

ALL INDIA FEDERATION OF UNIVERSITY & COLLEGE TEACHERS' ORGANISATIONS
Circular No. 06/2016-17 : Date : June1, 2017

Dear Friends,
 Greetings!

I feel glad to tell you that our long awaited meeting with MHRD Minister Mr. Prakash Javadekar finally took place on Wednesday, May 10, 2017. AIFUCTO leadership comprising President Prof Keshab Bhattacharya, General Secretary Prof. Arun Kumar and other Secretariat members including Prof. D Kumar, Prof. Jagwant Singh, Prof. Biswajit Bhuiyan, Prof. Binayak Bhattacharya, Prof. Madhu Paranjape and Prof B. Parthasarathy met the MHRD Minister, Mr Prakash Javadekar, discussed the 7th UGC PRC recommendations and many other longstanding issues affecting the teachers of colleges and universities across India. It was a dignified and substantive meeting in which a number of issues were addressed. **The Minister informed the delegation that the issue of Pay Scales is on fast track and would be published soon. He was hopeful that the Report would be finalized in a month's time. AIFUCTO raised the issue of 100% central assistance for uniform and simultaneous implementation of the 7 PRC across the country..** The AIFUCTO Secretariat as a goodwill gesture to honour the Minister's request decided to postpone the dharna that was to be held before UGC on May 15, 2017.

Among other issues that were discussed the Minister was in full agreement with AIFUCTO leadership that the system of adhoc and contractual teachers have led to deterioration of the quality of higher education and vacancies need to be filled up at the earliest. The Minister said that more permanent teachers are to be appointed and all measures will be taken to make teaching and academics more attractive and lucrative. **The Minister agreed to the scrapping of API which is acting as an obstacle to the career advancements of teachers. A proper pay scales and service conditions will be introduced to ensure that adhoc and contractual teachers do not get exploited.** He also assured AIFUCTO leadership of formulating the new Education Policy only after consultation with the stake holders.

AIFUCTO leadership discussed the issue of **Pension Scheme for all teachers. In this regard special mention was made of the aided colleges in Punjab, Chandigarh, Himachal Pradesh, Meghalaya and Jammu and Kashmir who are outside the pale of this benefit. Along with, the demand for a comprehensive and affordable health scheme for all teachers, both in service as well as retired, has been made.**

AIFUCTO leadership reiterated its demand **for removing the anomalies of the 6PRC.** It also raised the issue of introducing CBCS and autonomous colleges in its meeting with the MHRD Minister. They cited the fact that as yet the Indian higher education system is not ready for such moves. Proper infrastructure must be created before such quintessential western designs are introduced here.

And last but not the least AIFUCTO leadership once again asked the Minister for regular interaction with the teachers' body and reestablish the democratic tradition of maintaining continuous dialogue and exchange of ideas between the two bodies to help foster a healthy and vibrant higher education system in India. We are eagerly waiting for the 7PRC Report and hope that that the Minister keeps his words.

MUMBAI NEC: The BUCTU (Bombay University & College Teachers' Union) will be hosting the National Executive Committee (NEC) meeting of AIFUCTO between June 17 and 18, 2017 to commemorate its Golden Jubilee (1966 – 2016). The NEC meeting on Sunday June 18, 2017 will be preceded by a one day National Symposium on: **"Towards Formulation of an Alternative Democratic Education Policy", Saturday, 17 June 2017,** at the Kalina Campus of University of Mumbai. The objective is to have deliberations on the policy initiatives of the Central Government in the field of Higher Education, their impact on the principles of access, equity, and quality and the role of Public Universities. All NEC members are requested to

attend the meeting in Mumbai.

AIFUCTO once again requests every state leadership to send prior information to the organizer regarding the number/ names of the delegates reaching for Symposium and NEC meeting in Mumbai for their comfortable stay and good hospitality.

NEED FOR FINANCIAL SUPPORT/STRUGGLE FUND: I must point out that the finances of AIFUCTO are in jeopardy with no contribution coming from affiliates or members. I request all to please send your contribution at the earliest to salvage the shrinking fund. This is urgently needed to run the day to day functioning as also meet the cost of agitations and other programmes of AIFUCTO. As we decided in our last NEC in Salem, every affiliate unit has to deposit their membership subscription before 15th May, 2017. But very very poor response. I want to point out in this connection that the postage charge of Teachers Movement has been raised from 25 paise to Rs 2 (two) and all these together cost heavily on the Treasury. I request all members and affiliates to please take this matter seriously and send their contribution at the earliest.

AIFUCTO OFFICE IN DELHI SHIFTED: As decided in the last NEC in Salem, The AIFUCTO office is shifted from Tilaknagar to Lakshminagar. Both General Secretary and the Treasurer were in Delhi to look for a new office, which is now located at Yamuna Par, some five to ten minutes from ITO and New Delhi Railway Station by bus, auto or car and two metro stations after ITO. AIFUCTO new Office is barely 3-4 minutes walk from the Laxmi Nagar metro station. This location is economically more viable and closest from ITO and UGC main office. Please note the new address : *AIFUCTO : Building No: WA-108, Ground Floor, School Block Chowk, Gali No. 16 Shakarpur, Delhi 110092*

EIGHT HOUR DHARNA IN KOLKATA: On 12th May AIFUCTO President Prof. Kesab Bhattacharya and General Secretary Prof. Arun Kumar attended a state level one day 8 hour long *mahadharna* of university and college teachers and employees to protest against the undemocratic West Bengal Universities and Colleges (Administration and Regulation) Act, 2017 at Rani Rashmoni Road in Kolkata. Addressing the gathering, General Secretary Arun Kumar reiterated AIFUCTO's support to the cause of teachers' movements anywhere in the country. He dubbed the Act unconstitutional and undemocratic and categorically stated that AIFUCTO and its affiliates would resist all attempts of the central and state governments to thwart the progress of the academics and teachers. He also discussed about the meeting with MHRD Minister in Delhi.

Friends, we are living in very critical time. There is an overwhelming attempt to curb the voice of teachers and academicians across the country, a process that has been in vogue for past several years. The Central government in Delhi functions in the most undemocratic way and never ready for discussion with the teachers. It is after much effort and shaken by the success of our Demand Day on April 19, 2017 and also assessing the impact of the proposed Dharna before UGC on May 15, 2017 that the MHRD Minister finally met us. The Seventh PRC recommendations are still not out. Unfortunately we cannot rely on the Minister's assurances. You must note that the Seventh Pay Commission recommendation for central government employees has already been implemented and many state governments are now on the path towards execution of the same. Only the college and university teachers have been left out. We look forward to discussing these issues with you at the upcoming NEC meeting in Mumbai on June 18, 2017. It is extremely urgent that we take appropriate decision on the ambiguous behaviour of the Government on issues related to college and university teachers of the country.

Thank you .Looking forward for Mumbai.

Arun Kumar
General Secretary, AIFUCTO

सन २००६ पूर्वी सेवानिवृत्त झालेल्या प्राध्यापकांचे सेवानिवृत्ती

वेतन ठरवितांना भेदभावपूर्ण वागणूक : ६

प्रा. बी. टी. देशमुख, महाराष्ट्र प्राध्यापक महासंघाचे माजी अध्यक्ष * डॉ. प्रवीण रघुवंशी, अध्यक्ष, 'नुटा'

IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR BENCH, NAGPUR WRIT PETITION NO. 6599 OF 2016

उपरोक्त याचिकेच्या संदर्भातील सर्व विवादास्पद मुद्दे मा. सर्वोच्च न्यायालयाच्या स्तरावर अंतिमतः निकाली निघालेले आहेत हे नमूद करणारे तपशील

१ जानेवारी २००६ ही 'कट ऑफ डेट' ठरवून त्यापूर्वी सेवानिवृत्त झालेल्या शिक्षकांना भेदभावपूर्ण वागणूक देण्याच्या राज्यशासनाच्या धोरणामुळे महाराष्ट्रातील निरनिराळ्या खंडपीठापुढे अशा शेकडो शिक्षकांची प्रकरणे सुनावणीत आहेत. सन २००६ पूर्वी रीडर श्रेणीमध्ये किंवा निवडश्रेणीमध्ये ३ वर्षे किंवा त्याहून जास्त वर्षे सेवा करून शासकीय महाविद्यालयातून सेवानिवृत्त झालेल्या 'रिडर'श्रेणीतील तीन ज्येष्ठ अधिव्याख्यात्यांनी याबाबतच्या न्यायालयीन संघर्षामध्ये त्यांच्या अधिवक्त्यामार्फत उत्तम यश मिळविले आहे. महाराष्ट्र प्रशासकीय न्यायाधिकरणाच्या नागपूर खंडपीठासमोर Original Application 72 of 2013 या प्रकरणामध्ये खंडपीठाने दिनांक २० जानेवारी २०१६ रोजी हा निर्णय दिलेला असल्याची माहिती संघटनेला उपलब्ध झालेली आहे.

