

## IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO. 1175 of 2014 In SPECIAL CIVIL APPLICATION NO. 13590 of 2013 With LETTERS PATENT APPEAL NO. 1248 of 2014 In SPECIAL CIVIL APPLICATION NO. 3202 of 2014 With LETTERS PATENT APPEAL NO. 32 of 2015 In SPECIAL CIVIL APPLICATION NO. 13590 of 2013 With LETTERS PATENT APPEAL NO. 459 of 2015 In SPECIAL CIVIL APPLICATION NO. 3202 of 2014 With LETTERS PATENT APPEAL NO. 498 of 2015 In SPECIAL CIVIL APPLICATION NO. 4106 of 2014 With LETTERS PATENT APPEAL NO. 499 of 2015 In SPECIAL CIVIL APPLICATION NO. 15094 of 2013 With LETTERS PATENT APPEAL NO. 500 of 2015 In SPECIAL CIVIL APPLICATION NO. 15705 of 2013 With LETTERS PATENT APPEAL NO. 92 of 2016 In SPECIAL CIVIL APPLICATION NO. 705 of 2013 With CIVIL APPLICATION NO. 1145 of 2016 In LETTERS PATENT APPEAL NO. 92 of 2016

**PRABHUDAS C BAROT & 12....Appellants VERSUS STATE OF GUJARAT & 2....Respondents Appearance in Letters Patent Appeal No. 1175 of 2014** : MR MIHIR THAKORE, SR. ADVOCATE WITH MR BHARGAV HASURKAR, ADVOCATE for the Appellants No. 1 - 13 MR PK JANI, AAG WITH VACHA DESAI, AGP for the Respondents No. 1 RULE SERVED for the Respondents No. 2 - 3 **Appearance in Letters Patent Appeal No. 1248 of 2014** : MR SN SHELAT, SR. ADVOCATE WITH MRS VD NANAVATI, ADVOCATE for the Appellants MR PK JANI, AAG WITH VACHA DESAI, AGP for the Respondents No. 1 RULE SERVED for the Respondents No. 2 - 3 **Appearance in Letters Patent Appeal No. 32 of 2015** : MR PK JANI, AAG WITH VACHA DESAI, AGP for the Appellants MR MIHIR THAKORE, SR. ADVOCATE WITH MR BHARGAV HASURKAR, ADVOCATE for the Respondents **Appearance in Letters Patent Appeal No. 459 of 2015** : MR PK JANI, AAG WITH VACHA DESAI, AGP for the Appellants MR SN SHELAT, SR. ADVOCATE WITH MRS VD NANAVATI, ADVOCATE for the Respondents **Appearance in Letters Patent Appeal No. 498 of 2015** : MR PK JANI, AAG WITH VACHA DESAI, AGP for the Appellants MR MIHIR THAKORE, SR. ADVOCATE WITH MR BHARGAV HASURKAR, ADVOCATE for the Respondents 1-75, 76-79 **Appearance in Letters Patent Appeal No. 499 of 2015** : MR PK JANI, AAG WITH VACHA DESAI, AGP for the Appellants MR MIHIR THAKORE, SR. ADVOCATE WITH MR BHARGAV HASURKAR, ADVOCATE for the Respondent Nos. 1-80, 81-90.1, 91-116.1, 117-128.1, 120-130-1, 131-229, 230-262.1, 263-293-1 **Appearance in Letters Patent Appeal No. 500 of 2015** : MR PK JANI, AAG WITH VACHA DESAI, AGP for the Appellants MR MIHIR THAKORE, SR. ADVOCATE WITH MR BHARGAV HASURKAR, ADVOCATE for the Respondents **Appearance in Letters Patent Appeal No. 92 of 2016** : MR PK JANI, AAG WITH VACHA DESAI, AGP for the Appellants MR GM JOSHI, ADVOCATE with MR GUNVANT B. SHAH for Respondent Nos. 1-34, MR. MITUL K SHELAT, ADVOCATE for Respondent 35, **Appearance in Civil Application No. 1145 of 2016** : MR PK JANI, AAG WITH VACHA DESAI, AGP for the Applicants

CORAM: HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

and

HONOURABLE MR.JUSTICE A.Y. KOGJE

Date : 20/06/2017

COMMON CAV JUDGMENT  
(PER : HONOURABLE MR.JUSTICE  
S.R.BRAHMBHATT)

1. This group of Letters Patent Appeals contains challenge to two separate judgment and orders by two different Benches of the Single Judges of this Court, however, the issues covered in both the judgments are identical and pertains to grant of **benefit of appropriate revision in the pension in the light of recommendations and implementations of 6th Pay Commission to the pensioners, who retired as Lecturer (selection Grade) from grant in aid colleges and university in the State of Gujarat prior to 1.1.2006**, hence the appeals were heard together and are being disposed of by this common judgment and order. The original petitioners and respondents in the proceedings of Special Civil Applications are hereinafter referred to as 'Petitioners' and 'respondents' respectively for the sake of convenience.

2. The petitioners, who were receiving their pension after their retirement from the services as lecturers (selection grade) in the grant in aid colleges in the State of Gujarat and who were always receiving the revision in pension on the implementation of pay commission recommendations were denied the benefit of

complete and total revision admissible to them after the recommendations of 6th Pay Commission, resulting into their filing group of SCAs namely SCA NO. 13590 of 2013, SCA No. 3202 of 2014, SCA No. 4106 of 2014, SCA No. 15094 of 2013, SCA No. 15705 of 2013, which came to be heard and partly allowed by the learned Single Judge of this Court vide judgment and order dated 26-27.8.2014 and the another group of pensioners who had retired from services of Agriculture University and who were in fact granted the appropriate revision in their pension in accordance with the rules and recommendations of 6th Pay Commission were subjected to withdrawal of the same and resultant recovery giving rise to filing of SCA No. 705 of 2013 which came to be heard and allowed by another learned Single Judge of this Court vide judgment and order dated 22.9.2015. The pensioners and respondent State both felt aggrieved on account of the learned Single Judge's order and judgment dated 26/27.8.2014 and they filed their respective Letters Patent Appeal challenging the same, that formed one part of the group consisting of the Letters Patent Appeal Nos. 1175 of 2014, LPA No. 1228 of 2014, LPA No. 32 of 2015, LPA No. 459 of 2015, LPA No. 498 of 2015, LPA No. 499 of 2015, LPA No. 500 of 2015. The another LPA No. 92 of 2016 was filed by the State challenging the order dated 22.9.2015 passed in SCA No. 705 of 2013 (Coram:

We hereby declare that the petitioners pensioners, who have rendered more than 3 years service in selection grade pay scale prior to retirement are entitled to fixation of their pension as per the corresponding pay scale admissible to the selection grade, UGC lecturers i.e. 37400-67,000 with grade pay of Rs.9000/-.

( See Para 28 of the Gujrat High Court Judgment dated 20th June 2017. )

JB Pardiwala, J.), that form another part of the group.

3. The following would depict the details of the matter:

**LPA No.1175 of 2014:-** This appeal arises out of Special Civil Application No.13590 of 2013. This petition was filed by thirteen petitioners, who are retired Lecturers (Selection Grade) with Grant-in-Aid colleges within the State of Gujarat. The said petition questioned the decision taken by the State denying benefits of revision of pension which was admissible to them in accordance with the Finance Department's GR dated 13.04.2009, which provides for 50% of the last pay drawn by an employee according to their selection grade.

**LPA No.32 of 2015:-** This is an appeal filed by the State against common oral judgment dated 26/27.08.2014 in Special Civil Application No.13590 of 2013.

**LPA No.1248 of 2014:-** This is an appeal preferred by an Association representing retired Lecturers in general and former Lecturers (Selection Grade) of private colleges, against the same common oral judgment dated 26/27.08.2014. These petitioners were constrained to approach the Court as the State Government had refused to consider the grievance of these petitioners despite several representations for granting them revision of pension after the State of Gujarat accepted recommendations of 6th Central Pay Commission by GR dated 27.02.2009 and GR dated 13.04.2009 and accorded sanction to regularize pension /gratuity /commutation of existing pre-2006 pensioners and family pensioners.

**LPA No.459 of 2015:-** This is an appeal filed by the State against common oral judgment dated 26/27.08.2014 in Special Civil Application No.3202 of 2014 filed by the Association.

**LPA No.498 of 2015:-** This is an appeal filed by the State against common oral judgment dated 26/27.08.2014 in Special Civil Application No.4106 of 2014, where 79 petitioners who were retirees from the post Lecturers (Selection Grade) with various Grant-inAid colleges /Government colleges and Universities within the State of Gujarat and were drawing regular pension and were also extended the benefits of 5th Pay Commission by the State, now are claiming the revision of pension pursuant to GR dated 13.04.2009.

**LPA No.499 of 2015:-** This is an appeal filed by the State against common oral judgment dated 26/27.08.2014 in Special Civil Application No.15094 of 2013. This petition was filed by 293 petitioners, who retirees from the post Lecturers (Selection Grade) with various Grant-inAid colleges /Government colleges and Universities within the State of Gujarat and were aggrieved by denial of benefit of revision of pension, which was otherwise available to them under Finance Department resolution dated 13.04.2009.

**LPA No.500 of 2015:-** This is an appeal filed by the State against common oral judgment dated 26/27.08.2014 in Special Civil Application No.15705 of 2013. This petition was filed by 90 petitioners, who retirees from the post Lecturers (Selection Grade) with various Grant-inAid colleges /Government colleges and Universities within the State of Gujarat and were denied benefit of revision of pension, which was otherwise available to them under Finance Department resolution dated 13.04.2009.

**LPA No.92 of 2016:-** This is an appeal filed by the State against CAV judgment dated 22.09.2015 in Special Civil Application No.705 of 2013. This petition was preferred by 33

individuals. They had retired as Associate Professors and/or Assistant Professors getting selection grade with Anand Agricultural University. This appeal would defer to the extent that it was the Department of Agriculture and Cooperation of the State which passed GR dated 01.04.2010 deciding to confer 6th Pay Commission to the teaching cadres of all the four Agricultural Universities of the State of Gujarat. These petitioners claimed extension of similar benefits of the recommendations of the 6th Pay Commission to the existing pensioners/family pensioners prior to 01.04.2006. The subject matter of challenge by the petitioners in the Special Civil Application was the recovery effected on account of downward revision of pension after the same was granted as per GR dated 13.04.2009.

The aforesaid details could be narrated in tabular form as under:

L.P.A. No.	Appellant	Respondent	Impugned Judgment	S.C.A. No.
L.P.A. 1175 of 2014	Prabhudas C.Barot + 13	State of Gujarat + 3	26-27 August, 2014 [G.R. U. J.]	13590 of 2013
L.P.A. 1248 of 2014	Akhil Gujarat University and College Pensioner Samaj + 2	State of Gujarat + 3	26-27 August, 2014 [G.R. U. J.]	3202 of 2014
L.P.A. 32 of 2015	State of Gujarat + 2	Prabhudas C. Barot	26-27 August, 2014 [G.R. U. J.]	13590 of 2013
L.P.A. 459 of 2015	State of Gujarat + 2	Akhil Gujarat University and College Pensioner Samaj + 2	26-27 August, 2014 [G.R. U. J.]	3202 of 2014
L.P.A. 498 of 2015	State of Gujarat + 2	Damji Jivraj Bavla + 78	26-27 August, 2014 [G.R. U. J.]	4106 of 2014
L.P.A. 499 of 2015	State of Gujarat + 2	Janak Prasad N Oza + 292	26-27 August, 2014 [G.R. U. J.]	15094 of 2013
L.P.A. 500 of 2015	State of Gujarat + 2	Mafatlal J Patel + 90	26-27 August, 2014 [G.R. U. J.]	15705 of 2013
L.P.A. 92 of 2016	State of Gujarat	J. R. Paneliya + 34	22.09.2015 [ J.B.P. J.]	705of 2013
C.A. 1145 of 2016 in L.P.A. No. 92 of 2016 [ For Stay]	State of Gujarat	J. R. Paneliya + 34	22.09.2015 [ J.B.P. J.]	705of 2013

The authorities and decisions cited at bar on behalf of the respondents needs no elaborate discussion as the present matters and the facts would be govern by the Supreme Court's judgment in case of State of Rajasthan Vs Mahendranath Sharma (supra) and therefore, other judgments, which are on different facts, will have no applicability.

( See Para 25 of the Gujrat High Court Judgment dated 20th June 2017. )

( Judgment in case of State of Rajasthan Vs Mahendranath Sharma : See Page 153 of 2015 NUTA Bulletin. )

4. Considering the relevant common facts of the aforementioned appeals, LPA No.1175 of 2014 is hereby treated as the lead case for narrating the controversy, contentions and submissions of the rival parties.

5. **Special Civil Application No. 13590 of 2013 was filed by thirteen individuals, who were retirees from the post of Lecturers (Selection Grade) having more than 3 years of experience in Selection Grade and were employed in Grant-in-Aid colleges, Govt. colleges and universities.** The petitioners have retired prior to 1.1.2006 and are regularly drawing pension upon retirement. The State Government came out with a resolution dated 13.4.2009 having No. PGR-1009-4-Pay Scale (hereinafter referred to as "resolution dated 13.4.2009"), wherein it was resolved to revise the pension of the all pensioners who retired prior to 1.01.2006 in light of the recommendations of 6th Pay Commission. As per para-9.2 of resolution dated 13.4.2009, the pensioners were to be given benefit of revisions on account of revision in the pay scales of the posts wherefrom pensioners had retired and it was resolved to be revised to 50% of the minimum of the pay in the pay band plus the grade pay corresponding to the pre-revised pay scale from which the pensioners had retired. After Resolution dated 13.4.2009, which was issued by Govt. of Gujarat, Finance Department, the Education Department of Govt. of Gujarat also came out with a similar entitling resolution having resolution dated 4.12.2009. In such Resolution, Schedule "A" prescribed corresponding pay scales to the pay scales in which the present petitioners had retired. Thus, as against the pay scale on which the petitioners had retired i.e. 12000-420-18300, corresponding to pay scales was prescribed by way of such Resolution. **All the petitioners had completed more than 3 years services as lecturers after being awarded Selection Grade and, therefore, were entitled to receive pension revision on the basis of the corresponding pay scale of Rs.37,400-67,000 with an academic grade pay of Rs.9000/-** Thus, for the purpose of calculating pension which would be payable to the present petitioners in line of GR dated 13.4.2009 and 4.12.2009, 50% of (Rs.37,400 plus Rs.9000/-) would have to be calculated which would be Rs.23,200/-.

