getting pension in view of M.C.S. (Pension) Rules, 1982 and also earlier governed by Government Resolution dated 22nd June, 2009 (now superseded) and also 30th October, 2009, employees retired between 1.1.2006 to 26.2.2009 are also entitled to the benefits of revised pension.

**22.** The Supreme Court, in case of Association of College & University Superannuated Teachers vs Union of India and others in Civil Appeal No.908 of 2013 (Arising out of SLP (C) No.3700 of 2012) while considering similar fact situation, in case of refusal of enhanced amount of gratuity by prescribing cut-off date, allowed the civil appeal filed by the appellants therein, holding that the cut-off date 1st September, 2009 specified in Government Resolution dated 21st August, 2009, in the facts of that case, was discriminative and same was declared unconstitutional.

**We hold the cut-off date 27th February, 2009 prescribed in Government Resolution dated 30th October, 2009 for payment of revised pension under the Maharashtra Civil Services (Pension) Rules, 1982, making it applicable to those employees who retired from 27th February, 2009 and not to those employees, who retired in between 1st January, 2006 to 26th February, 2009, as unconstitutional.**

**23.** In the light of discussion herein above, as a sequel to the above, we direct that within three months from the date of receipt/production of copy of this order, the State Government shall pay to the petitioners and other similarly situated employees, the difference of the pension and revised pension payable.

We make it clear that, we have considered the controversy only confined to the cut-off date applied in Government Resolution dated 30th October, 2009 to those retirements from 27.2.2009 vis-a-vis the employees who retired between 1st January, 2006 to 26th February, 2009 for payment of revised pension. We only declare the said cut-off date as unconstitutional. We have not tested the rest of the provisions of the said Government Resolution, since did not fall for our consideration, which shall remain unaffected.

Rule made absolute in above terms with no order as to costs. Writ Petitions stand disposed of.

[V.K. JADHAV, J] [ S.S. SHINDE, J ]

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