२. १६ परिच्छेदांच्या या निर्णयामध्ये प्रशासकीय न्यायाधिकरणाच्या मा. नागपूर खंडपीठाने अशी भेदभावपूर्ण वागणूक देणे हे चुकीचे आहे असे आपल्या निर्णयाच्या परिच्छेद १४ मध्ये पुढील शब्दात नमूद केलेले आहे.

"(14) In view of the clearly laid down law as above, we hold the applicants could not have been denied the benefits of pension based on pay revision in terms of the GR of 12.8.2009. Undisputedly the Lecturers, whether retiring before or after 31.12.2005; are governed by the same set of rules, that is MCS (Pension) Rules, 1982 and hence they belong to one class only. Therefore, the condition as stipulated in para 8(E) of the GR that the pay revision will not be applicable to lecturers retiring on or before 31.12.2005 is to be held as bad in law and it requires to be struck down."

३. प्रशासकीय न्यायाधिकरणाच्या मा. नागपूर खंडपीठाने शेवटी पुढीलप्रमाणे आदेश पारित केला :-

"(16) Having thus considered the issues involved in the OA from all aspects we hold that the applicants are entitled to the benefits of pension revision in terms of pay revision as laid down in the GR dated 12.8.2009, subject, of course, to their fulfilling all other conditions as stipulated in the GR. Hence the OA stands disposed of in terms of the following directions.

i.) The applicants are entitled to the benefits of pay revision in terms of the GR dated 12.8.2009, for purpose of fixation of their pension, notwithstanding the fact that they had retired on or before. 31st December, 2005. This is subject to their fulfilling other conditions stipulated in the GR.

ii.) The respondents will work out the applicants' entitlement to revised pension based on this order, and disburse arrears, if any, within six months of receipt of this order. "

४. न्यायपीठाच्या पहिल्या पातळीवर या शिक्षकांना उत्तम यश मिळालेले असले तरी हा संघर्ष संपुष्टात आलेला नाही, कारण राज्यशासनाने या निर्णयाच्या विरोधात मा. उच्च न्यायालयाच्या नागपूर खंडपीठासमोर अपील याचिका दाखल केलेली आहे, त्या याचिकेमध्ये राज्यशासन हे वादी असून सन २०१६ च्या याचिका क्रमांक ६५९९ या प्रकरणामध्ये या तीन ज्येष्ठ शिक्षकांना राज्यशासनाने प्रतिवादी केले आहे. (यापुढे W.P. No. 6599 of 2016 या याचिकेचा उल्लेख विद्यमान याचिका असा) महाराष्ट्र प्रशासकीय न्यायाधिकरणाच्या नागपूर खंडपीठाचा निर्णय रद्दबादल करावा अशी विनंती या याचिकेमध्ये शासनातर्फे करण्यात आलेली आहे. संबंध महाराष्ट्रभर निरनिराळ्या खंडपीठासमोर वेगवेगळ्या याचिका या संदर्भामध्ये व्यथित शिक्षकांच्या वतीने दाखल झालेल्या आहेत, त्या लक्षात घेता संघटनेला उपलब्ध झालेली काही माहिती विद्यमान याचिकेच्या सुनावणीत संबंधित शिक्षकांनी किंवा त्यांच्या अधिवक्त्यांनी उच्च न्यायालयाच्या मा. नागपूर

खंडपीठासमोर मांडणे आवश्यक आहे असे वाटते.

५. अमुक एका तारखेच्या पूर्वी निवृत्त झालेल्या व त्या तारखेनंतर निवृत्त झालेल्या एकाच प्रवर्गातील सेवानिवृत्तांमध्ये निवृत्तीवेतन अदा करतांना 'कट ऑफ डेट' चे निमित्त करून भेदभाव करता येणार नाही. असा भेदभाव करणे हे भारतीय संविधानाच्या कलम १४ चा भंग करणारे कृत्य होय. असा महत्त्वपूर्ण निर्णय मा.सर्वोच्च न्यायालयाने डी.एस.नकारा विरुद्ध केंद्र शासन या प्रकरणामध्ये दिला. ३० वर्षापूर्वीचा मा.सर्वोच्च न्यायालयाचा हा निर्णय आजही याबाबतीत प्रमाणभूत मानल्या जातो व सेवानिवृत्तांच्या प्रकरणी अंतिम शब्द मानल्या जातो. मुळात त्या निर्णयातील ही शब्दरचना पुढीलप्रमाणे :-

"The fixation of cut off date as a result of which equals were treated as unequals and for the purpose of entitlement and payment of pension to those who retired by a certain date and those who retired thereafter is wholly arbitrary and did not stand the test of Article-14. The object sought to be achieved was not to create a class within a class, but to ensure that the benefits of pension were made available to all pensioners of the same class equally" [D.S.Nakara and others Vs. Union Government of India (ISCC 305/1983)]

६. केंद्र शासनाच्या व विद्यापीठ अनुदान आयोगाच्या आदेशाची अवहेलना करून महाराष्ट्र शासनाने याबाबतचे जे शासननिर्णय निर्गमित केले त्यामुळे "सिलेक्शन ग्रेड अधिव्याख्याता म्हणून किंवा रिडर म्हणून ३ वर्षांपेक्षा जास्त सेवा पूर्ण केलेले अधिव्याख्याते" या प्रवर्गामध्ये शासन निर्णयाने १ जानेवारी, २००६ पूर्वी निवृत्त झालेले व त्या तारखेनंतर निवृत्त झालेले असे दोन भाग केले असून त्यांना अत्यंत भेदभावपूर्ण व असमान वागणूक दिलेली आहे व ती सरळ-सरळ घटनेच्या कलम १४ चा भंग करणारी आहे.

७. ०१.०१.१९९६ च्या पूर्वी निवृत्त झालेले व ०१.०१.१९९६ नंतर निवृत्त झालेले प्राध्यापक यांच्याबाबत सेवानिवृत्तीवेतन निश्चित करतांना १४९४० हे वेतन गृहित धरून निवृत्तीवेतन निश्चित करण्यास राज्यशासनाने नकार दिला होता. राज्यशासनाची ही वागणूक घटनेच्या कलम १४ च्या विरोधात असल्यामुळे महाराष्ट्रातील मुंबई उच्च न्यायालयाच्या अनेक खंडपीठांनी ती तरतूद रद्दबादल ठरविली होती. राज्यशासन त्यातील अनेक प्रकरणामध्ये सर्वोच्च न्यायालयात गेले असता सर्वोच्च न्यायालयाने उच्च न्यायालयाच्या खंडपीठांचे निर्णय कायम केले व राज्यशासनाच्या SLP फेटाळून लावल्या. अशारीतीने भेदभावपूर्ण वागणुकीला भुईसपाट करण्याच्या प्रकरणात सर्वोच्च न्यायालयाचा अंतिम निर्णय झाल्यामुळे त्या निर्णयाला याबाबतीत कायद्याची स्थिती सांगणाऱ्या अंतिम शब्दाचे स्वरूप प्राप्त झाले.

८. सन २००६ पूर्वी व सन २००६ नंतर निवृत्त झालेल्या शिक्षकांना व कर्मचाऱ्यांना भेदभावपूर्ण वागणूक देण्याच्या प्रकरणामध्ये देशातील अनेक राज्यांमध्ये अशी भेदभावपूर्ण वागणूक देण्यात आली व त्या त्या राज्याच्या खंडपीठांनी त्या त्या ठिकाणी शासनाचे ते निर्णय फेटाळून लावले. ही प्रकरणे सर्वोच्च न्यायालयात गेली व सर्वोच्च न्यायालयाने भेदभावपूर्ण वागणुकीला भुईसपाट करण्याचे एकसारखे निर्णय या सर्व प्रकरणात दिले. त्यामुळे त्या निर्णयाला याबाबतीत कायद्याची स्थिती सांगणाऱ्या अंतिम शब्दाचे स्वरूप प्राप्त झाले. या संदर्भातील तपशीलवार माहिती पुढील परिच्छेदातून नमूद केलेली आहे.