5.1 The petitioners are basing their claim on GR dated 13.04.2009 issued by the Finance Department and subsequent GR dated 04.12.2009 issued by the Education Department to extend benefits of 6th Pay Commission revision. Relying upon the GR dated 04.12.2009, more particularly para-1, the claim is that the benefit is also to be extended to the Lecturers (Selection Grade), the post from which the petitioners have retired.

5.2 It is contended that on several occasions, representations were made, individually as well as through their Association. However, no decision was taken and ultimately by communication dated 24.01.2011 addressed to their Association, a categorical denial is made to extend the benefits of revision of pension. It is contended that GR dated 13.04.2009, particularly Clause-9.2 thereof provides for revision of pension to an employee in the Selection Grade of Rs.12,000-Rs.420-Rs.18,000. The said employee would draw 50% pension on corresponding 6th Pay Commission band of Rs.37,400-Rs.67,000 plus additional corresponding grade pay of Rs.9,000/-, thereby providing for Rs.23,200/- to be the total pension entitlement of the petitioners.

5.3 It is contended that however, later portion of Clause-9.2 prescribes for the procedure to be followed as per GR dated 01.11.2000, which laid down that while working out the quantum of minimum scale in the revised pay scale, the selection grade or senior grade might have received by the pensioner concerned in the old pre-revised scale are not to be taken into consideration. It is this later portion of Clause-9.2 which has aggrieved the petitioners for filing the petition.

5.4 It would be necessary to reproduce hereunder Clause-9.2 of GR dated 13.04.2009, which requires fixation and revision of pension as per GR dated 01.11.2000 and accordingly a pensioner would get revision of pension on the basis of their corresponding pay to the post from which the petitioners retired and not on the basis of the actual selection grade pay drawn by the petitioners. Such interpretation restricts on the entitlement of the pensioner and therefore, the petitioners also prayed for, by way of amendment, declaration of such portion of Clause-9.2 of GR dated 13.04.2009 to be unjust and arbitrary. For ready reference, Clause-9.2 of the said GR is reproduced hereunder:-

*"9.2 The revision of pension will be subject to the provision that the revised pension, in no case shall be lower than 50% of the minimum of the pay in the pay band plus the grade pay corresponding to the pre-revised pay scale from which the pensioners had retired.*

*The pension calculated at 50% of the minimum of pay in the pay band plus grade pay would be calculated-(i) at the minimum of the pay in the pay band (irrespective of the pre-revised pay scale of pay) plus grade pay corresponding to the pre-revised pay scale. For example, if a pensioners had retired in the pre-revised scale of pay of Rs.18400-22400, the corresponding grade pay being Rs.10,000/- p.m., his minimum guaranteed pension would be 50% of 37,400 + Rs10,000/- (i.e. 23,700). The revision of family pension will be subject to the provision that the revised family pension in no case shall be lower than 30% of the sum of the minimum of the pay in the pay band plus the grade thereon corresponding to the pre-revised pay scale in which the pensioner/deceased government servant had last worked. **The procedure to be adopted by the disbursing authorities shall be on the line of Finance Department Resolution No.PPF/1099/GOG-1(2)-P, dated 1.11.2000. A statement indicating the minimum pension/family pension corresponding to each of the pre-2006 scales of pay is enclosed at Annexure-III.**"(emphasis supplied)*

5.5 In support of their contentions, the petitioners have drawn support from decision of Division Bench of **Punjab and Haryana High Court** in Writ Petition (C) No.19641 of 2009. Para-23 of the said decision reads as under:-

*"(23). It is not in dispute that vide resolution dated 29.08.2008, recommendations of the 6th Central Pay Commission were accepted by the government and the pension was also to be fixed on the basis of formula contained therein. We have already reproduced the recommendations of the 6th Central Pay Commission, as contained in para 5.1.47, which was accepted by the government vide Item No.12 of resolution dated 29.08.2008 with certain modifications. Based on this resolution, OM dated 01.09.2008 was issued. We have also reproduced para 4.2 thereof. This states in unequivocal terms that "revised pension in no case shall be lower than 50% of the minimum of pay in the pay band plus grade pay corresponding to the pre-revised pay scale....". The clear purport and meaning of the aforesaid provision is that those who retired before 01.01.2006 as well were ensured that their revised pension after enforcing recommendations of the 6th Central Pay Commission, shall not be less than 50% of the minimum of the pay band plus grade pay corresponding to the pre-revised pay scale from which the pensioners had retired....." (emphasis supplied)."*

5.6 It was further contended that during pendency of petitions, the Finance Department passed resolution dated 26.02.2014 and under such resolution also, the benefits of revised pension as per the Selection Grade of the petitioners has been denied and though the State Government has resolved to include UGC /ICAR /AICTE pay scales which are appended in the GR dated 26.02.2014, still such inclusion was made subject to embargo created on account of objectionable para in Clause-9.2 of GR dated 13.04.2009 and therefore, resultant effect is that the petitioners are denied even the benefits of UGC pay scales for basing their claim for admissible revision in pension.

Thus, the aforesaid observations of the Supreme Court in exactly similarly situated lecturers can well be said to be squarely covering the position of the present petitioners also and denial to them in revision in pension on the basis of corresponding scale of Rs.37400-670000/- being contrary to provisions of law.

( See Para 28 of the Gujrat High Court Judgment dated 20th June 2017. )

6. In response to the contentions of the petitioners, the State has contended that the decision dated 24.01.2011 denying the benefits of revision of pension as claimed by the petitioners was in consonance with the GR dated 13.04.2009. It is contended that by GR dated 01.11.2000, the benefit of 5th Pay Commission was extended to the employees like the petitioners who were working as Lecturers in the granted colleges. It is contended that though the petitioners have retired prior to 01.01.2006 and though they have never actually received pay scale of Rs.37,400-Rs.67,000, the petitioners have staked their claim on the basis of assumption and hypothesis as if the petitioners have ever actually received such pay scale. It is contended that in absence of any rules, regulations and resolution, such claim of the petitioners on hypothesis is not tenable at law.

6.1 It was contended that as the GR dated 13.4.2009 did not mention the pay scales of the persons retired prior to 1.1.2006 like the present petitioners, the Finance Department issued resolution dated 26.02.2014 mentioning pay scales and it is now GR dated 26.02.2014 read with GR dated 13.04.2009 would govern the cases of the petitioners. GR dated 01.11.2000 having been made integral part of GR dated 13.04.2009, the Government is bound to act in consonance with what is provided under such GRs and that there is no illegality pointed out by the petitioners for which the Government would deviate from these provisions.

6.2 It is contended that the Government was having scheme of higher pay scale which was introduced way back in the year 1991 under GR dated 05.07.1991 and giving effect from 01.06.1987. GR dated 01.11.2000 was issued and its effect was given from 01.01.1996. By said GR dated 01.11.2000, the State Government has fixed minimum pension and family pension to be given to the employees. It is also mentioned in the said GR that while calculating the revised pension of the employees, higher pay scale /Selection Grade/seniority cannot be taken into consideration. An employee can be said to be entitled to revision of pension on the basis of the corresponding scale of the post last held by the employee. Accordingly, petitioners are entitled to pension on the basis of pay scale of the post of Lecturer, but Selection Grade cannot be considered. **It is contended that pay scale of Rs.12,000-Rs.420-Rs.18,300 was revised in two parts, (1) Rs.15,600-Rs.39,100 with academic grade pay of Rs.8,000/- for Assistant Professors and Rs.37,400-Rs.67,000 for Associated Professors.** Thus, the revision of pay scale available to the petitioners from the scale of Rs.12,000-Rs.420-Rs.18,300 to the corresponding pay scale of Rs.15,600-Rs.39,100 and therefore, the claim of the petitioners for getting pension on the basis of revision of pay scale to the scale of Rs.37,400-Rs.67,000 is not tenable. It is contended that the grievance of the petitioners, which is on the basis of hypothesis, if taken into consideration, would attach huge financial burden upon the State exchequer.

6.3 It is contended that the State has adopted uniform formula and applied it to nearly 3,86,000 pensioners within the State of Gujarat. The petitioners are also given the same treatment and that there is no discrimination whereas if the interpretation of the petitioners is adopted, **it may create discrimination insofar as other employees of the State are concerned.**

7. Heard learned Senior Counsel Shri Mihir Thakore with learned Counsel Shri Bhargav Hasurkar for the appellants in LPA No.1175 of 2014, learned Senior Counsel Shri S.N.Shelat with learned Counsel Ms.V.D.Nanavaty for the appellants in LPA No.1248 of 2014, learned Counsel Shri G.M.Joshi for the respondent Nos.1 to 34 and learned Counsel Shri Mitul K.Shelat for respondent No.35 in LPA No.92 of 2016 and learned Additional Advocate General Shri P.K.Jani with learned AGP Ms.Vacha Desai for the State in all these appeals.

8. The counsels for the petitioners invited courts attention to the conclusion arrived at by the learned Single Judge in group of the petitions which were partly allowed by the learned Single Judge and the reasons therefore which deserve to be set out as under:

*"13.17 This leads to the question as to the scale of pay on the basis of which the pension, in the present petition, is to be revised. It is not in dispute that the petitioners had retired around 1995 in the selection grade which was revised to Rs.12,000-420-18,300 by the 5th Pay Commission. The 6th Pay Commission recommended two pay-scales against the post of Lecturer (selection grade) (including Reader) being Rs.15,600-39100 with grade pay of Rs.8,000/- and Rs.37,400-67,000 with the grade pay of Rs.9,000/- and henceforth the holder of such pay-scales were to be designated as Assistant Professor and Associate Professor respectively. While the pay-scales of Rs.15,600-39100 with the grade pay of Rs.8,000/- is made available to the presently working incumbents as Readers and Lecturers who were in the pre-revised selection grade but did not complete three years in the said scales as on 01.01.2006, other pay-scales are made available to the presently working Readers and Lecturers, who were in the pre-revised selection grade but did not complete three years of service in the pre-revised scales. The aforesaid aspects are clear from Schedule-A to the resolution dated 04.12.2009. The resolution dated 26.02.2014 inserted the pay-scales of various cadres by way of Annexure-IV which are meant for consideration in pursuant to the resolution dated 13.04.2009. For beneficially appreciation, table containing the pay-scales, which were inserted as =above, is quoted hereunder:*

Sr. No.	5th CPC Pay Scale	Name of Pay/Band /Scale	Corresponding 6th COC Pay Bands/Scales	Corresponding Acad emic Grade Pay	Pension =50% of sum of min. of PB+ AGO /Scale	Family Pension =30% of sum of Min.of PB+AGP /Scale
1	2	3	4	5	6	7
1	8000-13500	PB-3	15600-39100	6000	10800	6480
2	10000-15200	PB-3	15600-39100	7000	11300	6780
3	12000-18300	PB-3	15600-39100	8000	11800	7080
4	16400-22400	PB-4	37400-67000	10000	23700	14200

*13.18 A bare perusal of the above cited table indicates that the pay band-3 of Rs.15,600-39100 with grade pay of Rs.8,000/- is made available to the Lecturers holding pre-revised selection grade of Rs.12,000-18,300 as also Readers and the pension/family pension, they would be entitled as per the formula contemplated in report of the 5th Pay Commission is Rs.11,800/-, Rs.7,080/- as the case may be. It may be recalled that the 6th Pay Commission recommended and the State accepted the two pay-scales against pre-revised pay-scales of Rs.12,000-420-18,300. Both these pay-scales are meant for the Lecturers in the selection grade employed as on 31.12.2005. In the affidavit-in-reply, it is made clear by the respondents that the pay-scales of Rs.15,600-39100 with grade pay of Rs.6,000/- was taken into consideration for revising the pension of the petitioners. This Court may revert back to the question as to whether a minimum of Rs.6,000/- as grade pay could have been taken into consideration in light of the discussion in detail in this judgment at a later point of time.*

*13.19 What is required to be seen at this stage is as to whether the appropriate pay-scale, as recommended by the 6th Pay Commission, was taken into consideration for fixation of the revised pension of the petitioners. It cannot be disputed that the petitioners having retired somewhere in the year 1995 were not in service as on 01.01.2006 i.e. the date from which the aforementioned pay-scales are applicable to the employee working as on the said date. Pertinently, the selection grade held by the petitioners earlier is now split into two selection grades; one will apply to existing employees who have not completed three years of service in the pre-revised scales of Rs.12,000-420-18,300 as on 01.01.2006; and the other will apply to those who have completed the said service. The fact remains that each of the pay-scales are applicable to the employees who were in the selection grade as on 31.12.2005. Since the petitioners*

Such hypothetical situation cannot be accepted by the State as the same would create anomaly insofar as receiving of the pension by other State employees is concerned.

( See Para 14 of the Gujrat High Court Judgment dated 20th June 2017. )

were not in service on 01.01.2006, their completion or non-completion of three years of service in the revised pay-scales does not arise.

The petitioners appear to be insisting for payscales of Rs.37,400-67,000 with grade of Rs.9,000/- on the misconceived premise or presumption that they are still in service. Undisputedly, the petitioners were given all the benefits in pursuant to the Pension Rules of 2002 on their superannuation including the pension calculated on their **selection grade** they held then. Merely because such selection grade is split into two scales as indicated above to the advantage of the existing Readers and Lecturers in such selection grade, it is unreasonable for the petitioners to stake the claim on the basis aforesaid. No question of treating unequals as equals arises under such circumstances inasmuch as those in service as on date of implementation of the recommendation of the 5th Pay Commission form a different class than the pensioners. The conditions of service of inservice employees can always be revised differently than the pensioners. Therefore, merely because the service conditions for existing incumbent is altered to their benefits, the pensioners cannot harp upon the same.