१-१-९६ च्या पूर्वीचे व नंतरचे हा भेदभाव सर्वोच्च न्यायालयाच्या स्तरावर रद्दबादल ठरविण्यात आला

९. संघटनेकडे उपलब्ध असलेल्या निर्णयांचे अवलोकन करता असे दिसून येते की, १ जानेवारी १९९६ पूर्वी निवृत्त झालेल्या शिक्षकांना भेदभावपूर्ण वागणूक देण्याचा राज्यशासनाचा निर्णय घटनाबाह्य ठरविणारा पहिला निर्णय मा. औरंगाबाद खंडपीठाने सन २०१० च्या याचिका क्रमांक २६३० मध्ये दिनांक १ ऑगस्ट २०१२ रोजी दिला. (P140NB2015) त्या निर्णयाचा परिच्छेद ८ पुढीलप्रमाणे आहे :-

"8. The issue is squarely covered by the decision in the case of D.S. Nakara vs Union of India - AIR 1983 SC 130, wherein the Hon'ble Apex Court has found that all pensioners constitute a single homogeneous class and no norm can be inserted or used to discriminate amongst them."

१०. आपल्यासमोर निर्णयार्थ काय प्रश्न आहे. याबाबतचा उक्तापोह खुद्द मा.

खंडपीठानेच केला असून तो या खंडपीठाच्या निर्णयाच्या परिच्छेद ७ मध्ये पुढील शब्दात नमूद आहे :-

"The only question is, whether their pay should have been fixed at Rs.14,940/- as observed in the remarks quoted above, because they had put in five years service in the said grade or selection grade in pre-revised scale of Rs.3700-5700."

पुढे याच निर्णयाच्या परिच्छेद ११ मध्ये मा. खंडपीठाने या प्रश्नाचे निर्णयात्मक उत्तर पुढील शब्दात दिलेले आहे :-

"11. We, therefore, find that the denial by Respondents to fix petitioners' pay at minimum i.e. Rs.14,940/- is arbitrary, unfounded and hence, unsustainable. In this situation, we direct the Respondents to undertake exercise of revising the wages of petitioners in accordance with remark appearing in appendix-I to Govt. Resolution dated 11.12.1999 quoted above and if they satisfy the terms & conditions in said "remark", their pay be fixed at Rs.14,940/- and thereafter their pension be calculated, "

११. त्यानंतर मुंबई उच्च न्यायालयाच्या वेगवेगळ्या खंडपीठांनी याबाबतीत शिक्षकांच्या बाजूने अनेक निर्णय दिले. त्याची तपशीलवार माहिती आवश्यकता असल्यास नमूद करता येईल. मा. सर्वोच्च न्यायालयात यासंदर्भात काय घडले याचे तपशील नमूद करणे आवश्यक आहे. मा. औरंगाबाद खंडपीठाच्या व मुंबई खंडपीठाच्या निर्णयाविरुद्ध राज्य शासनाने मा. सर्वोच्च न्यायालयात दाखल केलेल्या विशेष अनुमती याचिका तेथे फेटाळल्या गेल्या. दिनांक २ मे २०१४ रोजी मुंबई खंडपीठाने याचिका क्रमांक ५४६६/२००६ मध्ये जो निर्णय दिला त्या निर्णयाला शासनाने सर्वोच्च न्यायालयात आव्हान दिले होते. सर्वोच्च न्यायालयाने "The special leave petition is dismissed on the ground of delay as well as on merit." अशा शब्दात दिनांक २५.०४.२०१६ रोजी विशेष अनुमती याचिका फेटाळून लावली. (P 116 NB 2016) सन २०१० च्या याचिका क्रमांक २६३० मध्ये मा. औरंगाबाद खंडपीठाने जो निर्णय दिलेला होता, त्या निर्णयाची प्रत्यक्ष अंमलबजावणी झालेली असून याचिकाकर्त्यांना देय असलेली रक्कम त्यांना प्रत्यक्ष अदा करण्यात आलेली आहे. औरंगाबाद खंडपीठापुढेच त्या नंतर तत्सम निर्णय झालेल्या निरनिराळ्या पाच याचिकांच्या बाबतीत सन २०१५ मध्ये राज्यशासनाने दाखल केलेल्या विशेष अनुमती याचिका (SLP's) मा. सर्वोच्च न्यायालयाने निकाली काढल्या. दिनांक १८.०९.२०१५ रोजी मा. सर्वोच्च न्यायालयाने याबाबतीत दिलेल्या निर्णयात (P 116 NB 2016) "We have been apprised at the Bar that the Order passed by the High Court has already been complied with. Regard been had to the fact that the benefit of liberalised pension has been extended to retired employees, we are not inclined to interfere with the impugned order." असे नमूद करून शेवटी "The special leave petitions are dismissed accordingly." या शब्दात त्या सर्व पुनर्विलोकन याचिका फेटाळून लावल्या.

११-१-२००६ च्या पूर्वीचे व नंतरचे हा भेदभाव सर्वोच्च न्यायालयाच्या स्तरावर रद्दबादल ठरविण्यात आला

१ जानेवारी २००६ पूर्वी निवृत्त झालेले व नंतर निवृत्त होणारे यांना देण्यात येणारी भेदभावपूर्ण वागणूक वेगवेगळ्या उच्च न्यायालयांनी रद्दबादल ठरविली. त्या सर्व प्रकरणी मा. सर्वोच्च न्यायालयाने उच्च न्यायालयांचे निर्णय ठामपणे उचलून धरले. याबाबतचे तपशील पुढीलप्रमाणे :-

कायद्याची स्थिती सांगणारा अंतिम शब्द सर्वोच्च न्यायालयातील प्रकरण पहिले

१२. मा.पंजाब व हरियाणा हायकोर्टापुढे CWP No.19266 of 2010 या प्रकरणात दिनांक २५ जुलै, २०१२ रोजी त्या न्यायालयाच्या एकलपीठाने (Single Judge Bench) दिलेला निर्णय (P122NB2015) हा हुबेहुब महाराष्ट्राच्या स्थितीला लागू पडणारा आहे. मा.उच्च न्यायालयाच्या एकलपीठाने या शिक्षकांच्या बाजूने जो निर्णय दिला, त्यामध्ये स्पष्टपणाने पुढील आदेश नमूद आहेत :-

"Since the petitioners admittedly had completed 3 years of service in the prerevised scale of 12000-18300, prior to their retirement, although before 1.1.2006, they are held entitled to the fixation of pension by placing them in the minimum pay band of 37400-67000 with AGP of 9000 or revision of their pension/family pension w.e.f.1.1.2006."

१३. मा.पंजाब व हरियाणा उच्च न्यायालयाच्या एक सदस्यीय पीठाने दिनांक २५ जुलै, २०१२ रोजी CWP No.19266 of 2010 या प्रकरणात हा जो उपरोक्त निर्णय दिला त्यावर हरियाणा राज्यशासनाने त्याच उच्च न्यायालयाच्या 'डिजिजन बेंच'पुढे (सर्व प्रकरणी) अपिल दाखल केले. त्या न्यायालयाचे मा.मुख्य

न्यायमूर्ती श्री.ए.के.सिक्री व न्या.राकेशकुमार जैन या उभय न्यायाधीशांच्या खंडपीठाने दिनांक १४ जानेवारी, २०१३ रोजी या प्रकरणी (LPA No.1955 of 2012) निर्णय (P176NB2014) दिला. राज्यशासनाचे म्हणणे फेटाळून लावले व एक सदस्यीय खंडपीठाच्या निर्णय कायम केला. मा.उभय न्यायमूर्तींच्या खंडपीठाने सर्व बाजूंचे म्हणणे ऐकून घेतल्यावर एकसदस्यीय खंडपीठाने दिलेल्या निर्णयाशी आम्ही पूर्णपणे सहमत आहोत. उच्च शिक्षण आयुक्तांचे दिनांक ७.०९.२०१० चे आदेश रद्दबादल ठरविणाऱ्या त्या निर्णयामध्ये काहीही चुकीचे नाही. राज्यशासनाच्या अपिलामध्ये काहीही दम (Merit) नाही, त्यामुळे आम्ही ते फेटाळून लावत आहोत. हा आपला निर्णय पुढीलप्रमाणे शब्दबद्ध केला :-

"After hearing learned counsel for the parties, we are in full agreement with the aforesaid observations of the learned Single Judge and find no error in the impugned order by which the order passed by the Higher Education Commissioner, Haryana dated 07.09.2010 has been quashed." (P176NB2014)

१४. पंजाब व हरियाणा उच्च न्यायालयाच्या खंडपीठाने या सर्व शिक्षकांच्या प्रकरणात (एकुण आठ) दिनांक १४ जानेवारी, २०१३ रोजी जो उपरोक्त निर्णय दिला, त्या सर्व प्रकरणात हरियाणा राज्यशासनाने मा.सर्वोच्च न्यायालयात विशेष अनुमती याचिका (SLP's) दाखल केल्यात. "State Of Haryana & Anr Petitioner(s) Versus Satya Pal Yadav & Anr Respondent(s) With SLP(C) No. 26908-26911 / 2013" या प्रकरणासोबतच मा.सर्वोच्च न्यायालयाने दिनांक १० जुलै, २०१४ रोजी या सर्व विशेष अनुमती याचिका 'डिसमिस' केल्या. ह्या SLP मा.सर्वोच्च न्यायालयात 'डिसमिस' झाल्यामुळे मा.पंजाब व हरियाणा उच्च न्यायालयाच्या या निर्णयाला याबाबतीत कायद्याची स्थिती सांगणाऱ्या अंतिम शब्दाचे स्वरूप प्राप्त झाले आहे.