13.20 There is no dispute as to applicability of Clause 3.1 of the resolution dated 13.04.2009. Thus, the revised pension, as contemplated in the said clause, has properly been consolidated and the question is only that of applicability of the minimum cap, as provided in Clause 9.2 of the resolution dated 13.04.2009. As discussed in greater detail, a fixed percentage of the minimum of pay in the pay band plus the grade pay corresponding to the pre-revised pay-scales from which the pensioners retired, irrespective of the pre-revised pay-scales of the pay, is the criteria which governs the field for revision of the pension by the resolution dated 13.04.2009. In the instant case, though the pay-scales of Rs.15,600-39,100 corresponding to the pre-revised pay-scales of Rs.12,375-16500 has been taken into consideration, the grade pay of Rs.6,000/- is not correctly applied. The grade pay applicable, in such cases, as indicated in Schedule-A of the resolution dated 04.12.2009, is Rs.8,000/- and not Rs.6,000/-.

Therefore, to that extent, the petitioners are entitled to succeed and suitable directions are required to be given to the respondents to revise the pension of the petitioners, accordingly.

14. Under the circumstances, the petitions partly **succeed**. The words as mentioned in the Para 9.2 of the Government Resolution dated 13-4-2009, the provisions of Para 3 of the Government Resolution dated 1-11-2000 i.e. pay scale of the post last held and corresponding pay scale shall only to be taken into consideration, the Senior Scale, Selection Scale or Higher Pay Scale shall not be considered, as contained in the resolution dated 26.02.2014 are struck off and it is held that for revision of pension of the pensioners, only procedure contemplated in Clause 1 and 2 of the resolution dated 01.11.2000 will apply and Clause 3 will not apply.

15. The respondents are directed to reconsider the case of the petitioners by taking into consideration the Clause 9.2 of the resolution dated 13.04.2009 along with the procedure contemplated in the resolution dated 01.11.2000 except Clause 3 thereof. Rule is made absolute to the aforesaid extent.

16. Considering the advanced stage of the petitioners, the respondents are directed to carry out the exercise in terms of the judgment within a period of **four months** from the date of receipt of writ of this Court.

**9.** The conclusion thus given by the Single Judge is subject matter of challenge by both, petitioners (retired Lecturers) as well as the State Government. Though the petition is partly allowed, the petitioners are still aggrieved as the resultant effect of the decision given in the petition would be that the petitioners,

who had retired prior to 01.01.2006, would receive pension which would be far less than the pensioners who have retired after 01.01.2006 and this anomaly would persist. It is the say of the petitioners that once the effect is given as per the judgment, the petitioners would be subjected to recovery as if the petitioners have been paid more pension than what is admissible to them.

**10.** The State Government has preferred appeal as the judgment of the Single Judge has struck off the objectionable portion of Clause-9.2 of GR dated 13.04.2009.

**11.** Learned Senior Advocate Shri Shelat contended that the terms of reference of the 6th Pay Commission also refer to examining the principles which should govern the structure of pension, family pension, etc. He referred to the terms of reference prescribed under the 6th Central Pay Commission constituted by resolution dated 05.10.2006, more particularly Clause.1.1.2(E), which reads as under:-

*“E. To examine the principles which should govern the structure of pension, death-cumretirement gratuity, family pension and other terminal or recurring benefits having financial implications to the present and former Central Government employees appointed before January 1, 2004.”*

11.1 Further referring to the fitment benefits made available to the past pensioners, he has drawn attention of this Court to para-5.1.47, which reads as under:-

*“5.1.47 The Commission notes that modified parity has already been conceded between pre and post 1/1/1996 pensioners. Further, full neutralization of price rise on or after 1/1/1996 has also been extended to all the pensioners. Accordingly, no further changes in the extant rules are necessary. However, in order to maintain the existing modified parity between present and future retirees, it will be necessary to allow the same fitment benefit as is being recommended for the existing Government employees. The Commission, accordingly, recommends that all past pensioners should be allowed fitment benefit equal to 40% of the pension excluding the effect of merger of 50% dearness allowance /dearness relief as pension (in respect of pensioners retiring on or after 1/4/2004) and dearness pension (for other pensioners) respectively. The increase will be allowed by subsuming the effect of conversion of 50% of dearness relief/ dearness allowance as dearness pension/dearness pay. Consequently, dearness relief at the rate of 74% on pension (excluding the effect of merger) has been taken for the purposes of computing revised pension as on 1/1/2006. This is consistent with the fitment benefit being allowed in case of the existing employees. A table (Annex 5.1.1) showing fixation of the pension of the existing pensioners in the revised dispensation consequent to implementation of the recommendations of this Commission has been prepared and should be used for fixing the revised pension of the existing pensioners. The fixation as per this table will be subject to the provision that the revised pension, in no case, shall be lower than fifty percent of the sum of the minimum of the pay in the pay band and the grade pay thereon corresponding to the prerevised pay scale from which the pensioner had retired. To this extent, a change would need to be allowed from the fitment shown in the fitment table.”*

**11.2** Learned Senior Advocate Shri Shelat thereafter has drawn attention of this Court to a communication from Ministry of Human Resources Development, Department of Higher Education, **Government of India dated 15.12.2009** to emphasis upon the policy at all India level with regards to pension to pre-2006 reader and equivalent retirees with three years experience. He referred to para-3 of the said communication, placed at page No.376 of LPA No.1248 of 2014. For ready reference, the said

This submission in our view is untenable as it is an unfortunate attempt to equate two unequal groups namely the pensioners not governed by the guidelines and directions of the University Grant Commission and Government of India and the pensioners like the present petitioners, who have been all along given benefits on the basis of the UGCs recommendations in line with Govt. Of India's instructions and guidelines.

( See Para 19 of the Gujrat High Court Judgment dated 20th June 2017. )

para-3 is reproduced hereunder:-

"3. Accordingly, the Government has decided that in the case of teachers and equivalent cadres, the pre-2006 pensioners mentioned at categories (A) and (B) above who had completed 3 years of service in the pre-revised pay scale of Rs.12000-420-18300 (and/or the corresponding scale(s) applicable prior to 1.1.2006) shall be placed at the minimum of the Pay Band of Rs.37400-67000 with AGP of Rs.9000, for the revision of their pension/family pension with effect from 1.1.2006. Similarly, in the case of non-teaching posts/cadres the pre-2006 pensioners mentioned at category (C) above who had completed 5 years of service in the pre-revised pay scale of Rs.12000-420-18300 (and the corresponding scale(s) applicable prior to 1.1.2006) shall be placed at the minimum of the Pay Band of Rs.37400-67000 with GP of Rs.8700, for the revision of their pension/family pension with effect from 1.1.2006. The family pension of these pensioners may be revised accordingly."

**11.3** Learned Senior Advocate Shri Shelat thereafter referred to Office Memorandum dated 03.10.2008, which is on the subject of implementation of Government's decision on the recommendations of the 6th Central Pay Commission revision of pension of pre-2006 pensioners/family pensioners etc. In such Office Memorandum, placed at page No.360 of LPA No.1248 of 2014, clarification and modification envisaged by the Government of India, set out the minimum pension that should be made available to the petitioners. Shri Shelat has drawn attention to the annexure to such Office Memorandum and submitted that the minimum guaranteed pension should be 50%.

**11.4** Shri Shelat also referred to the communication dated **01.07.2010 issued to UGC by Ministry of Human Resource Development**, Department of Higher Education, Government of India, which also provides for approving revised pay band to be Rs.37400-Rs.67000 and grade pay of Rs.9000, thereby minimum pension available to the petitioners who are on the post of Lecturers (Selection Grade) with 3 or more years of service would be at Rs.23,000/-. This communication is placed at page No.398 of LPA No.1248 of 2014.

**11.5** Therefore, **what is sought to be submitted by Shri Shelat is that there is uniformed interpretation given PAN India with regards to revision of pension to the petitioners who are Lecturers (Selection Grade)**. Shri Shelat submitted that even by GR dated 04.12.2009 of the Education Department of the State Government, the State Government itself has accepted the recommendations of UGC with regards to approving pay scales recommended. In such recommendations, the post of Lecturer (Selection Grade) is bifurcated in two parts depending upon the candidate having completed 3 years in the pre-revised scales. It is submitted that though all the petitioners have indisputably put in more than 3 years in the pre-revised pay scale, yet now the State Government is putting them at par with the candidates who are Lecturers (Selection Grade) in the pre-revised pay scale., but have not put in 3 years in the pre-revised pay scale. It is this action, which according to Shri Shelat has deprived the petitioners of their legitimate dues.

**11.6** Shri Shelat contended that now the issue is covered by a decision of the Apex Court in the case of **State of Rajasthan & Ors. Vs. Mahendra Nath Sharma**, reported in **2015 (7) Scales, 211**. He drew attention to paras-2, 3 and 19 of the said decision, which read as under:-

"2. From the aforesaid schedule, it is quite clear that in the year 1986, the post of Lecturer (Selection Scale) was introduced for the purpose of revision of pay scale and the respondents since then had been drawing the pay scale of the post of Lecturer (Selection Scale).

3. As the factual matrix would unfurl, the Government of Rajasthan vide Rajasthan Civil Services (Revised Pay Scale for Government College Teachers including Librarians, PTIs) Rules, 1999, (for short, "the 1999 Rules") revised the pay scales of Government College Teachers/Librarians w.e.f. 1.1.1996. The Schedule appended to the said Rule mentioned the post of Lecturer (Ordinary Scale), Lecturer (Senior Scale) and Lecturer (Selection Scale) showing the existing revised pay scale as against the said post, as a result of which the respondents who retired prior to the year 1996 or for that matter in the year 1999 were granted revised pension on the basis of the revised pay scale w.e.f. 1.1.1996 meant for the grade of Lecturer (Selection Scale).

19. Paragraph 5 requires to be scrutinized and on such a scrutiny it becomes graphically clear that pension of a pre-1.9.2006 pensioner shall not be lower than 50% of sum of the minimum of post in the running pay band plus grade pay introduced w.e.f. 1.9.2006 corresponding to the pre-revised scale of the post. If the pay scale is taken into consideration, the corresponding pay revision would be Rs.37400-67000 with Rs.9000 AGP. The only qualifier is three years service in that scale. There is no scintilla of doubt that all the respondents meet that criteria. It is a well known principle that pension is not a bounty. The benefit is conferred upon an employee for his unblemished career. In *D.S. Nakara v. Union of India*[2], D.A. Desai, J. speaking for the Bench opined that:-

"18. The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service?"

19. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

20. The antiquated notion of pension being a bounty a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through court has been swept under the carpet by the decision of the Constitution Bench in *Deokinandan Prasad v. State of Bihar*[3] wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in *State of Punjab v. Iqbal Singh*."

**11.7** Shri Shelat ultimately submitted that once the State Government has accepted the petitioners' right to receive pension as made available to them by the State Government on the recommendations of UGC and in consonance with the uniformed applicability of the revision of pension, an enforceable and legitimate right is created in favour of the petitioners and therefore, such right cannot be denied by subsequent clarification, though it may be in the form of resolution and hence, the State has no right to deny the benefits to the petitioners.

**12.** Learned Senior Advocate Shri Mihir Thakore by and large adopted the arguments of learned Senior Advocate Shri Shelat and submitted that the State, which had conferred the benefits of revision of pension under GR dated 13.04.2009, has

The corresponding scale to their selection grade prior to the retirement with a condition of 3 years would only be a scale of Rs.37,400-67000 with grade pay of Rs.9000/-. Thus on this count also when the word corresponding would apply, the same should have been to its dictionary meaning and on this count also the same scale is required to be taken into consideration for counting the revision in pension.

( See Para 27 of the Gujrat High Court Judgment dated 20th June 2017. )

now unilaterally sought to withdraw the same by a subsequent resolution issued after almost five years being GR dated 26.02.2014.

**12.1** Over and above the communication dated 15.12.2009 of the Government of India to UGC, Shri Mihir Thakore also referred to the communication dated 04.06.2009 of the Ministry of Human Resources Development, Department of Higher Education, Government of India, which is placed at page No.Z/41 of LPA No.1175 of 2014. He drew Court's attention to Table-4, placed at page No.Z/45 where revised pay of the Lecturers (Selection Grade) with 3 years of service was specified. He submitted that the pre-revised payscale of Rs.12,000-Rs.420-Rs.18,300 was revised to Rs.37,400- Rs.67,000 plus AGP of Rs.9,000/- and this is uniformly applied all over India. Therefore, considering this and principle of making available 50% of the revised pay centrally, would entitle the petitioners to the pension as prayed for in the petitions.

**12.2** Shri Thakore submitted that the word "corresponding" which appears in Clause-9.2 of GR dated 13.04.2009 should necessarily be interpreted to relate to the scale and therefore, he drew attention of this Court to the interpretation of word corresponding given by the Apex Court in the judgment in the case of *Pankajakshi (Dead) through Lrs. & Ors. Vs. Chandrika & Ors.*, reported in *JT 2016(2) SC, page No.545*. The Apex Court has accepted the meaning to be as under:-

*"The word 'corresponding' is defined in Shorter Oxford Dictionary as "answering to in character and function; similar to." This meaning has been adopted in Winter v. Ministry of Transport [1972 NZLR 539] in which it has been observed as under:*

*"We read 'corresponding' in Section 20-A as including a new section dealing with the same subject-matter as the old one, in a manner or with a result not so far different from the old as to strain the accepted meaning of the word 'corresponding' as given in the Shorter Oxford English Dictionary — 'answering to in character and function; similar to'. The new (section) answers to the old one ... in character and function; it is similar in purpose, prescribes the same thing to be done, and is designed to produce the same result. We hold it to be a 'corresponding' section." (See Words & Phrases, 3rd Edn., Vol. 1)"*

**12.3** Therefore when the word 'corresponding' is used in GR dated 13.04.2009, particularly Clause-9.2, which is in relation to the pay scale then the reference should only to pay scale and not to any other word like 'post', 'salary', etc.