हरियाणामधील व महाराष्ट्रातील परिस्थितीची तुलना लक्षात घेणे आवश्यक आहे. विद्यापीठ अनुदान आयोगाच्या वेतनश्रेण्या अंमलात आणण्याची केंद्रशासनाची व्यवस्था हरियाणा शासनाने मान्य केली होती, तशी ती महाराष्ट्र शासनानेही मान्य केलेली आहे. महाराष्ट्र शासनाने तसे शपथपत्र सर्वोच्च न्यायालयात दाखल केलेले आहे.

कायद्याची स्थिती सांगणारा अंतिम शब्द सर्वोच्च न्यायालयातील प्रकरण दुसरे

१५. केंद्र शासनातील कर्मचाऱ्यांसाठी व अधिकाऱ्यांसाठी असलेल्या प्रशासकीय न्यायाधिकरणाच्या दिल्लीस्थित केंद्रीय प्रशासकीय न्यायाधिकरणाच्या मुख्य खंडपीठाकडे (Central Administrative Tribunal : Principal Bench) एकुण चार प्रकरणे (1) OA No.0655/2010 With (2) OA No.3079/2009 (3) OA No.0306/2010 (4) OA No.0507/2010) निर्णयार्थ होती. पूर्णखंडपीठामध्ये "Hon'ble Mr. Justice V.K. Bali, Chairman, Hon'ble Mr.M.L. Chauhan, Member (J), Hon'ble Dr. (Mrs.) Veena Chhotray, Member" या तीन सदस्यांचा समावेश होता. या प्रकरणी न्यायाधिकरणाने दिनांक १ नोव्हेंबर, २०११ रोजी दिलेल्या निर्णयाच्या (P127NB2015) परिच्छेद ३० मध्ये पुढीलप्रमाणे आदेश आहेत :- "In view of what has been stated above, we are of the view that the clarificatory OM dated 3.10.2008 and further OM dated 14.10.2008 (which is also based upon clarificatory OM dated 3.10.2008) and OM dated 11.02.2009, whereby representation was rejected by common order, are required to be quashed and set aside, which we accordingly do. Respondents are directed to re-fix the pension of all pre-2006 retirees w.e.f. 1.1.2006, based on the resolution dated 29.08.2008 and in the light of our observations made above."

१६. दिल्लीस्थित केंद्रीय प्रशासकीय न्यायाधिकरणाच्या मुख्य पूर्ण खंडपीठाने दिलेल्या या निर्णयावर केंद्र शासनाने दिल्ली उच्च न्यायालयापुढे अपिल दाखल केले. मा.दिल्ली उच्च न्यायालयाच्या द्विसदस्यीय खंडपीठाने "W.P.(C) 1535/ 2012 Union Of India & Anr....petitioners Versus Central Govt. SAG & Ors....Respondents" या प्रकरणात आपला निर्णय (P136NB2015) दिनांक २९ एप्रिल, २०१३ रोजी दिला व पुढील शब्दात न्यायाधिकरणाचा निर्णय कायम केला:-

"The writ petitions are dismissed. The decision of the Full Bench of the Tribunal is upheld but without any order as to costs."

"In case, the arrears are not paid within a period of two months, it will also carry interest @ 9% w.e.f. 01.03.2013. There shall, however, be no order as to cost."

१६. मा.दिल्ली उच्च न्यायालयाच्या या निर्णयावर केंद्र शासनाने मा.सर्वोच्च न्यायालयात विशेष अनुमती याचिका (SLP (C) 23055 of 2013) दाखल

केली. ती मा.सर्वोच्च न्यायालयाने दिनांक २९ जुलै, २०१३ रोजी फेटाळून लावली. त्यावर केंद्र शासनाने पुन्हा पुनर्विलोकन याचिका (Review Petition (C) No(s). 2492 Of 2013 In SLP(C) 23055/2013) दाखल केली. मा.सर्वोच्च न्यायालयाने ती दिनांक १२ नोव्हेंबर, २०१३ रोजी 'डिसमिस' केली. (P122NB2015) त्यावर केंद्र शासनाने पुन्हा सर्वोच्च न्यायालयात पूर्वनिर्णय निवारक याचिका (Curative Petition (C) No. 126 Of 2014 In Review Petition (C) No. 2492 Of 2013 In Special Leave Petition (C) No.23055 Of 2013) दाखल केली. मा.सर्वोच्च न्यायालयाच्या (1) CJI. R.M. Lodha (2) H.L. Dattu J. (3) Dr. B.S. Chauhan J. (4) Surinder Singh Nijjar J. (5) Fakkir Mohamed Ibrahim Kalifulla J." या पाच न्यायमूर्तींच्या खंडपीठाने दिनांक ३० एप्रिल, २०१४ रोजी ती 'क्युरेटीव्ह पिटीशन' 'डिसमिस' केली. (P119NB2015) त्यामुळे आता केंद्रीय प्रशासकीय न्यायाधिकरणाच्या व मा.दिल्ली उच्च न्यायालयाच्या या निर्णयाला याबाबत कायद्याची स्थिती सांगणाऱ्या अंतिम शब्दाचे स्वरूप प्राप्त झाले आहे.

कायद्याची स्थिती सांगणारा अंतिम शब्द

सर्वोच्च न्यायालयातील

प्रकरण तिसरे

१७. मा. राजस्थान उच्च न्यायालयाने अशाच प्राध्यापकांच्या बाजूने ठामपणाने भेदभाव संपुष्टात आणणारा निर्णय दिला. त्यावर राजस्थान राज्यशासनाने सर्वोच्च न्यायालयात बऱ्याच SLP दाखल केल्यात. मा. सर्वोच्च न्यायालयाने त्या सर्व SLP केवळ 'डिसमिस' केल्या असेच नव्हे तर २२ परिच्छेदांचा एक तपशीलवार निर्णय (P153NB2015) दिला. या निर्णयाच्या परिच्छेद ११ मध्ये राजस्थान उच्च न्यायालयाच्या Division बेंचने दिलेल्या निर्णयाची पुढील शब्दात पाठराखण केली. :-

"The Division Bench appreciated the reasoning of the learned Single Judge that the consolidated pension as on 1.9.2006 should not be lower than 50% of the minimum pay of the post in the running pay band plus grade pay introduced w.e.f. 1.9.2006."

"Notification dated 12.10.2009, with effect from 01.01.2006 instead of 01.09.2006; that it was clear that revision of pay scale would be at the minimum of 50% of the sum of the pay in running pay band plus grade pay so introduced from the year 2006;"

"The Division Bench clarified by way of example that if a teacher was awarded Selection Scale in the year 2002 or prior to it under the old Regulation and was continuing, then the benefit of Revised Pay Scale Rules, could not be denied to him."

१८. उपरोक्त "In the Supreme Court of India Civil Appellate Jurisdiction : Civil Appeal No. 1123 of 2015 (Arising out of SLP(C) NO.321 OF 2015)" या प्रकरणात मा. सर्वोच्च न्यायालयाने तत्सम प्रकरणी स्पष्टपणे शिक्षकांच्या बाजूने निर्णय दिलेला आहे. (P153NB2015) एकदा खालच्या न्यायालयात निर्णय झाल्यावर उगाच लोकांना कोर्टात हेलपाटे देण्याच्या वृत्तीला राज्यशासनाने टाळले पाहिजे. ते राज्यशासनाचे कर्तव्य आहे. याबाबत या निर्णयाच्या परिच्छेद २० मध्ये स्पष्टपणे पुढीलप्रमाणे उल्लेख आहे:-

"It is the duty of the State Government to avoid unwarranted litigations and not to encourage any litigation for the sake of litigation. The respondents were entitled to get the benefit of pension and the High Court has placed reliance on the decision of another High Court which has already been approved by this Court."

१९. मा. सर्वोच्च न्यायालयाच्या या निर्णयातील परिच्छेद २१ व २२ मधील पुढील महत्त्वपूर्ण निरीक्षणे लक्षात घेण्यासारखी आहे. :-

21. It is urged before us that it will put a heavy financial burden on the State. The said submission has been seriously resisted by the learned counsel for the respondents by urging that hardly 200-250 retired lecturers in the selection scale are alive in praesenti and the State cannot take a plea of financial burden to deny the legitimate dues of the respondents.

22. In view of the aforesaid analysis, we do not perceive any merit in this batch of appeals and accordingly, the same stands dismissed. The benefit shall be extended to the respondents within a span of three months from today failing which the accrued sum shall carry interest @ 9% per annum till realisation. There shall be no order as to costs."

२०. तत्सम प्रकरणामध्ये २० जानेवारी २०१६ रोजी "Maharashtra Administrative Tribunal Nagpur Bench, Nagpur Original Application No. 72/2013" या प्रकरणामध्ये मा. प्रशासकीय न्यायाधिकरणाने या तीन ज्येष्ठ शिक्षकांच्या बाजूने निर्णय दिलेला आहे. राज्यशासनाने त्यावर मा. नागपूर खंडपीठासमोर याचिका दाखल केलेली आहे. या प्रकरणामध्ये (W. P. 3052 of 2016) मा. उच्च न्यायालयासमोर याचिका दाखल करतांना १ जानेवारी २००६ पूर्वी निवृत्त झालेल्या प्राध्यापकांच्या बाबतीत १२ ऑगस्ट २००९ च्या शासननिर्णयाचे लाभ या शिक्षकांना लागू न करून वेगळी वागणूक त्यांना देण्याच्या समर्थनार्थ प्रशासकीय न्यायाधिकरणासमोर शासनातर्फे काय समर्थन मांडण्यात आले होते हे मा. उच्च न्यायालयासमोर सादर करण्यात आले नव्हते. या प्रकरणावर वेगवेगळ्या तारखांना मा. उच्च न्यायालयासमोर सुनावणी झाली. दिनांक २ मार्च २०१७ रोजीच्या सुनावणीच्या वेळी खुद्द मा. खंडपीठाने जे अभिप्राय व्यक्त केले ते त्या दिवशीच्या कामकाजाच्या परिच्छेद २ मध्ये पुढील शब्दात नमूद आहे :-

"2. The only question is, whether any justification for treating the pensioners retired prior to 01.01.2006 differently than those who have retired after this date and given benefit of Government Resolution dated 12.08.2009, was pleaded before the Maharashtra Administrative Tribunal (MAT)."

त्याच दिवशीच्या मा. उच्च न्यायालयाच्या कामकाजातील परिच्छेद ४ व ५ पुढीलप्रमाणे आहे :-

"4. The defence taken before the MAT is not placed on record."

"5. The learned Additional GP is seeking time of one week to place it on record."

२१. एका आठवड्यात ते समर्थन मा. खंडपीठासमोर ठेवण्यात आलेले नाही हे उघड आहे. मात्र राज्यशासनाचे याबाबतीत काय समर्थन आहे याचे काही उल्लेख आपल्याला आढळतात. प्रशासकीय न्यायाधिकरणासमोर राज्यशासनाने जी बाजू मांडली ती मा. न्यायाधिकरणाच्या निर्णयाच्या परिच्छेद ५ व ६ मध्ये नमूद आहे. ती पुढील शब्दात :-

"5. The respondents further state that it is the prerogative of the government as what extent the recommendations of pay revision appointed by the Central Government are to be followed in totality depending on the financial condition of the State."

प्रशासकीय न्यायाधिकरणाच्या निर्णयातील परिच्छेद ४ व ५ चे अवलोकन करता १ जानेवारी २००६ पूर्वी निवृत्त झालेल्या शिक्षकांच्या बाबतीत वेगळा धोरणात्मक निर्णय (Policy Decision) घेण्याचा शासनाला अधिकार आहे अशी मांडणी राज्यशासनातर्फे तेथे करण्यात आली आहे.

२२. भेदभावपूर्ण वागणूक देण्याच्या दुसऱ्या एका प्रकरणी मा. नागपूर खंडपीठासमोर दाखल करण्यात आलेल्या व सुनावणीत असलेल्या W. P. No. 4908 of 2016 मध्ये राज्यशासनातर्फे उच्च शिक्षण सहसंचालक, नागपूर यांनी १८.०२.२०१७ रोजी एक शपथपत्र दाखल केलेले आहे. त्यातील परिच्छेद ६ या एका परिच्छेदामध्ये राज्यशासनाची बाजू मांडण्यात आलेली आहे. या ६ व्या परिच्छेदामध्ये **"Whether the Policy Decision of the Government can be faulted with"** असा एकदा उल्लेख आहे. पुन्हा दुसऱ्यांदा **"Whether the Judicial Scrutiny of Policy Decision taken by the State Government"** असा दुसऱ्यांदा उल्लेख आहे व त्याच परिच्छेदात तिसऱ्यांदा सुद्धा **"Policy making is an absolute prerogative of the State Government"** असा उल्लेख आहे.

२३. निवडश्रेणीमध्ये ३ वर्षे किंवा त्यापेक्षा जास्त सेवा होऊन १ जानेवारी, २००६ पूर्वी सेवानिवृत्त झालेल्या अधिव्याख्यात्यांना निवृत्तीवेतनाबाबत जी भेदभावपूर्ण वागणूक देण्यात आली आहे, त्या संदर्भात दुर्तोंडी वर्तनाची एक नवी वस्तुस्थिती आता समोर आलेली आहे. मा. सर्वोच्च न्यायालयाने दिनांक ५ जानेवारी, २०१७ रोजी "Supreme Court of India Civil Appellate Jurisdiction : Civil Appeal Nos. 115-116 of 2017 (Arising out of SLP (C) Nos. 26523-26524 of 2012) Secretary Mahatma Gandhi Mission & Another...Appellants VERSUS Bhartiya Kamgar Sena & Others...Respondents" (P2NB2017) या प्रकरणात एक अतिशय महत्त्वपूर्ण निर्णय दिलेला आहे. त्यातून ही वस्तुस्थिती पुढे आलेली आहे.

२४. उपरोक्त सर्वोच्च न्यायालयाच्या निर्णयामध्ये केंद्र शासनाच्या ३१.१२.२००८ च्या पत्रान्वये पाठविण्यात आलेल्या विद्यापीठ अनुदान आयोगाच्या वेतनपुनर्रचने विषयीचा उल्लेख स्पष्टपणे परिच्छेद ६४ मध्ये असून केंद्राची ही योजना मान्य करण्याचा धोरणात्मक निर्णय घेऊन महाराष्ट्र राज्य शासनाने १२.०८.२००९ रोजी शासन निर्णय निर्गमित केला असाही स्पष्ट उल्लेख परिच्छेद ६५ मध्ये आहेत. या ६५ व्या परिच्छेदात असेही नमूद आहे की, राज्यशासनाने सर्वोच्च

न्यायालयामध्ये जे शपथपत्र दाखल केले त्या शपथपत्राच्या परिच्छेद ३ मध्ये केंद्राची विद्यापीठ अनुदान आयोगाने सुचविलेली सहाय्या वेतन आयोगाची व्यवस्था महाराष्ट्रात राबविण्याचा धोरणात्मक निर्णय (Policy Decision) महाराष्ट्र शासनाने घेतला होता. मा. सर्वोच्च न्यायालयाच्या या निर्णयातील लागूपुरता भाग शब्दशः पुढीलप्रमाणे:-

"64. However, after adopting such a policy the Government of India thought it fit to suggest to the States by its communication dated 31.12.2008 that the States may also adopt the policy of the Government of India if they so choose. As an incentive for the States to adopt the policy, the Government of India offered to undertake a substantial portion of the financial burden of the States resulting from the adoption of such policy. However, such an undertaking is limited only for a period of five years.

65. Accepting the offer made under the scheme of the Union of India, the State of Maharashtra issued the GR dated 12.8.2009 revising the pay scales of the cadres specified therein (essentially teaching staff) of the "universities' colleges and other higher educational institutions". By the said GR, the State of Maharashtra declared the revision of the pay scales of the teaching staff of the educational institutions. It is stated in the counter affidavit filed before this Court on behalf of the State:

"3. I say that as things stand today, the Government of Maharashtra has taken a policy decision to implement the recommendations of 6th Pay Commission to teaching and non-teaching staff of government-run and government-aided educational institutions only."