**13.** Learned Advocate Shri G.M.Joshi adopted the arguments of learned Senior Advocates and further submitted that his case is on far better footing in view of the fact that the concerned Department of the State Government had not only accepted the revision of pension but had also given effect to the same and therefore, if the submissions canvassed by other Counsel are accepted then the same would necessarily cover this issues as well.

**14. Learned Additional Advocate General Shri P.K.Jani appearing for the State submitted that grant of pension to an employee is a benevolent act of the State and therefore, State is the only authority which can decide upon the manner in which the pension is to be made available to the petitioners.** It is submitted that the State has not left the petitioners high and dry, but in fact, a huge amount is received by the petitioners towards their pension respectively. He submitted that the submissions made by the petitioners for calculating their pension and applying the revision of pension in particular manner is not supported by any statute, rules or guidelines. He submitted that what the petitioners want is that though they may have retired much prior to 2006, still the State should deem them to be in service

and have retired only on 01.01.2006, which is the date of giving effect to 6th Pay Commission. **Such hypothetical situation cannot be accepted by the State as the same would create anomaly insofar as receiving of the pension by other State employees is concerned.** He further submitted that in most of the cases of the petitioners, their pension was already fixed as per the pension rules and thereafter, such fixation has not been ever objected to by the petitioners. The State has adopted a uniform practice of giving revision of pension for all its employees and the petitioners cannot claim a different treatment. He submitted that the precedent cited need not be followed blindly as the same can be distinguished on the ground that the State of Gujarat has specifically provided for exclusion in its GR dated 13.04.2009 and was amply clarified by the subsequent GR dated 26.02.2014.

**15.** Learned Additional Advocate General relied upon following judgments of the Supreme Court:-

*I. In the case of M.P. Rural Agriculture Extension Officers Association Vs. State of M.P. & Anr., reported in 2004 (4) SCC, page No.646. Paras-13 and 26 of the said judgment read as under:-*

*"13. The Pay Commissions are constituted for evaluating the duties and functions of the employees and the nature thereof vis-a-vis the educational qualifications required therefor. Although the Pay Commission is considered to be an expert body, the State in its wisdom and in furtherance of a valid policy-decision may or may not accept its recommendations. The State in exercise of its jurisdiction conferred upon it by the proviso appended to Article 309 of the Constitution of India can unilaterally make or amend the conditions of service of its employees by framing appropriate Rules. The State in terms of the said provision is also entitled to give a retrospective effect thereto. A policy-decision had been adopted by the State that the post of Extension Officers shall be filled up only by graduates. Such a policy-decision ex facie cannot be termed to be arbitrary or irrational attracting the wrath of Article 14 of the Constitution of India. A dying scale was provided by the State for the non-graduates. Fresh recruitments were to be made only from amongst the persons who held the requisite educational qualification. With a view to avoid any discrimination between the new recruits and the serving employees who possessed the same qualification, the State cannot be said to have acted illegally in granting a higher scale of pay also for the existing degree holders. Article 14, it is trite, does not forbid a reasonable classification.*

*26. True it may be that when recommendations are made by a Pay Commission, evaluation of job must be held to have been made but the same by itself may not be a ground to enforce the recommendations by issuing a writ of or in the nature of mandamus although the State did not accept the same in toto and made rules to the contrary by evolving a policy-decision which cannot be said to be arbitrary or discriminatory."*

*II. In the case of State of U.P. and others, Vs. U.P. Sales Tax Officers Grade II Association, reported in 2003 (6) SCC, page No.250. Paras-11 and 13 of the said judgment read as under:-*

*"11. There can be no denial of the legal position that decision of expert bodies like the Pay Commission is not ordinarily subject to judicial review obviously because pay fixation is an exercise requiring going into various aspects of the posts held in various services and nature of the duties of the employees. In the present case, however, judicial review is not sought against the report of recommendation of the Pay Commission. What the respondent/association has questioned is the implementation of the Resolution of the Government based on the report and recommendations of the Pay Commission.....*

*13. The High Court has also gone into the question as to whether the Trade Tax Officers can be dealt differently from the District Level Officers. The Pay Commission did consider the cases of Trade Tax Officers in the Tax Department distinctly from District Level Officers in other departments of the State Government but for both the Officers*

This Court is unable to accept the submission of learned Additional Advocate General that the pension is essentially a policy of State, on the contrary, right to receive pension forms one of the vested right akin to the property right, which cannot be denied on specious plea of policy.

( See Para 25 of the Gujrat High Court Judgment dated 20th June 2017. )

## In the catena of judgment of the Apex Court, it has been time and again held that pension is not bounty but a right of retiree.

( See Para 25 of the Gujrat High Court Judgment dated 20th June 2017. )

*in pre-revised scale of Rs. 400-750/- the Commission recommended revised scale of Rs. 625-1170/-. Thereafter, the Government Resolution granted pay scale of Rs.625-1240/- to the officers in pre-revised scale of Rs.400-750/-. Pursuant to the Resolution of the Government, all Officers either in the Tax Department or in other departments, carrying pre-revised scale of Rs. 400-750/- were required to be granted revised scale of Rs. 625-1240/- and no discrimination inter se between them could be made on the basis of the report of the Pay Commission. The High Court has examined the nature of duties and functions of Trade Tax Officers. The High Court has rightly come to the conclusion that the Trade Tax Officers exercise administrative and quasijudicial functions both within the District and sometimes outside and can, in that sense, be treated as District Level Officers at par with District Level Officers in other departments. The importance of their role and their significant contribution, functionally in the administrative hierarchy cannot in any manner be belittled even vis-a-vis the others appreciated by the Commission or ultimately considered for better treatment even by the Government, in the process of implementation of the report of the Commission. It appears that the Resolution of the Government dated 29-12-1981 and particularly its relevant part quoted above, makes no distinction between the officers carrying pre-revised scale of Rs. 400-750/- in the Tax Department as well as in other departments. In effect, the implementation of the Resolution of the Government seems to be discriminatory and the rightly been interfered with by the High Court by directing the State Government to grant revised pay scale of Rs. 690-1420/- to Trade Tax Officers at par with District Level Officers who carried same pre-revised scale of pay."*

**III. In the case of Tata Cellular Vs. Union of India**, reported in AIR 1996 SC, page No.11. Relevant paras of the said judgment read as under:-

"85. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercises of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.

86. Judicial quest in administrative matters has been to find the right balance between the administrative discretion to decide matters whether contractual or political in nature or issues of social policy; thus they are not essentially justiciable and the need to remedy any unfairness. Such an unfairness is set right by judicial review.

90. Judicial review is concerned with reviewing not the merits of the decision in support of which the application of judicial review is made, but the decision making process itself.

93. The duty of the Court is to confine itself to the question of legality. Its concern should be;

1. whether a decision-making authority exceeded its powers?
2. committed an error of law.
3. committed a breach of the rules of natural justice.
4. reached a decision which no reasonable Tribunals would have reached or:
5. abused its powers.

94. Therefore, it is not for the Court to determine whether a particular policy or particular decision taken in the fitment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) **Illegality** : This means the decision-maker must understand correctly the law regulates his decision-making power and must give effect to it.

(ii) **Irrationality**, namely, *Wednesbury* unreasonableness.

(iii) **Procedural impropriety**.

95. The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in *R. v. Secretary of State for the Home Department ex parte Brind*, (1991) 1 AC 696, Lord Diplock refers specifically to one development namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the Court should, 'consider whether something has gone wrong of a nature and degree which requires its intervention.

113. The principles deducible from the above are:

(1) The modern trend points to judicial restraint in administrative action.

(2) The Court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fairplay in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi administrative sphere. However, the decision must not only be tested by the application of *Wednesbury* principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure."

Learned Additional Advocate General Shri P.K.Jani appearing for the State submitted that grant of pension to an employee is a benevolent act of the State and therefore, State is the only authority which can decide upon the manner in which the pension is to be made available to the petitioners.

( See Para 14 of the Gujrat High Court Judgment dated 20th June 2017. )

Thus, the contention of the State that pension is benevolent act equivalent to mercy as it is dramatically opposite to the accepted tenets of law.

( See Para 18 of the Gujrat High Court Judgment dated 20th June 2017. )

*IV. In the case of V. Kasturi Vs Managing Director, State Bank of India, Bombay & Anr., reported in AIR 1999 SC, page No.81. Paras-21 and 22 of the said judgment read as under:-*

"21. If the person retiring is eligible for pension at the time of his retirement and if he survives till the time by 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's case (AIR 1983 SC 130) (supra) would cover this category of cases.

Category II:

22. 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 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, Calcutta v. Capt. Biplabendra Chanda, (1997) 1 SCC 208 : (1997 AIR SCW 2564) (supra) and Govt. of Tamil Nadu v. K. Jayaraman, (1997) 9 SCC 606 : (1997 AIR SCW 1434) (supra) 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 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 coming into operation of the new scheme, would disentitle him from getting such a new benefit."

*V. In the case of Union of India v. S. R. Dhingra & Ors., reported in 2008 (2) SCC, page No.229. Paras-23 to 26 of the said judgment read as under:-*

"23. We are of the opinion that the clarification of the Railway Board issued dated 29.12.1999 clarifying that the running allowance which was already taken into account for pension and other benefits at the time of retirement is not to be added to the pay of pre-1986 retirees revised on notional basis as on 1.1.1986 is valid. It appears that due to a clerical error the notional benefits of the respondents w.e.f. 1.1.1986 was wrongly fixed and such retired employees are getting excess pension. It is well-settled that a mistake does not confer any right to any party, and can be corrected.

24. We are of the opinion that the benefit of running allowance has

to be taken into consideration for computing pension only once. It had been taken into consideration while fixing the pension of the respondents at the time of their retirement. In our opinion it is not required to be taken into account again for any future calculation.

25. It is well settled that when two sets of employees of the same rank retire at different points of time, one set cannot claim the benefit extended to the other set on the ground that they are similarly situated. Though they retired with the same rank, they are not of the same class or homogeneous group. Hence Article 14 has no application. The employer can validly fix a cut-off date for introducing any new pension/retirement scheme or for discontinuance of any existing scheme. What is discriminatory is introduction of a benefit retrospectively (or prospectively) fixing a cut-off date arbitrarily thereby dividing a single homogeneous class of pensioners into two groups and subjecting them to different treatment (vide Col. B.J. Akkara (Retd.) vs. Govt. of India (2006) 11 SCC 709, D.S. Nakara vs. Union of India (1983) 1 SCC 305, Krishna Kumar vs. Union of India (1990) 4 SCC 207, Indian Ex-Services League vs. Union of India (1991) 2 SCC 104, V. Kasturi vs. Managing Director, State Bank of India (1998) 8 SCC 30 and Union of India vs. Dr. Vijayapurapu Subbayamma (2000) 7 SCC 662).

26. In view of the above, we are of the opinion that the benefit of running allowance which has been given to the respondent at the time of retirement is not to be given again vide Office Memorandum dated 10.2.1998."

*VI. In the case of State of W.B. & Anr. Vs. W.B. Govt. Pensioners Associations & Ors., reported in 2002 (2) SCC, page No.179. Relevant paras of the said judgment read as under:-*

"16. The respondents' case is based upon a failure to distinguish between the pension scheme on the one hand and the revised pay scales on the other. Pension Schemes are based on the West Bengal Services (Death-cum-Retirement) Rules, 1971 (hereinafter referred to as the '1971 Rules') which were framed under Article 309. These Rules apply to all State Government employees barring a few exceptions which are not relevant for our purposes. These Rules provide that a Government servant's claim to pension is regulated by the rules in force at the time the Government servant resigns or is discharged from service on retirement or otherwise. Rule 67 deals with the amount of pension which is fixed on the emoluments which in terms of the definition of the word under Section 7(1)(d) means the 'pay' as defined in Rule 5 (28) of the West Bengal Service Rules, Part I which the officer was receiving immediately before his retirement. Sub-clause (1) of Rule 5 (28) of the West Bengal Service Rules,

Part I has defined pay as:

"Pay means the amount monthly drawn by a Government servant as pay other than special pay or pay granted in view of personal qualification which has been sanctioned for a post held by him substantially or in an officiating capacity or to which he is entitled by reason of his position in a cadre."

17. Therefore unless there is a change in the emoluments as defined in the 1971 Rules, the pension will continue to be pegged to the pay drawn by the employee immediately before his retirement. This has not been done as far as the pre-1986 retirees are concerned by the 1990 ROPA Rules.

18. The ROPA Rules, 1990 were based upon the recommendation of the Third State Pay Commission. The Third State Pay Commission was constituted by the State Government by Finance Department resolution No. 805-F dated 30th January 1987, inter alia, to examine

This Court is unable to accept to the submission of learned Additional Advocate General that pension is benevolent act, in fact, the pension is rather treated as extension of pay and an obligation of the State towards its employee who have retired.

( See Para 18 of the Gujrat High Court Judgment dated 20th June 2017. )

the structure of pay and conditions of service of the specified categories of State Government employees keeping in view the recommendations of the Fourth Central Pay Commission and the decision of the Government of India. The Third State Pay Commission revised the pay scales and other benefits of those employees in terms of the reference and also recommended that the Pay Commission's report on pay, allowances and conditions of service should be made effective from 1-1-86 because that was the date from which the Central Government employees and the employees of a large majority of other States had got the benefit of revised emoluments. Keeping in view the financial resources of the State, the Third Pay Commission also recommended that there should be notional effectiveness from 1-1-86 and the arrears due on the basis thereof should be paid to the employees only for the period from 1-1-88 onwards. It was further recommended that pensioner retiring after 1-1-86 should be allowed the benefit of pay fixation in the revised scales and allowance of computation of their pension which may be revised where necessary.

19. The State Government accepted the recommendations of the Third Pay Commission and in exercise of the powers conferred under Article 309 published the ROPA Rules on 12th January, 1990. Consequent upon the revision of the pay scales with effect from 1-1-86 the pensionary benefits in respect of those State Government employees whose pay had been fixed under the ROPA Rules, 1990 were also re-calculated. In respect of those employees who had retired after 1-1-86 their pensionary benefits were revised notionally on the basis of the revised pay, also fixed notionally, in terms of the ROPA Rules, 1990 by Memorandum No. 4056-F dated 25th April, 1990.

20. What is noticeable is that the definition of the word 'emoluments' in the 1971 Rules was not amended. As such pension continued to be calculated on the basis of emoluments as defined in the 1971 Rules namely the last pay drawn immediately prior to retirement. The pay of the pre 1986 pensioners was not revised. The Third Pay Commission

had given a reason for choosing 1-1-86, as the cut off date. As held in *Krishna Kumar v. Union of India*, (supra) and *Union of India v. P. N. Menon* (supra) merely because a cut off date is fixed would not make the exercise invalid all though persons in the service immediately before the cut off date would be deprived of the benefit of the revised scales of pay. It would depend upon the relevancy of the consideration underlying the choice of such date. The reason stated by the Third Pay Commission cannot be said to be arbitrary or irrelevant.

21. Because the scales of pay had been revised from 1-1-86, the re-computation of pension for such employees as had been granted the revised scales of necessity was limited to the same cut off date. All that the impugned Memorandum No. 4056-F dated 25th April 1990 did was to re-compute the benefits in favour of post 1-1-86 retirees according to the existing formula as provided by the Memorandum No. 7530-F and No. 7531-F both dated 6th July 1988. The same formula continues to be applied to the pre 1986 retirees. The difference between pre-1986 pensioners and the post-1986 pensioners is only on account of the revision of pay scales and not on account of failure of State Government to equitably apply the liberalised pension scheme formula. The quantum of the emoluments formed no part of the formula for grant of pension during 1986 to 1995.

25. Consequently in the present case for the period in question, namely, pre 1-1-86 to 31-12-95 when the definition of 'emoluments' was not amended and pension continued to be calculated on the basis of the unrevised emoluments of the pre 1986 pensioners, no parity in the amount of pension can be granted."

16. This Court has heard counsel for the parties and perused the LPA memo, annexures and both the judgments impugned in these LPAs. Before adverting to the rival contentions of the counsel for the parties, it would be most appropriate to set out hereinbelow few indisputable aspects emerging therefrom namely:-

(a) The petitioners of SCA No 13590 of 2013 and similarly petitioners in that group are retired lecturers and before their retirement, they were enjoying the selection grade and all of them had completed three or more years in the selection grade.

(b) The petitioners of the SCA No. 705 of 2013 were also as could be seen from the averments, were lectures and/or professors in the Agriculture University and prior to retirement, they had also completed more than 3 years in their selection grade. On this premise, the entire controversy is examined.

(c) The petitioners though have retired long back, have been always given the benefit of revisions, those were recommended

निवडश्रेणीमध्ये पाच वर्षांची सेवा पूर्ण करून १ जानेवारी १९९६ पूर्वी निवृत्त झालेल्या शिक्षकांचे निवृत्तीवेतन १४९४० च्या टप्प्यावर निर्धारित करण्याचे प्रकरण अंतिम टप्प्यात आल्या बाबतचा अहवाल : २

उपरोक्त मधल्याचा पहिला अहवाल सन २०१७ च्या बुलेटीनच्या पृष्ठ १०७ ते ११२ वर प्रसृत करण्यात आला आहे. तो अहवाल १ ते २२ परिच्छेदांचा होता. त्यात परिच्छेद २२ नंतर पुढील परिच्छेद जोडण्यात यावेत.

२३. दिनांक २ मे २०१४ रोजी मा. मुंबई उच्च न्यायालयाने या विषयावरील 'सुटा'च्या प्रकरणात जो निर्णय (P12NB2015) दिला होता, त्यावर राज्यशासनाने मा.सर्वोच्च न्यायालयात विशेष अनुमती याचिका (SLP) दाखल केलेली होती. आता दिनांक ३०.१०.२०१७ रोजी मा. सर्वोच्च न्यायालयाने या प्रकरणी अंतिम निर्णय दिला असून राज्यशासनाची याचिका फेटाळून लावलेली आहे. मा.सर्वोच्च न्यायालयाचा तो आदेश याच अंकात प्रसृत करण्यात आला आहे. (P191NB2017)

२४. सिलेक्शन ग्रेड मध्ये ३७००-५७०० या वेतनश्रेणीत पाच वर्षांची सेवा ज्यांनी पूर्ण केलेली आहे व जे शिक्षक १ जानेवारी १९९६ च्या पूर्वी सेवानिवृत्त झालेले आहेत, अशा शिक्षकांना १४९४० च्या निश्चितीचे लाभ देऊन त्यांचे निवृत्तीवेतन निर्धारित करणे आवश्यक होते. प्रत्यक्षात मात्र अशा निवडश्रेणीमधील प्राध्यापकांना रु. १२०००-१६३०० या निवडश्रेणीच्या कमीत कमी टप्प्याच्या, म्हणजेच रु. १२,००० आधार धरून रुपये ६००० वर सेवानिवृत्ती वेतनाचा लाभ १-१-१९९६ पासून देण्यात आला. अशा सर्व शिक्षकांना न्याय देणारे मा. उच्च न्यायालयाचे सर्व निर्णय याचिकाकर्त्यांपुरतेच देण्यात आलेले आहे. त्यामुळे ज्यांनी याचिका दाखल केल्या नाहीत असे अनेक प्राध्यापक अथवा त्यांचे कुटुंबीय वाढीव निवृत्ती वेतनापासून वंचित राहिलेले आहेत. अशा अनेक प्राध्यापकांनी संघटनेच्या पदाधिकाऱ्यांना भेटून उर्वरित प्राध्यापकांच्या वतीने एक याचिका दाखल करण्यात यावी, अशा विनंती केल्यामुळे अशा प्राध्यापकांची बैठक बोलाविण्याचा निर्णय घेण्यात आला असून अशा बैठकीची सूचना स्वतंत्रपणे याच अंकात पृष्ठ १९० वर प्रसृत करण्यात आलेली आहे.

- डॉ. प्रवीण रघुवंशी, अध्यक्ष, नुटा  
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PR :- (1) P95&96NB2004 (2) P110NB2004 (3) P23NB2005 (4) P06EX-2008 (5)P13NB2015 (6) P115NB2016 (7) P107NB2017 (8) P190NB2017

सिलेक्शन ग्रेड मध्ये ५ वर्षांच्या सेवेनंतर १ जानेवारी १९९६ पूर्वी सेवानिवृत्त झालेल्या प्राध्यापकांची सभा

सिलेक्शन ग्रेडमध्ये ३७००-५७०० या वेतनश्रेणीत ५ वर्षांची सेवा ज्यांनी पूर्ण केली व जे १ जानेवारी १९९६ पूर्वी सेवानिवृत्त झाले अशा प्राध्यापकांचे सेवानिवृत्ती वेतन १४९४० च्या निश्चितीचा लाभ देऊन निर्धारित करणे आवश्यक होते. मा. उच्च न्यायालयाच्या वेगवेगळ्या खंडपीठांनी दिलेल्या निर्णयांमुळे हे लाभ आतापावेतो याचिकाकर्त्यांना प्राप्त झालेले आहेत. ३० ऑक्टोबर २०१७ रोजी याबाबतची राज्यशासनाची पुनर्विलोकन याचिका मा. सर्वोच्च न्यायालयाने फेटाळून लावलेली आहे.

मा. उच्च न्यायालयासमोर याचिकाकर्ते नसल्यामुळे अनेक प्राध्यापक या लाभापासून वंचित राहिलेले आहेत. नागपूर व अमरावती विभागातील तीनही विद्यापीठ क्षेत्रातील उपरोक्त लाभवंचित अशा प्राध्यापकांच्या सभेचे आयोजन करण्यात आलेले आहे. सभेचा दिवस, दिनांक, वेळ व स्थळ खालील तक्त्यात दिल्याप्रमाणे आहे.

तक्ता

सभेचे ठिकाण : शिक्षक भवन, अमरावती विद्यापीठ परिसर, अमरावती

सभेचा दिवस व दिनांक : शनिवार, दिनांक २ डिसेंबर २०१७

सभेची वेळ : दुपारी ३.०० वाजता

सर्व संबंधित शिक्षकांनी उपस्थित रहावे अशी विनंती आहे.

- डॉ. प्रवीण रघुवंशी, अध्यक्ष, नुटा

by the respective Pay Commissions. The petitioners thus, did receive the benefit of revision in pension when the pensions were revised after recommendations of 5th Pay Commission.

(d) At least from 5th Pay Commission onwards, it has been practice of effecting fitment from scale to scale basis meaning thereby, the old pay scale is taken into consideration for prescribing new pay scale and fitment is provided on that basis. That is how the revision in pension also affects so as to adhere to the criterion and rule for providing not less than 50% of the minimum pay scale of the revised scales by way of pension.

(e) **The fact remains to be recorded that the present group of petitions and LPAs essentially addresses a question of educational institutions and college teachers, lecturers etc. who were essentially governed by the University Grant Commission and their recommendations accepted by the State Government.**

(f) The terms of reference to 6th Central Pay Commission constituted vide GR dated 5.10.2006 does contain revision of pensions received by the then existing pensioners and restructuring them so as to remove disparity between the group of pensioners and equip them with means to grapple with forces of inflation which affected all. The observations of 6th Central Pay Commission set out hereinabove needs to be reproduced herein below at the cost of repetition to emphasis that disparity amongst pensioners was all along concern of all.

“5.1.47 The Commission notes that modified parity has already been conceded between pre and post 1/1/1996 pensioners. Further, full neutralization of price rise on or after 1/1/1996 has also been extended to all the pensioners. Accordingly, no further changes in the extant rules are necessary. However, in order to maintain the existing modified parity between present and future retirees, it will be necessary to allow the same fitment benefit as is being recommended for the existing Government employees. The Commission, accordingly, recommends that all past pensioners should be allowed fitment benefit equal to 40% of the pension excluding the effect of merger of 50% dearness allowance /dearness relief as pension (in respect of pensioners retiring on or after 1/4/2004) and dearness pension (for other pensioners) respectively. The increase will be allowed by subsuming the effect of conversion of 50% of dearness relief/dearness allowance as dearness pension/dearness pay. Consequently, dearness relief at the rate of 74% on pension (excluding the effect of merger) has been taken for the purposes of computing revised pension as on 1/1/2006. This is consistent with the fitment benefit being allowed in case of the existing employees. A table (Annex 5.1.1) showing fixation of the pension of the existing pensioners in the revised dispensation consequent to implementation of the recommendations of this Commission has been prepared and should be used for fixing the revised pension of the existing pensioners. The fixation as per this table will be subject to the provision that the revised pension, in no case, shall be lower than fifty percent of the sum of the minimum of the pay in the pay band and the grade pay thereon corresponding to the pre-revised pay scale from which the pensioner had retired. To this extent, a change would need to be allowed from the fitment shown in the fitment table.”

(g) It is not in dispute that so far as the present petitioners are concerned, they were all working for more than 3 years in the selection grade prior to date of retirement, bearing that factor in mind, as it is stated hereinabove, the controversy is required to be examined.

(h) The GR dated 13.4.2009 is in respect of implementation of 6th Central Pay Commission revision of pensions of Pre-2006 pensioners / family pensioners, In other words the GR dated 13.4.2009 was issued essentially providing for implementing the recommendations of the 6th Central Pay Commission to the existing pensioners, who retired prior to 2006.

(i) The said GR by way of reference contains in clause 9.2 that the procedure for disbursing shall on line of Finance Department Resolution dated 1.11.2000.

(j) As per the Finance Department Resolution dated 1.11.2000, it was provided that the pay scale which came into existence on 1.1.1996, 50% thereof is admissible to the existing pensioners, however, while working out the same, the benefit of higher pay scale, selection grade, senior grade are not to be reckoned and only the pay scale is to be taken into consideration. The portion of the GR dated 1.11.2000, from page 25A of the compilation deserves to be set out as under :

“ xxx xxx Upon submission of application of pensioner for family pension in part I of Schedule attach to this order along with part 2 duly filled in by concerned division/department/office to the District Treasury Office where the Pension, Family Pension is paid, the concerned District Treasury Officer will undertake the process of sanction of pension payment order (PPO) @ 50% and (proportionate to pensionable service) and family @ 30% of the minimum pay as per pay scale applicable according to the post held by the pensioner at the time of retirement / death which has come into effect from 1.1.1997 in the case of pensioner / family pensioner. **While doing so, the higher pay scale or selection grade / senior grade received by the respective employee are not to be considered, but the basic pay scale according to the post is to be considered and in any exceptional cases, where clear information about basic pay scale according to the post of the pensioner and revised pay scale which is to be considered is not available from the PPO or part -I / 2 of the Schedule to the District Treasury Officer, then only, such cases can be sent to Ahmedabad Office of Commissioner of Pension and Provident Fund.**” (Emphasis supplied)

(k) It is important to take a note of the fact that the original GR dated 13.4.2009 contained at Annexure No. III, providing for ready reckoner for arriving at the conclusion for admissible pension. This ready reckoner did not contain the pay scale which was admissible to the petitioners for fixing their pension as it was to be based upon the recommendations of UGC, The Court's attention was invited to the GR of Education Department dated 4.12.2009, which provided the appropriate corresponding pay scale as recommended by UGC after recommendation of 6th Central Pay Commission.