२५. 'पेन्शन' व 'फॅमिली पेन्शन'ची व्यवस्था ही विद्यापीठ अनुदान आयोगाच्या वेतनश्रेण्या अंमलात आणणाऱ्या केंद्रशासनाच्या दिनांक ३१ डिसेंबर, २००८ च्या शासननिर्णयान्वये (P17NB2009) अंमलात आलेल्या त्या व्यवस्थेचा एक अविभाज्य भाग होती व आहे. केंद्राच्या त्या शासननिर्णयाच्या (P21NB2009) परिच्छेद ८ मध्ये पेन्शन व फॅमिली पेन्शन या दोनही बाबी समाविष्ट आहेत व त्यामुळेच ती व्यवस्था अंमलात आणणाऱ्या दिनांक १२ ऑगस्ट, २००९ च्या महाराष्ट्र शासननिर्णयाच्या परिच्छेद ८ मध्ये या दोनही बाबी समाविष्ट आहेत. दिनांक १२ ऑगस्ट, २००९ रोजीच्या शासननिर्णयाच्या पहिल्याच परिच्छेदात "Payment of central assistance for implementing this scheme is subject to the condition that the entire scheme of revision of pay scales together with all the conditions etc. shall be implemented by the State Governments as a composite scheme without any modification etc." असे नमूद आहे. अशा अटीवरच राज्यशासनाला जवळजवळ १५०० कोटी रुपयाचे अर्थसहाय्य केंद्र शासनाकडून या कामी मिळाले.

२६. हकीम समितीच्या शिफारशीनुसार धोरणात्मक निर्णय (Policy Decision) घेण्याचा राज्य शासनाला अधिकार आहे अशी भूमिका अशा भेदभावाच्या समर्थनार्थ राज्यशासनातर्फे वारंवार मांडण्यात आली आहे. विद्यमान प्रकरणी प्रशासकीय न्यायाधिकरणाच्या २० जानेवारी २०१६ च्या निर्णयाच्या परिच्छेद ५ मध्ये हकीम समितीच्या शिफारशीचा उल्लेख आहे. याबाबत हे स्पष्टपणे नमूद करण्यात येत आहे की हकीम समितीची स्थापना राज्यशासनाच्या दिनांक २३ सप्टेंबर, २००८ च्या शासननिर्णयान्वये (शासन निर्णय क्रमांक : वेपुर १२०८ / प्र.क्र. ७२/ सेवा - ९) (P131NB2008) करण्यात आली. त्या शासननिर्णयाने हे काम या समितीच्या कार्यक्षेत्रामध्ये सोपविलेले नव्हते. हकीम समितीची नेमणूक ज्या शासननिर्णयाने केली त्या शासननिर्णयाच्या जोडपत्राच्या परिच्छेद १ मध्ये या समितीच्या विचारार्थ विषयाची यादी दिलेली आहे. त्यामध्ये विद्यापीठीय व महाविद्यालयीन शिक्षकांचा कोणताही विषय या समितीकडे सोपविण्यात आलेला नव्हता. दिनांक ५ मे, २००९ च्या ज्या शासननिर्णयाने सेवानिवृत्ती वेतननिश्चितीचे सरसकट सूत्र ठरवून दिले त्या शासननिर्णयाच्या सुरुवातीलाच हा शासननिर्णय हकीम समितीच्या अहवालावर शासनाने घेतलेल्या निर्णयानुसार काढण्यात आला आहे, असे नमूद आहे. विद्यापीठीय व महाविद्यालयीन शिक्षकांचा व या हकीम समितीचा काहीही संबंध नाही.

महत्त्वाची बाब अशी की "सहाय्या केंद्रीय वेतन आयोगाच्या शिफारशीवरील केंद्र शासनाचे निर्णय विचारात घेऊन हकीम समितीने आपल्या शिफारशी कराव्या" अशी स्पष्ट तरतूद २३ सप्टेंबर २००८ च्या शासननिर्णयात (P131NB2008) होती. विद्यापीठीय व महाविद्यालयीन शिक्षकांच्या बाबतीत केंद्र शासनाचे निर्णय हकीम समिती नेमली त्यावेळी जाहीर झालेले नव्हते. हकीम समितीने आपला अहवाल राज्यशासनाला दिनांक २० डिसेंबर, २००८ रोजी सादर केला. विद्यापीठीय व महाविद्यालयीन शिक्षकांबाबत सहाय्या वेतन आयोगानुसारच्या वेतनश्रेण्यांची व्यवस्था लागू करणारा केंद्राचा निर्णय दिनांक ३१ डिसेंबर, २००८ रोजी जाहीर

झाला. एक म्हणजे या समितीकडे हा विषय सोपविलेला नव्हता, दुसरे म्हणजे केंद्राचा निर्णय विचारात घेऊन या समितीने आपल्या शिफारशी करावयाच्या होत्या. याबाबतीत अहवाल सादर झाला तरी केंद्रशासनाचे निर्णय जाहीर झालेले नव्हते. तिसरे म्हणजे वेतन विषयक निर्णय प्रथम व्हायला हवे होते. इथे सेवानिवृत्तीवेतनाचे निर्णय प्रथम झाले व वेतनाचे निर्णय नंतर झाले. त्यामुळे गाडी पुढे व घोडा मागे असा हास्यास्पद प्रकार याबाबतीत घडला.

२७. विद्यमान प्रकरणात प्रशासकीय न्यायाधिकरणासमोर गेलेल्या ३ ज्येष्ठ प्राध्यापकांप्रमाणे इतर व्यथित प्राध्यापकांनी हकीम समितीच्या शिफारशी विद्यापीठीय व महाविद्यालयीन प्राध्यापकांना लागू होत नाहीत. असा मुद्दा औरंगाबाद खंडपीठासमोर सन २०१३ च्या याचिका क्रमांक ४२९२ मध्ये मांडला होता. त्या प्रकरणी दिनांक ९ जून २०१५ रोजी औरंगाबाद खंडपीठाने २७ परिच्छेदांचा एक तपशीलवार निर्णय (P121NB2015) दिला असून त्याच्या परिच्छेद २६ मध्ये पुढीलप्रमाणे उल्लेख आहे.

"26. The State Government shall also consider the contention of the petitioner that, recommendation of Hakeem Committee are not applicable for deciding the pensionary benefits for the category of teaching staff working in universities and colleges in Maharashtra..."

चार महिन्यात राज्यशासनाने आपला विचार पूर्ण करावा असे मा. उच्च न्यायालयाचे ९ जून २०१५ रोजीचे आदेश (117/2015) असतांना हकीम समितीच्या गैरलागूपणाबाबतची माहिती शासनाने प्रशासकीय न्यायाधिकरणासमोर मांडली नाही व विद्यमान प्रकरणात मा. उच्च न्यायालयासमोर सुद्धा मांडली नाही.

२८. विद्यापीठीय व महाविद्यालयीन शिक्षकांना "हकीम समितीची व्यवस्था" लागू पडते की "विद्यापीठ अनुदान आयोगाने सुचविलेली व केंद्र शासनाने मान्य केलेली व्यवस्था" लागू पडते याबाबत घटनात्मक तरतुदी सुद्धा लक्षात घेणे आवश्यक आहे. त्या पुढीलप्रमाणे:-

(A) 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.

(B) 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.

(C) 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.

(D) But the UGC Act essentially intended to make provisions for the 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.

(E) 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 till today.

२९. भारतीय संविधान अस्तित्वात आल्यापासून महाराष्ट्रात विद्यापीठीय व महाविद्यालयीन शिक्षकांसाठीची वेतनव्यवस्था हकीम समिती किंवा तत्सम राज्यस्तरीय समितीच्या शिफारशीवरून एकदाही लागू करण्यात आली नाही व आजही नाही. यापूर्वी या प्रत्येक वेतन आयोगाच्या वेळी "विद्यापीठ अनुदान आयोगाने सुचविलेली व केंद्र शासनाने मान्य केलेली व्यवस्था" महाराष्ट्रात अंमलात आणल्या गेली. सहाय्या वेतन आयोगाच्या वेळीसुद्धा ती तशी अंमलात आणल्या गेली आहे. ती व्यवस्था अंमलात आणण्याचा धोरणात्मक निर्णय महाराष्ट्र शासनाने घेतला असल्याचे शपथपत्र राज्यशासनाने सर्वोच्च न्यायालयात दाखल केले आहे असे असतांना इकडे मात्र मा. उच्च न्यायालयासमोर हकीम समितीचे तुणतुणे वाजविणे दुर्तोंडीपणाचे होय.