(l) The learned Single Judge, while party allowing the petitions in his judgment dated 26/27.8.2014 in para 3.3. has observed as under :

“3.3 The petitioners were drawing the salary in the pay-scale of Rs.12,000-420-18,300 which was a selection grade equivalent to the grade attached to the post of Associated Professor as recommended by the 5th Pay Commission. According to the petitioners, since the petitioners

ITEM NO.7 COURT NO.7 SECTION IX

## SUPREME COURT OF INDIA

( Record of Proceedings )

Petition(s) for Special Leave to Appeal (C) No./2017  
CC No(s).7523/2016

(Arising out of impugned final judgment and order dated 02-05-2014 in WP No.6680/2006 passed by the High Court Of Judicature At Bombay)

THE STATE OF MAHARASHTRA & ANR. Petitioner(s)  
**VERSUS**  
SHIVAJI UNIVERSITY TEACHERS ASSOCIATION  
(SUTA) & ORS. Respondent(s)

(FOR CONDONATION OF DELAY IN FILING ON IA 1/2016 FOR CONDONATION OF DELAY IN REFILEING ON IA 2/2016) WITH SLP(C) No...../2017 CC No. 7841/2016 (IX) (FOR CONDONATION OF DELAY IN FILING ON IA 1/2016 FOR CONDONATION OF DELAY IN REFILEING ON IA 2/2016)

**Date : 30-10-2017**

These matters were called on for hearing today.

**CORAM :**  
HON'BLE MR. JUSTICE S.A. BOBDE  
HON'BLE MR. JUSTICE MOHAN  
M. SHANTANAGOUDAR

For Petitioner(s) Mr. Mahaling Pandarge, Addl. Govt. Adv.\*  
Mr. Nishant Ramakantrao Katneshwarkar, AOR\* For Respondent(s)

UPON hearing the counsel the Court made the following

### ORDER

These special leave petitions are **DISMISSED** on the ground of delay.

(SANJAY KUMAR-II) (INDU KUMARI POKHRIYAL)  
COURT MASTER (SH) BRANCH OFFICER

were in the higher grade pay scale before 1.1.2006, their appropriate equivalent pay scale, as recommended by the 6th Pay Commission, is Rs.37,400-67,000 with the grade pay of Rs.9000/- and thus they must get the pension at the rate of 50% of the basic pay i.e. Rs.37,4000/- plus the grade pay i.e. Rs.9000/-. Their claim is that thus Rs.23,200/- should be the revised pension."

Learned Single Judge in para-10.2 has observed as under:

"10.2 Annexure-D is the resolution dated 04.12.2009 which was passed as a result of representation made by various unions/employees. It is clarificatory in nature. It reiterates the pay scales for the post of Lecturers (Selection Grade), Readers, Assistant Librarian/College Librarian (Selection Grade) and Deputy Librarian, as indicated in Annexure-A. Insofar as Lecturers (Selection Grade) and Readers are concerned, the pre-revised pay scales is Rs.12,000-420-18,300 and revised pay band as recommended by the University Grant Commission and accepted by the Central Government by its letter dated 31.12.2008 has been split into two pay-scales being Rs.15,600-39,100 with an academic grade pay of Rs.8,000/- for Assistant Professor and Rs.37,400-67,000 with an academic grade pay of Rs.9,000/- for Associate Professor. The pay band of Rs.15,600-39,100 is applied to in service Readers as well as Lecturers (Selection Grade) who have not completed three years of service in the pre-revised scales and the pay band of Rs.37,400-67,000 is applied to the said cadres completing three years of service in the pre-revised scales.

It is evident from the resolution dated 26.02.2014 and other relevant documents that three pre-revised pay-scales being Rs.8000-13500, Rs.10,000-15200 (Senior Scale) and Rs.12000- 18300 (Selection Grade) were applicable by virtue of resolution dated 07.09.1998 to the post of Lecturers/Readers.

All these pay scales were assimilated into one scale in the revised pay-

**सन २००६ पूर्वी सेवानिवृत्त झालेल्या  
प्राध्यापकांचे सेवानिवृत्ती वेतन  
ठरवितांना भेदभावपूर्ण  
वागणूक : ७**

सन २००६ पूर्वी ३ वर्षे किंवा त्यापेक्षा जास्त काळ सिलेक्शन ग्रेड मध्ये किंवा रिडर या श्रेणीमध्ये सेवा करून सेवानिवृत्त झालेल्या प्राध्यापकांच्या बाबतीत एक महत्त्वपूर्ण निर्णय मा. गुजरात उच्च न्यायालयाने दिनांक २० जून २०१७ रोजी दिला असून निर्णयाच्या परिच्छेद २८ मध्ये "We hereby declare that the petitioners pensioners, who have rendered more than 3 years service in selection grade pay scale prior to retirement are entitled to fixation of their pension as per the corresponding pay scale admissible to the selection grade, UGC lecturers i.e. 37400-67,000 with grade pay of RS.9000/-." असे आदेशित केलेले आहे.

२. या विषयाचा तपशीलवार ऊहापोह करणारा मा. गुजरात उच्च न्यायालयाचा हा निर्णय ३० परिच्छेदांचा असून तो याच अंकात प्रसूत केलेला आहे. मा.गुजरात उच्च न्यायालयाने दिनांक २० जून २०१७ रोजी दिलेल्या या निर्णयावर गुजरात सरकारने मा. सर्वोच्च न्यायालयापुढे विशेष अनुमती याचिका दाखल केली होती. गुजरात राज्यशासनाच्या या विशेष अनुमती याचिकेवर मा. सर्वोच्च न्यायालयाने "The special leave petitions are accordingly **DISMISSED.**" असे आदेश २३.१०.२०१७ रोजी पारित केले आहेत. ते आदेश याच अंकात प्रसूत करण्यात आलेले आहेत. (P192NB2017) सर्वोच्च न्यायालयाने गुजरात शासनाची याचिका खारीज केल्यामुळे गुजरात उच्च न्यायालयाचा हा निर्णय आता अंतिम झालेला आहे.

३. मा. गुजरात उच्च न्यायालयाने या विषयावर दिलेला २० जून २०१७ रोजीचा निर्णय व त्याच विषयावर राज्यशासनाची विशेष अनुमती याचिका (SLP) फेटाळून लावणारा मा. सर्वोच्च न्यायालयाचा २३.१०.२०१७ रोजीचा निर्णय मा. नागपूर खंडपीठाच्या लक्षात आणून देण्यात यावा यासाठी संघटनेच्या अधिवक्त्यांना विनंती करण्यात आलेली आहे.

- डॉ. प्रवीण रघुवंशी, अध्यक्ष, 'नुटा'

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PR : (1) P101 NB2015 (2) P126 NB2015 (3) P138 NB 2015 (4)P152 NB 2015 (6) P 21 NB 2017 (7) P 107NB2017 (8) P126NB2017 (9) P192 NB 2017

scales as per the recommendation of the 6th Pay Commission being Rs.15,600-39,100 with the only difference being the grade pay of Rs.6,000/-, Rs.7,000/- and Rs.8,000/-, respectively."

(m) It would be most important to refer to the communication by the Government of India in Ministry of Human Resources to the Secretary Union Commission dated 4.6.2009, produced at Z-41, which reads as under :

"No.F.3-1/2009-UI  
Government of India  
Ministry of Human Resource Development  
(Department of Higher Education)  
New Delhi, the 4th June, 2009

To,  
The Secretary,  
University Grants Commission,  
Bahadur Shah Zafar Marg,  
New Delhi 110002.

(Kind Attn: Dr.R.K.Chauhan, Secretary)

Subject : Scheme of revision of pay of teachers and equivalent cadres in universities and colleges and as also for the posts of Registrar, Deputy Registrar, etc.,

Sir,

I am directed to invite your attention to this Ministry's letter No.1-31/2006-U.II/U.I(i) and No.1-32/2006-U.II/U.I(ii), dated the 31st December, 2008 as also your D.O. Letter No.F.1-2/2009 (EC) dated the

REVISED

ITEM NO.24+27+30+55 COURT NO.10 SECTION III

**SUPREME COURT OF INDIA**

(Record of Proceedings)

**Item No.24 :** Petition(s) for Special Leave to Appeal (C) Nos.25810-25811/2017 (Arising out of impugned final judgment and order dated 20-06-2017 in LPA No.1175/2014 20-06-2017 in LPA No. 32/2015 passed by the High Court Of Gujarat At Ahmedabad)

THE STATE OF GUJARAT & ORS. Petitioner(s)

**VERSUS**

PRABHUDAS C. BAROT & ORS. Respondent(s)

(With appln.(s) for exemption from filing O.T.)

**Item No.27 :** SLP(C)No.26539/2017 (With appln.(s) for exemption from filing O.T.)

**Item No.30 :** SLP(C)No.25846/2017 (With appln.(s) for exemption from filing O.T.) WITH SLP(C)No.25850/2017 (With appln.(s) for exemption from filing O.T.) WITH SLP(C)No.26570/2017 (With appln.(s) for exemption from filing O.T.)

**Item no.55 :** SLP(C)Nos.25840-25841/2017 (With appln.(s) for exemption from filing O.T.)

**Date : 23-10-2017**

These matters were called on for hearing today.

**CORAM :**

HON'BLE MR. JUSTICE ARUN MISHRA

HON'BLE MR. JUSTICE MOHAN

M. SHANTANAGOUDAR

**For Petitioner(s)** Mr. Tushar Mehta, ASG\* Ms. Jesal Wahi, Adv.\* Ms. Shodhika Sharma, Adv.\* For Ms. Hemantika Wahi, AOR\* **For Respondent(s)** Mr. Huzefa Ahmadi, Sr. Adv.\* Mr. Bhargav Hasurkar, Adv.\* Mr. Anshul Narayan, Adv.\* For Mr. Prem Prakash, AOR\* Mr. Gautam, Adv.\* Mr. Pradhuman Gohil, Adv.\* Ms. Taruna Gohil, Adv.\* Mr. Himanshu Choubey, Adv.\* Ms. Charu Mathur, AOR\*

UPON hearing the counsel the Court made the following

**ORDER**

In the facts and circumstances of these cases, we are not inclined to interfere with the impugned order passed by the High Court.

The special leave petitions are accordingly **DISMISSED.**

Pending applications stand disposed of.

(Sarita Purohit)  
Court master

(Tapan Kumar Chakraborty)  
Branch Officer

27th January, 2009, on the above subject and to forward herewith authenticated Fitment Tables (Table No.1 to 9) for fixation of pay of the existing incumbents, who were in position as on 1.1.2006, in various categories of posts as indicated in the Tables, for appropriate action at your end.

Yours faithfully,  
Sd/-  
[R.Chakravarty]

Deputy Secretary to the Government of India”

The relevant table, being table no. 4 is also reproduced herewith: at Page-Z-45:

“TABLE – 4

(i) Incumbent Readers and Lecturers (SG) with 3 years of Service

(ii) Incumbent Dy. Librarian/Asst. Librarian (SG)/College Librarian (SG) with 3 years of Service

(iii) Incumbent Dy. DPE/Asst. DPE(SG)/College DPE(SG) with 3 years of Service

Pre-revised scale Rs.12000 - 420-18300	Revised Pay Band + AGP Rs.37400-67000 + AGP 9000		
Pre-revised Basic Pay	Revised Pay		
	Pay in the Pay Band	Academic Grade Pay	Revised Basic Pay
13260	37400	9000	46400
13680	37400	9000	46400
14100	37400	9000	46400
14520	37400	9000	46400
14940	38530	9000	47530
15360	38530	9000	47530
15780	39690	9000	48690
16200	39690	9000	48690
16620	40890	9000	49890
17040	40890	9000	49890
17460	42120	9000	51120
17880	42120	9000	51120
18300	43390	9000	52390
18720	43390	9000	52390
19140	44700	9000	53700
19560	44700	9000	53700

(n) In fact, the another learned Single Judge in his judgment dated 22.9.2015 impugned in the LPA No. 92 of 2016 in SCA 705 of 2013, records as under :

“2.5 The Government of India in its Ministry of Human Resources Development addressed a letter to the University Grants Commission dated 15.12.2009 communicating that the Government had decided that in the case of Teachers and equivalent cadres, the pre01.01.2006 pensioners mentioned at the categories “A” and “B” of the letter and having completed three years of service on 01.01.2006 in the pre-revised pay scale of Rs.12,000 – Rs.420 – Rs. 18,300/( and/or the corresponding pay scales applicable prior to 01.01.1996) shall be placed at the minimum of the pay band of Rs.37,400 – Rs.67,000/ with the AGP of Rs.9,000/ for revision of their pension / family pension with effect from 01.01.2006.

2.6 The Government of India also issued further clarification to the University Grants Commission dated 01.07.2010 fixing the pension of various teaching staff who had retired prior to 01.01.2006 from the Central Universities and Colleges.

2.7 It is the case of the petitioners that they fall in the category of Lecturer (selection grade) / Reader (with three years or more of service), entitled to receive the minimum pension on the basis of the approved revised pay band mentioned in column 4 to be Rs.37,400 – Rs.67,000/- with grade pay of Rs.9,000/- making them entitled to receive Rs.23,200/- as the minimum pension and Rs.13,900/- as family pension.

2.8 It is the case of the petitioners that the Universities experienced difficulty in revising the pension of the pensioners who had retired before 01.01.2006 in the cadre of Associate Professor / Associate Research

Scientist / Associate Extension Educationist / Rider/Assistant Professor (Selection Grade) and its equivalent whose pre-revised pension was fixed on the basis of the pay scale of Rs.12,000 – Rs.18,300/.”