MAHARASHTRA ADMINISTRATIVE TRIBUNAL : NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO. 72/2013

(1) Dr. Arun S/o Balwantrao Tongo Aged about 74 years, Occ. Retired, R/o. M-13, Taty Tope Nagar, Nagpur-440015. (2) Dr. Yeshwant S/o. Krishnarao Risaldar, aged about 80 years, Occ. Retired, R/o. Prasad Risaldar, Lane, Ruikar Road, Mahal Nagpur. (3) Dr. Bhalchandra S/o. Ramchandra Andhare, aged about 77 years, R/o. Pitruchaya S-70, Bharat Nagar, Nagpur-440001.....**APPLICANTS**

VERSUS

(1) State of Maharashtra, Through the Secretary, Higher and Technical Education, Mantralaya, Annexe, Mumbai-440032. (2) The Director, Higher Education, Maharashtra State, Central, Building, Pune -01 (3) The joint Director, Higher Education, Nagpur Division, Old Morris College Building, Zero Mile, Nagpur (4) Senior Treasury officer, Nagpur (5) Vasant Naik Govt. College and Social Science Institute, Nagpur through its Director, Reserve Bank Square, Pandit Nehru Marg, Nagpur 440001.....**RESPONDENTS**

Smt R D Raskar, Advocate for the applicant : Shri P N Warjurkar: PO for the respondents

CORAM : B. Majumdar: Vice Chairman and S S Hingne : Member (J)

DATE : 20th Jan, 2016.

ORDER : PER VICE-CHAIRMAN

The applicants retired as Readers from a Govt college. They are aggrieved that they have been deprived the benefits of pension revision as per pay revision approved by UGC.

(2) The applicants retired during 1993 to 1995. On 12.8.2009 the Govt in higher and Technical Education Dept issued a GR adapting the UGC approved revised pay scales for teachers in colleges w.e.f.1.1.2006. **The GR states that these scales will not be available to teachers who had retired prior to 1.1.2006.** The applicants have challenged the legality of this GR in the OA. On 15.12.2009 the Ministry of HRD, Dept of Higher Education, informed UGC that pre-1.1.2006 retired teachers who had completed 3 years' service in the pre-revised pay scale of Rs. 12000-420-18300 will be placed in the revised pay scale of Rs

37,400-67,000 with grade pay of Rs 9000.

(3) The applicants state that in terms of the above communication of the Ministry of HRD the Govt of India has implemented one-rank-one pension policy by removing the discrepancy between the retirees who retired before and after 1.1.2006. As the State Govt is committed to follow the policy of the Central Government with regard to all matters of pay and pension revision, it should implement the policy in terms of the above circulation.

(4) Secretary, Higher and Technical Education (R/1), Director, Higher Education (R/2), Joint Director, Higher Education (R/3) and Director Vasant Naik Govt. College and Social Science Institute, Nagpur (R/5) in their reply submit as follows :

*Para 6. "It is submitted that, the State Government has laid down the formula as a consequences of acceptance of revised 6th Pay commission, therefore, **the benefits occurring to the employee serving on the date of acceptance of revised 6th pay Commission cannot be extended to the employees who retired prior to the acceptance of 6th Pay Commission i.e. 1.1.2006.** It is further submitted that the employees who were in service and were not retired on the date of acceptance of 6th Pay Commission form a separate class. In the light of this the formula stipulated in Government Resolution dated 31.10.2009 of Finance Department for determination of Pension for the employees in service on 01.01.2006 may not be made applicable to the employees retired prior to 01.01.2006. It is must that the employee must be in service on 01.01.2006 as per the formula set up by the government resolution."*

(5) The respondents further state that it is the prerogative of the government as what extent the recommendations of pay revision appointed by the Central Government are to be followed in totality depending on the financial condition of the State. The post-1.1.2006 pensioners have their pension revised according to **Hakim Committee recommendations** as per GR dated 5.5.2009.

(6) The Senior Treasury officer, Nagpur (R/4) submitted that the applicants' pay fixation was as per authorisation by the Accountant General and circular dated 5.5.2009.

(7) Smt R D Raskar, Ld Counsel for the applicant relied on the judgment of the Constitutional Bench in D. S. Nakara & Others vs Union of India [1983 AIR 130, 1983 SCR (2) 165] **holding that pensioners governed by the same service rules cannot be classified into two or more groups by laying down a cut off date for entitlement to revision in pension.** The Apex Court therefore had struck down the Central Government's order

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 6599 OF 2016

(The State of Maharashtra thr. Secretary, Higher and
Technical Education Department & Ors.

VERSUS.

Dr. Arun s/o Balwantrao Tongo & Ors.)

CORAM : B.P. DHARMADHIKARI &
Mrs. SWAPNA JOSHI, JJ.

MARCH 02, 2017.

Heard Mrs. K.S. Joshi, learned Additional GP for the petitioners and Mrs. R.D. Raskar, learned counsel for respondent Nos. 1 & 2.

2. The only question is, whether any justification for treating the pensioners retired prior to 01.01.2006 differently than those who have retired after this date and given benefit of Government Resolution dated 12.08.2009, was pleaded before the Maharashtra Administrative Tribunal (MAT).

3. According to the learned counsel for respondent Nos. 1 & 2, the Government Resolution dated 05.05.2009 treating the pensioners retiring before 01.01.2006 differently was very much pressed into service and consideration by the MAT shows that in terms of Government Resolution dated 12.08.2009, no discrimination could have been made amongst the pensioners depending upon the date of their retirement. She submits that impliedly Government Resolution dated 05.05.2009 is found bad by the MAT.

4. The defence taken before the MAT is not placed on record.

5. The learned Additional GP is seeking time of one week to place it on record.

6. List the matter on 16.03.2017.

JUDGE

JUDGE

creating two categories of pensioners depending on their dates of retirement. She also relied on the order of hon'ble the High Court dated 2.5.2014 in Shivaji University Teachers' Association and others vs State of Maharashtra and Others in WP 5466 of 2006 (Unreported). The High Court had ruled that the cases of pension revision of College Teachers who retired prior to 1.1.96 and have served for more than 5 years in the Selection Grade have to be decided as per the same formula as in case of those who retired after 31.12.95. Thus, according to her, it is the settled law that those who had retired prior to a cut off date cannot be denied the benefits of pension revision which are made available to pensioners who retired on or after that date.

(8) Shri Warjurkar, Ld PO reiterated the submissions of the respondents. He then relied on Mineral Exploration Corp Ltd vs Arvind Kurnar Dixit and Another [(2015) 2 SCC 535] in which the Apex Court had held that fixing of a cut off date for grant of wage and pensionary benefits by forming two distinct and separate classes of employees was permissible and it was within the ambit of Article 14.

(9) We find that the applicants main grievance is that they have not been granted the benefits of revision of pension as per the impugned GR of 12.8.09 only for the reason that as per this GR, these benefits were not applicable to those who had retired prior to 1.1.06. The relevant para 8(E) of the GR states as follows:

"8(E) *Applicability of the Scheme:*

(i) *This scheme shall be applicable to teachers and other equivalent cadres of library and physical education in all the Universities, Colleges and other higher educational institutes coming under the purview of state legislature through the department of Higher and Technical Education of Maharashtra and governed by the rules of University Grants Commission. However, the unaided colleges will not be entitled for any financial assistance from the State Government and similarly in case of aided institutes of the Government assistance will only be limited to the posts approved by the Government from time to time. The revised scales are not applicable to the teachers who retired on or before 31st December, 2005 and who worked on re-employment on that date."*

(10) Respondents in their reply have stated that these retirees constitute a separate class of pensioners and hence different yardsticks of pay revision will apply to this class.

(11) We find that such a policy stands contrary to the law laid down in D. S. Nakara. In D. S. Nakara the petitioners had challenged the Govt of India Memorandum dated May 25, 1979 liberalising the formula for computation of pensions in respect of employees governed by the Central Civil Services (Pension) rules 1972 and made it applicable to employees retiring on or after March 31, 1979, as also another Memorandum issued on September 23, 1979 extending it to the Armed Forces' personnel retiring on or after April 1, 1979. **The Constitutional Bench held that pensioners, for payment of pension, form a single class. When the State considered it necessary to liberalise the pension scheme in order to augment social security in old age to government servants it could not grant the benefits of liberalisation only to those who retired subsequent to the specified date and deny the same to those who had retired prior to that date.** The division which classified the pensioners into two classes on the basis of the specified date was devoid of any rational principle and was both arbitrary and unprincipled being unrelated to the object sought to be achieved by grant of liberalised pension and the guarantee of equal treatment contained in Art. 14 was violated inasmuch as the **pension rules which were statutory in character meted out differential and discriminatory**

treatment to equals in the matter of computation of pension from the dates specified in the impugned memoranda. Para 65 of the judgment is reproduced below :

"65. *That is the end of the journey. With the expanding horizons of socio-economic justice, the socialist Republic and welfare State which we endeavour to set up and largely influenced by the fact that the old men who retired when emoluments were comparatively low and are exposed to vagaries of continuously rising prices, the falling value of rupee consequent upon inflationary inputs, we are satisfied that by introducing an arbitrary eligibility criteria: "being in service and retiring subsequent to the specified date" for being eligible for the liberalised pension scheme and thereby dividing a homogeneous class, the classification being not based on any discernible rational principle and having been found wholly unrelated to objects sought to be achieved by grant of liberalised pension and the eligibility criteria devised being thoroughly arbitrary, We are of the view that eligibility for liberalised pension scheme of being in service on the specified date and retiring*

१-१-९६ च्या पूर्वीचे

व नंतरचे

१ जानेवारी १९९६ पूर्वी निवृत्त झालेल्या शिक्षकांना भेदभावपूर्ण वागणूक देण्याचा राज्यशासनाचा निर्णय घटनाबाह्य ठरविणारा पहिला निर्णय मा. औरंगाबाद खंडपीठाने सन २०१० च्या याचिका क्रमांक २६३० मध्ये दिनांक १ ऑगस्ट २०१२ रोजी दिला. (P140NB2015) त्या निर्णयातील परिच्छेद ७ मधील पुढील मजकूर पहा :-

"The only question is, whether their pay should have been fixed at Rs.14,940/- as observed in the remarks quoted above, because they had put in five years service in the said grade or selection grade in pre-revised scale of Rs.3700-5700."

२. पुढे याच निर्णयाच्या परिच्छेद ११ मध्ये मा. खंडपीठाने या प्रश्नाचे निर्णयात्मक उत्तर पुढील शब्दात दिलेले आहे :-

"11. We, therefore, find that the denial by Respondents to fix petitioners' pay at minimum i.e. Rs.14,940/- is arbitrary, unfounded and hence, unsustainable."

मा. औरंगाबाद खंडपीठाच्या व मुंबई खंडपीठाच्या निर्णयाविरुद्ध राज्य शासनाने मा. सर्वोच्च न्यायालयात दाखल केलेल्या विशेष अनुमती याचिका तेथे फेटाळल्या गेल्या.

१-१-२००६ च्या पूर्वीचे

व नंतरचे

३. २० जानेवारी २०१६ रोजी "Maharashtra Administrative Tribunal Nagpur Bench, Nagpur यांच्या समोरील Original Application No. 72/2013" या प्रकरणांमध्ये मा. प्रशासकीय न्यायाधिकरणाने या तीन ज्येष्ठ शिक्षकांच्या बाजूने निर्णय (P130NB2017) दिलेला आहे. राज्यशासनाने त्यावर मा. नागपूर खंडपीठासमोर याचिका दाखल केलेली आहे. या प्रकरणांमध्ये (W. P. 3052 of 2016) मा. उच्च न्यायालयासमोर सुनावणी सुरू आहे. या प्रकरणावर वेगवेगळ्या तारखांना मा. उच्च न्यायालयासमोर सुनावणी झाली. दिनांक २ मार्च २०१७ रोजीच्या सुनावणीच्या वेळी खुद्द मा. खंडपीठाने जे अभिप्राय व्यक्त केले ते त्या दिवशीच्या (P130NB2017) कामकाजाच्या परिच्छेद २ मध्ये पुढील शब्दात नमूद आहे :-

"2. The only question is, whether any justification for treating the pensioners retired prior to 01.01.2006 differently than those who have retired after this date and given benefit of Government Resolution dated 12.08.2009, was pleaded before the Maharashtra Administrative Tribunal (MAT)."

subsequent to that date in impugned memoranda, Exhibits P-1 and P-2, violates Art. 14 and is unconstitutional and is struck down.”

(12) In Shivaji University Teachers’ Association and others vs State of Maharashtra (supra) the petitioners before hon’ble the High Court had challenged denial of pension in the revised scale as they had prior to the cut off date of 1.1.96. The High Court, relying on its judgment in Chandrakant J Dangre (WP 2957 of 2010) **had held that there cannot be two different classes of pensioners for extending the benefits of revision in pension. In Chandrakant J Dangre Their Lordships, relying on D S Nakara, had held that,**

“10. The petitioners, whether they retire before or after 1.1.1996, in present facts, constitute only one class & have been recognized as such qua the pension computation exercise and, therefore only, respondents have revised petitioners’ wages and extended to them the benefit of revised scale of Rs.12000-18300/-. However, the more beneficial term which required the petitioners’ pay to be fixed at Rs. 14,940/-, when they have put in five years service in selection grade which they claim to have put prior to their retirement; has not been extended to them. No reason is being assigned for not doing so.

11. We, therefor find that the denial by Respondents to fix petitioners’ pay at minimum i.e. Rs 14,940/- is arbitrary, unfounded and hence, unsustainable...”

(13) After citing Chandrakant J Dangre as above, the High Court held:

“6. From the aforesaid, it is clear that the retirees pre 1996 and Post 1996, in the facts and circumstances of the present case constitute one class. As between the members of this one class, it was impermissible for the state to adopt an unequal yardstick. Admittedly, the retirees post 1996 are being paid pension/family pension, not only in the revised pay scale of Rs.12000-18300, but further such retirees, when they have put in five years of service in selection grade have their pay fixed at Rs.14,940/-. However, benefit of such interpretation is being denied to the college teachers who have retired prior to 1.1.1996. As noted earlier, the Division Bench of this Court in the case of Chandrakant Dangre (supra) has categorically held that this constitutes discrimination and is accordingly unsustainable.”

(14) In view of the clearly laid down law as above, we hold the applicants could not have been denied the benefits of pension based on pay revision in terms of the GR of 12.8.2009. Undisputedly the Lecturers, whether retiring before or after 31.12.2005; are governed by the same set of rules, that is MCS (Pension) Rules, 1982 and hence they belong to one class only. **Therefore, the condition as stipulated in para 8(E) of the GR that the pay revision will not be applicable to lecturers retiring on or before 31.12.2005 is to be held as bad in law and it requires to be struck down.**

(15) The Ld PO has relied on Mineral Exploration

Corp Ltd vs Arvind Kumar Dixit and Another (ibid). We find that the issues involved in this judgement are different from the present one and hence this judgment does not apply to it. The respondents before the Apex Court were not govt servants but employees of the undertaking, Mineral Exploration Corp Ltd., which had effected wage/pension revision subject to availability of resources and it had set a cut-off date for implementation of the revision. The Apex Court had held that there could be justification in denying the benefits of pension revision based on wage increases depending on the financial health of the employer. The Apex Court in D S Nakara had held that pay/pension in case of government servants is not linked with its affordability by the State. Para 45 of the judgment is reproduced below:

“Para 45: Let us clear one misconception. The pension scheme including the liberalised scheme available to the Government employees is non-contributory in character. **It was not pointed out that there is something like a pension fund. It is recognised as an item of expenditure and it is budgeted and voted every year. At any given point of time there is no fixed or predetermined pension fund which is divided amongst eligible pensioners. There is no artificially created fund or reservoir from which pensioners draw pension within the limits of the fund, the share of each being extensive with the available fund. The payment of pension is a statutory liability undertaken by the Government and whatever becomes due and payable is budgeted for. One could have appreciated this line of reasoning where there is a contributory scheme and a pension fund from which alone pension is disbursed. That being not the case, there is no question of pensioners dividing the pension fund which, if more persons are admitted to the scheme, would pro rata affect the share. Therefore there is no question of dividing the Pension fund. Pension is a liability incurred and has to be provided for in the budget.**”

(16) Having thus considered the issues involved in the OA from all aspects we hold that the applicants are entitled to the benefits of pension revision in terms of pay revision as laid down in the GR dated 12.8.2009, subject, of course, to their fulfilling all other conditions as stipulated in the GR. Hence the OA stands disposed of in terms of the following directions.

- (i.) The applicants are entitled to the benefits of pay revision in terms of the GR dated 12.8.2009, for purpose of fixation of their pension, notwithstanding the fact that they had retired on or before. 31st December, 2005. This is subject to their fulfilling other conditions stipulated in the GR.
- (ii.) The respondents will work out the applicants’ entitlement to revised pension based on this order, and disburse arrears, if any, within six months of receipt of this order.
- (iii.) No order as to cost

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