Para Nos. 21 to 25 of said decision read as under:

“21 Based on the above referred resolution dated 13.04.2010, the Government of Gujarat in its Agriculture and Cooperation Department issued a resolution dated 01.04.2010 as regards the revision of pay scales of the education cadres of the State Agriculture University based on the recommendations of the Sixth Pay Commission. According to the said resolution dated 01.04.2010, the revision was as under:

Sr. No.	Designation	Present Scale (Rs.)	Revised Pay Scale	
			New Pay Band	Academic Grade Pay (AGP) Rs.
6	Associate Professor and its equivalent posts	12000 – 18300	(1) 15600 – 39100	8000
			Incumbents, Associate Professor & its equivalent, who had not completed three years in the pay scale of Rs.12000-18300/- (Pre-revised) on 1.1.2006.	
			(2) Rs.37400 – 67000	9000
			Incumbents, Associate Professor & its equivalent, who had completed three years in the pay scale of Rs.12000-18300/- (Pre-revised) on 1.1.2006.	
7	Assistant Professor (Selection Grade) and its equivalent	12000- 18300	(1) 15600- 39100	8000
			Incumbents, Assistant Professor (selection Grade) and its equivalent, who had not completed three years in the pay scale of Rs.12000-18300/- (Pre-revised) on 1.1.2006.	
			(2) Rs.37400- 67000	9000
			Incumbents, Assistant Professor (selection Grade) and its equivalent, who had completed three years in the pay scale of Rs.12000-18300/- (Pre-revised) on 1.1.2006 shall be placed at the appropriate stage and accordingly redesignated as Associate Professor and its equivalent.	
		(3) Till the Assistant Professor (Selection Grade) and its equivalent, not reached at the pay scale Rs. 87400-67000, they shall be designated Assistant Professor (selection Grade) and equivalent.		

22 The Government of India in its Ministry of the Human Resources Development, Department of Higher Education, New Delhi vide its communication dated 15.12.2009 addressed to the Secretary, University Grants Commission, New Delhi clarified as under:

“I am directed to refer to the Government’ decision regarding pension/

family pension of all the pre-2006 pensioner/family pensioners issued vide Department of Pension and Pensioners' Welfare O.M. No.38/37/08-P&PW(A) dated 1.9.2008. In this connection a question has arisen about the Pay Band applicable to pre-2007 pensioners in Central Universities/Colleges, who had retired from the posts in the pre-revised scale of pay Rs.12000-420-18300 (or the corresponding pay scales applicable prior to 1.1.1996) mentioned below to determine their pension/family pension in terms of para 42 of Ministry of Personnel, Public Grievances and Pensions (Department of Pension and Pensioners' Welfare) O.M. No.38/37/08-P&PW(A) dated 1.9.2008.

#### Category (A)

Readers/Lectures (selection Grade)

#### Category (B)

(i) Deputy Librarian/ Assistant (Selection Grade)/College Librarian (Selection Grade)

(ii) Deputy Director of Physical Education/Assistant Director of Physical Education (selection Grade), College Director of Physical Education (selection Grade).

#### Category (C)

(i) Deputy Registrar

(ii) Deputy Finance Officer,

(iii) Deputy Controller of Examinations

2. According to the revised pay scales applicable to Teachers/Equivalent Cadres in Central Universities/Colleges as notified vide Ministry's letter No.1-32/2006-UIIAJI(i) dated 31.12.2008, incumbents of the posts mentioned at categories (A) and (B) above who had completed 3 years of service in the pay scale of Rs.12000-420-18399 on 1.1.2006 have been placed in Pay Band of Rs.37400-67000 with Academic Grade Pay (AGP) of Rs.9000.

Similarly, in terms of this Ministry's letter No.1-32/2006-UII/UI(ii) dated 31.12.2008, incumbents of the posts of Deputy Registrar/Deputy Finance Officers/Deputy Controllers of Examinations who had completed 5 years in pre-revised pay scale of Rs.12000-18300 on 1.1.2006 were placed in the Pay Band of Rs.37400-67000 with Grade Pay (GP) of Rs.8700.

3. Accordingly, the Government has decided that in the case of teachers and equivalent cadres, the pre-2006 pensioners mentioned at categories (A) and (B) above had completed 3 years or service in the pre-revised pay scale of Rs.12000-420-18300 (and/or the corresponding pay scale(s) applicable prior to 1.1.1996) shall be placed at the minimum of the Pay band of Rs.37400-67000 with AGP of Rs.9000 for revision of their pension/family pension with effect from 1.1.2006. Similarly, in the case of non-teaching posts/cadres, the pre-1.1.2006 pensioners mentioned at category (C) above who had completed 5 years of service in the pre-revised pay scale of Rs.12000-420-18300 (and the corresponding pay scale(s) applicable prior to 1.1.1996) shall be placed at the minimum of the Pay Band of Rs.37400-67000 with GP of Rs.8700 for revision of their pension/family pension with effect from 1.1.2006. the pension/family pension of these pre-2006 pensioners may be revised accordingly."

23 One of the orders of the revised pension issued by the Navsari Agricultural University is on record. I deem it necessary to look into the same as it would give a fair idea as to how the amount of the revised pension was calculated.

1	The date of retirement	30.11.2002
2	Pension as on 01.01.2006	Rs.6525/-
3	Pay scale according to the Fifth Pay Commission at the time of retirement	Rs.12,000-420- Rs.18,000/-
4	Pay scale according to the Sixth Pay Commission recommendations	Rs.37,400-Rs.67,000 (Grade PayRs.9,000/-)
5	The minimum salary according to the Sixth Pay Commission	Rs.37,400/-
6	Grade Pay according to the Sixth Pay Commission	Rs.9,000/-

23.1 Keeping the above in mind, the calculation was as under:

#### Details of Calculation of pension/family pension

Sr. No.	Particulars	Pensioner	Family Pension First Rate	Family Pension Second Rate
1	Pension receiving as on 1.1.2006	6525	6525	3978
2	50% D.P.	3263	3263	1989
3	Gross Pension (1+2)	9788	9788	5967
4	24% of Gross Pension	2350	2350	1433
5	40% of Basic Pension	2610	2610	1592
6	Revised New Pension (3+4+5)	14748	14748	8992
7	Minus Commuted Value of Pension	2611	---	---
8	Reduced amount of Pension	12137	14748	8992
9	50% of the minimum of pay of the Pensioner retired before 1.1.2010 according to Sixth Pay Commission recommendation	23200	---	13920

24 I shall now look into the Government resolution dated 26.02.2014 regarding the Sixth Central Pay Commission / Revision of Pension Pre-2006 pensioners / family pensioners, etc. The same reads as under:

"In pursuance of the Government of India decision on the recommendation of the Sixth Central Pay Commission and orders issued vide Ministry of Personnel, Public Grievances and Pension, Office Memorandum No.F.No.38/37/08-P&PW(A) dated 1-0-2008 and clarification issued vide Office Memorandum No. F. No.38/37/08-P&PW(A) Part-I dated 3-10-2008 and Office Memorandum of even No. dated 14-10-2008 the State Government had issued orders vide Finance Department Government Resolution No. PGR-1009-4-Pay Cell dated 13-4-2009 regarding revision of Pension/family pension of pre-2006 pensioners.

Under the para 9.2 of the said resolution dated 13-4-2009, it was decided that the revision of pension will be subject to the provision that the revised pension and family pension, in no case, shall be lower than 50% and 30% respectively of the minimum of the pay in pay band plus grade corresponding to the pre-revised pay scale. A statement indicating the minimum pension / family pension corresponding to each of the pre-revised scale was attached as Annexure-III with the Government resolution dated 13-4-2009. It was also decided that the procedure to be adopted by the disbursing authority shall be in the line of Finance Department Government resolution N.PPF/1099/GOG-1(2)-P, dated 1-11-2000.

After the issuance of the said GR dated 13-4-2009, Ministry of Human Resource Development Department of Higher Education authenticated Fitment Tables vide their letter No.F.3/2009-U.1 dated 4th June, 2009. In pursuance to the said orders dated 4th June 2009, the pay scales of the teachers of the various Universities, Colleges and Agricultural Universities as well as Technical Colleges had been revised in the line of UGC/ICAR/AICTE recommendations. As these pay scales were not included in the Annexure III of the GR dated 13-4-2009, the State Government has received representations from various departments for inclusion of these scales in the Annexure-III of the Government Resolution dated 13-4-2009 as the pre-2006 pensioners are facing hardship due to non-inclusion of these scale in Annexure-III of the said resolution.

#### Resolution:

After careful consideration, the state Government is pleased to include UGC/ICAR/AICTE pay scales as mentioned in the Annexure-IV enclosed herewith, with the conditions mentioned in Para 9.2. of the Finance Department, Government Resolution dated 13-4-2009, with effect from 01-01-2006.

As mentioned in the para 9.2 of the Government Resolution dated 13-4-2009, the provisions of para 3 of the Government Resolution dated 1-11-2009 i.e. pay scale of the post last held and corresponding pay scale shall only to be taken consideration, Senior Scale, Selection Scale or Higher Pay Scale shall not be considered. The other conditions of the

said Government Resolution dated 13-4-2009, shall remain unchanged.

These order shall be implemented from 01-01-2006.

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

Sd/-

(Dr. R.G. Joshi)  
Joint Secretary to the  
Government  
Finance Department”

**“Annexure-IV  
REVISED PENSION BASED ON REVISED  
PAY BANDS AND GRADE PAY FOR POSTS  
CARRYING PRESENT PAY SCALES AS  
PER SIXTH PAY COMMISSION.**

(UGC/ICAR/AICTE Pay Scales – with reference to Para-9.2 of the Finance Department Government Resolution dated 13-4-2009)

(Enclosure to the Finance Department, Government resolution no.PSN-10-2014-61446-P dated 26th February, 2014)

Sr. No.	6th CPC Pay Scale	Name of Pay Band/Scale	Corresponding 6th CPC Pay Bands / Scales	Corresponding Academic Grade Pay	Pension = 50% of sum of Min. of PB+ AGP/Scale	Family Pension = 30% of sum of Min. of PB+AGP/Scale
1	2	3	4	5	6	7
1	8000-13500	PB-3	15600-39100	6000	10800	6480
2	10000-15200	PB-3	15600-39100	7000	11300	6780
3	12000-18300	PB-3	15600-39100	8000	11800	7080
4	16400-22400	PB-4	37400-67000	10000	23700	14200

Sd/-

(Dr. R.G. Joshi)  
Joint Secretary to the  
Government Finance  
Department.”

25 Thus, the Government resolution dated 26.02.2014 afore-noted makes it clear that the Government took a decision to include the UGC / ICAR / AICTE pay scales as mentioned in the Annexure : “IV”, but decided that the pay scale of the post last held and corresponding pay scale shall only be taken into consideration, whereas the Senior Scale, Selection Scale or Higher Pay Scale would not be considered.”

(o) The learned Single Judge in SCA No. 705 of 2013 has taken a note that another learned Single Judge has not accepted the petitions in its totality and has also taken a note that said judgment is subject matter of LPA. However, learned Single Judge has thereafter, extensively relied upon and referred to the judgments of the Apex Court and has observed in paras 29 to 40 as under:

“29. Mr. Joshi, the learned counsel appearing for the petitioners pointed out that the decision referred to above and relied upon by the State Government is now a subject matter of challenge in the Letters Patent Appeal No.1175 of 2014 and other allied Appeals. He pointed out that a Division Bench of this Court vide order dated 30.03.2015 passed the following order:

**“ORDER IN APPEALS**

All appeals are **admitted**. Office to place all these appeals for final hearing on **8th June, 2015**.

**ORDER IN CIVIL APPLICATIONS**

The impugned judgment and order passed by the learned Single

Judge is hereby stayed. The respondents will not change the service conditions of the applicants. Status quo as on today will be maintained by both the sides.

All the Civil Applications stand disposed of accordingly.”

30. Mr. Joshi, thereafter, invited my attention to a very recent pronouncement of the Supreme Court in the case of the **State of Rajasthan and others vs. Mahendra Nath Sharma** in the Civil Appeal No.1123 of 2015 arising out of the Special Leave to Petition (Civil) No.321 of 2015 decided on 01.07.2015. Relying on this decision of the Supreme Court, Mr. Joshi submitted that the issue in hand is now no longer res integra, and the present petition deserves to be allowed on the strength of the Supreme Court's judgment.

31. In the case before the Supreme Court, the respondents were working on different posts of the Lecturers, Librarians and P.T.Is., who retired prior to 01.01.2006. All of those were appointed in different years between 1950 and 1976, and all of those retired between 1991 and 2004. All of those had been granted the Lecturers (Selection Grade) on or before 01.01.1986. They had completed three years of service in the said pay scale prior to 01.01.2006. After the pay revision took place, on the basis of the recommendations of the Fourth Pay Commission, the respondents / similarly situated employees got the benefit of revision of the pay scales w.e.f. 01.01.1986 vide Notification dated 03.06.1988. According to the Rajasthan Civil Services (Revised Pay Scales for Government College Teachers) Rules, 1988, the schedule indicated the pay scales then existing of the revised U.G.C. pay scales. A chart in that regard indicates as follows:

S. No.	Name of posts	Existing Pay Scale	Revised U.G.C. Pay Scale
1	2	3	4
1	Principal of Post Graduate College	Rs.1500-2500	Rs.4300-50-5700-200-7300
2	Principal of Degree College / Vice Principal of Post Graduate College/Degree College	Rs.1200-1900	3700-125-4950-150-5700
3	Lecturer (Ordinary Scale)	700-1600	2200-75-2800-100-4000
4	Lecturer (Senior Scale)	-	3000-100-3500-125-5000
5	Lecturer (Selection Scale)	-	3700-125-4950-150-5700

32. The Supreme Court took notice of the fact that in the year 1986, the post of Lecturer (Selection Grade) was introduced for the purpose of revision of pay scale and the respondents since then had been drawing the pay scale of the post of Lecturer (Selection Grade).

33. The Government of Rajasthan, vide Rules, 1999, revised the pay scales of the Government College Teachers / Librarians w.e.f. 01.01.1996. The schedule appended to the said rules mentioned for the post of Lecturer (Ordinary Scale), Lecturer (Senior Scale) and Lecturer (Selection Scale) showing the existing revised pay scale as against the said posts, as a result of which, the respondents who had retired prior to the year 1996 or in the year 1999 were granted the revised pension on the basis of the revised pay scale w.e.f. 01.01.1996 meant for the grade of Lecturer (selection scale).

34. In the year 2008, the Government of Rajasthan issued a Circular / Memorandum dated 12.09.2008, which envisaged for the pension / family pension of all the pre-01.09.2006 State pensioners / family pensioners to be revised w.e.f. 01.09.2006 according to provisions made therein. A learned Single Judge of the Rajasthan High Court considered the regulations of 2010, and other Notifications including the letter

This in our view amounted to overlooking the petitioners original service as selection grade lecturers prior to retirement and it would also not granting them the corresponding scale.

( See Para 21 of the Gujrat High Court Judgment dated 20th June 2017. )

dated 15.12.2009 issued by the Government of India, Ministry of Human Resources Development, wherein it was clarified that pay band of Rs.37,000 - 400 - Rs.67,000/- was to be given to all those who had already completed three years of service in the Selection Grade prior to 01.01.2006 and, more specifically, the pensioners, and on that analysis allowed the writ petitions.

35. The State of Rajasthan being dissatisfied with the decision of the learned Single Judge preferred the Intra-Court appeals before the Division Bench. The Division Bench noticed that the learned Single Judge had awarded the benefit according to the then existing guidelines of the U.G.C. to the respondents who had retired prior to 01.01.2006. The Division Bench also took note of certain other factors, namely, that there were three pay scales applicable to the respondents, and that the Sixth Pay Commission had recommended to revise those pay scales to Rs.15,600 - Rs.39,100/- with the Academic Grade Pay of Rs.6,000/- to the first existing pay scale, Rs.7,000/- as AGP as Senior Scale, to the second existing pay scale, and Rs.8,000/- as AGP as Selection Scale to the third pay scale; and that it had also recommended for bifurcation of pay scales of the Lecturers (Selection Scale) into two, namely, Rs.15,600 - Rs.39,100/- with AGP of Rs.8,000/- for those Lecturers (Selection Scale), who had completed three years of service in the pay the then existing as on 01.01.2006 and the pay scale of Rs.37,400- Rs.67,000/- with the AGP of Rs.9,000/- for those, who had completed three years of service in the pay scale the then existing as on 01.01.2006 and onwards.

36. The Division Bench opined that the respondents were entitled according to the paragraph 5 of the Memorandum dated 12.09.2008 for fixation of their pension at the minimum of 50% in the running pay band plus grade pay of the post introduced vide Notification dated 12.10.2009. The Division Bench, ultimately, clarified by way of an example that if a teacher was awarded selection scale in the year 2002 or prior to it under the old Regulations and was continuing, then the benefit of Revised Pay Scale Rules, could not have been denied to such teacher.

37. The matter was considered by the Supreme Court in the above referred factual background. It was argued by the learned Solicitor General appearing for the State of Rajasthan that there is a difference between the revision of pay and revision of pension, and the Notification dated 12.10.2009 relating to revision of pay was also applicable to the employees the then existing and not to those who had retired prior to 01.01.2006. To appreciate the controversy, the Supreme Court compared in juxtaposition Rule 6(1) of the Haryana Civil Services (Revised Pension) Part I Rules, 2009 and paragraph 5 (i) of the Memorandum dated 12.09.2008 reproduced herein below:

Haryana Civil Services (Revised Pension) Part-I Rules, 2009	Circular / Memorandum
Rule 6(1) (1) The fixation of revised entitlement of pension shall be subject to the provision that the revised entitlement of pension so worked out shall, in no case, be lower than fifty per cent of the minimum of the pay in the pay band + grade pay in the corresponding revised scale in terms of Haryana Civil Services (Revised Pay) Rules, 2008, or as the case may be, Haryana Civil Services (Assured Career Progression) Rules, 2008, to the preremised pay scale from which the pensioner had retired.	Paragraph 5 (i) The consolidated pension (treated as final 'basic pension') as on 1.9.2006 of pre-01.9.2006, pensioner shall not be lower than 50% of sum of the minimum pay of the post in the running pay band plus grade pay introduced w.e.f. 1.9.2006 corresponding to the pre-revised pay scale of the post from which pensioner had retired. Subject to the condition that the existing provisions in the rules governing qualifying service for grant of pension and minimum pension shall continue to be operative.

38. The Supreme Court, thereafter, made the following observations while dismissing the Appeals filed by the State of Rajasthan:

"18. We are absolutely conscious that we had already reproduced paragraph 5(i) earlier but we have quoted it hereinabove to appreciate the impact and import of the same in juxtaposition of the Haryana Rules. There is no shadow of doubt that the language employed in 2009 Rules of Haryana and the Circular/Memorandum dated 12.9.2008 are slightly different but the import and impact is the same. It is appropriate to note here that placing reliance on the same, the State of Haryana, vide memorandum dated 10.7.2009 had denied the benefit of pension to the retired employees. The High Court had quashed the same which has been affirmed by this Court. Similarly, in the present case, the benefit is deprived vide order dated 22.1.2010. There is no cavil over the fact that the respondents have been fitted into a pay band and extended the benefit of pension under the revision of pay from 2006 as the respondents had completed three years of service. Paragraph 5 clearly lays the postulate that the consolidated pension (treated as final basic pension) as on 1.9.2006, all pre-1.9.2006 pensioner shall not be lower than 50% of sum of the minimum pay of the post in the running pay band plus grade pay introduced w.e.f. 1.9.2006 corresponding to the pre-revised pay scale of the post from which pensioner had retired. The only rider is the minimum qualifying service and all the respondents have the experience of three years by 1.9.2006. As the factual score would depict, the respondents were paid pension on a lower band after the revision of the pay scale despite the fact that the persons who were already in service with the similar qualification have been kept in the higher pay band plus grade pay.

19. Paragraph 5 requires to be scrutinized and on such a scrutiny it becomes graphically clear that pension of a pre-1.9.2006 pensioner shall not be lower than 50% of sum of the minimum of post in the running pay band plus grade pay introduced w.e.f. 1.9.2006 corresponding to the preremised scale of the post. If the pay scale is taken into consideration, the corresponding pay revision would be Rs.37400-67000 with Rs.9000 AGP. The only qualifier is three years service in that scale. There is no scintilla of doubt that all the respondents meet that criteria. It is a well known principle that pension is not a bounty. The benefit is conferred upon an employee for his unblemished career. In D.S. Nakara v. Union of India[2], D.A. Desai, J. speaking for the Bench opined that:-

"18. The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service?"

19. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

20. The antiquated notion of pension being a bounty a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through court has been swept under the carpet by the decision of the Constitution Bench in Deokinandan Prasad v. State of Bihar [3] wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab v. Iqbal Singh[4]."

20. We may hasten to add that though the said decision has been explained and diluted on certain other aspects, but the paragraphs which

The very important premise so far as the petitioners are concerned, needs to be constantly borne in mind that the petitioners before their retirement were receiving selection grade pay scale for more than 3 years.

( See Para 20 of the Gujrat High Court Judgment dated 20th June 2017. )

*we have reproduced as a concept holds the filed as it is a fundamental concept in service jurisprudence. It will be appropriate and apposite on the part of the employers to remember the same and ingeminate it time and again so that unnecessary litigation do not travel to the Court and the employers show a definite and correct attitude towards employees. We are compelled to say so as we find that the intention of the State Government from paragraph 5 of the circular/memorandum has been litigated at various stages to deny the benefits to the respondents. 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. True it is, there is slight difference in the use of language in the Haryana Pension Rules 2009 and the circular/memorandum issued by the State of Rajasthan, but a critical analysis would show that the final consequence is not affected.*

*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."*

*39. In my view, the above referred decision of the Supreme Court takes care of the issue which has been raised in the present petition.*

*40. The Clause 9.2. of the resolution dated 13.04.2009 provides that the revised pension, in no case, shall be lower than 50% of the minimum of the pay in the pay band plus the grade pay corresponding to the pre-revised pay scale from which the petitioners have retired. If the pay scale is taken into consideration, the corresponding pay revision shall be Rs.37,400 - Rs.67,000/- with Rs.9,000/- AGP. The only requirement is three years in that scale. It is not in dispute that all the petitioners fulfill that criteria."*

Thus, he allowed the petition.

**17.** Against the aforesaid backdrops now let us examine the rival contentions of the parties.

Now, it may be noted that the decision rendered by the learned Single Judge in group of petition, which came to be disposed of on 26/27.8.2014 takes into consideration the plea of the State that as the petitioners were not in actual service and as they did not enjoy ever the pay scale of Rs.37,400-67000 with grade pay of Rs.9000/-, they cannot be given the benefit of revision in pension based thereupon, whereas, another learned Single Judge while rendering decision on 22.9.2016 has placed heavy reliance upon the decision of the Supreme Court in case of *State of Rajasthan Vs. Mahendranath Sharma*, reported in **2015 (9) SCC 540** for allowing the petitions of the petitioners. The learned Single, as it is stated hereinabove cited the observations of the Court for rendering decision, which has been challenged in this proceedings by way of LPA No. 92 of 2016.

**18. This Court is unable to accept to the submission of learned Additional Advocate General that pension is benevolent, in fact, the pension is rather treated as extension of pay and an obligation of the State towards its employee who have retired.** The Supreme Court has held in case of *U.Raghendra Acharya Vs. State of Karnataka*, reported in **AIR 2006 SC 2145** that **pension is differed salary akin to right of property. In that case, the retired teachers of the private aided college and university were treated on par with Govt. employees and given benefits of revised pay scale and pensionary benefits were extended from 1.1.1996. Thus, the contention of the State that pension is benevolent act equivalent to mercy as it is dramatically opposite to the accepted tenets of law.**

**19.** The Court is also unable to accept the submission of learned Additional Advocate General for the State that as the GR dated 13.4.2009 provides for following the procedure as prescribed in the GR of 2000, any deviation therefrom would create anomaly between the petitioners, pensioners and other pensioners covered by those GR, in which the selection grade, higher pay scale on stagnation etc. is not be counted for revising the pension. **This submission in our view is untenable as it is an unfortunate attempt to equate two unequal groups namely the pensioners not governed by the guidelines and directions of the University Grant Commission and Government of India and the pensioners like the present petitioners, who have been all along given benefits on the basis of the UGCs recommendations in line with Govt. Of India's instructions and guidelines.** They form an independent class by themselves and therefore, in their case if the UGC guidelines and GOI's resolutions are not followed then, rather it would create anomaly and would result into depriving them of their right to receive revision in pension, based upon their original scale which was selection scale.

**20. The very important premise so far as the petitioners are concerned, needs to be constantly borne in mind that the petitioners before their retirement were receiving selection grade pay scale for more than 3 years.** The said selection grade would if not considered then, it would amount to treating them as if they were not given selection grade and treating them to be receiving lesser scale for the revision, which would rather clearly violate Articles 14 and 16 of the Constitution of India.

**21.** The learned Single Judge while partly allowing the petitions, vide his order and judgment dated 26/27.8.2014 has unfortunately not appreciated the factual backdrop of pay revision nor has he appreciated that all alone it was an endeavor on the part of the GOI, the State Govt and UGC to eliminate disparity between the then existing pensioners and the pensioners, who received pension after the recommendations. The learned Single Judge has proceeded on rather factual submission that the present pensioners petitioners were never in receipt of selection grade pay Rs.37,400-67,000/- with grade pay of Rs.9000/- and on that basis, has come to the conclusion that the same could not have been taken for taking basis for revision in the pension. The learned Single Judge while partly allowing the petitions, has considered that the present petitioners deserve to be given pension based upon the pay scale of 15,600-39,100/- with grade pay Rs.6000/- on the ground that the earlier pay which was made basis for giving pension being pay scale of Rs.12,000-420-18300 was splitted into two grade scales namely Rs.15,600-39100/- with grade pay of Rs.8000/- recommended to Assistant Professors, who were erstwhile known as Lecturers and had not put in 3 years of service whereas, the scale of Rs.37400-67,000 with grade pay of Rs.9000/- was recommended to Associates Professors, who had put in 3 years of continuous service in selection grade. In the instant case, the present petitioners, at the relevant time before their retirement, had in fact put in more than 3 years as selection grade lectures and therefore, they claimed to be receiving pension on the corresponding scale i.e. Rs.37,400-67,000 with grade pay of Rs.9000/-, instead thereof, the State by stroke of the pen, in Resolution, without any rhyme or reason took away the benefit of their service in the selection grade for more than 3 years before their retirement and artificially attempted to equate their scale with the scale of Rs.15,600-39,100/- with grade pay of Rs.6000/- and learned Single Judge made only one change instead of grade pay Rs.6000/- held that petitioners were entitled to get grade pay of Rs.8000/-. **This in our view amounted to overlooking the petitioners original service as selection grade lecturers prior to retirement and it would also not granting them the corresponding scale.**

**22.** Learned counsel Shri Shelat was correct in inviting this Court's attention to the terms of Reference to the 6th Pay Commission which was constituted under the Notification dated

Therefore, what is sought to be submitted by Shri Shelat is that there is uniformed interpretation given PAN India with regards to revision of pension to the petitioners who are Lecturers (Selection Grade).

( See Para 11.5 of the Gujrat High Court Judgment dated 20th June 2017. )

5th October, 2006, in which, as could be seen from the tenor and language it can be said that minimizing of disparity between the pensioners was always a prime concern of all the concerned.

**23.** We have hereinabove reproduced the relevant observations of the 6th Pay Commission in para no. 5.1.47, which are required to be reproduced hereinbelow at the cost of repetition, which would indicate that there was always an acknowledgment of the fact that the existing pensioners were required to be brought at par or near and they are to be equipped with proper means to assuage their plight in these days of galloping inflation.

*“5.1.47 The Commission notes that modified parity has already been conceded between pre and post 1/1/1996 pensioners. Further, full neutralization of price rise on or after 1/1/1996 has also been extended to all the pensioners. Accordingly, no further changes in the extant rules are necessary. However, in order to maintain the existing modified parity between present and future retirees, it will be necessary to allow the same fitment benefit as is being recommended for the existing Government employees. The Commission, accordingly, recommends that all past pensioners should be allowed fitment benefit equal to 40% of the pension excluding the effect of merger of 50% dearness allowance /dearness relief as pension (in respect of pensioners retiring on or after 1/4/2004) and dearness pension (for other pensioners) respectively. The increase will be allowed by subsuming the effect of conversion of 50% of dearness relief/ dearness allowance as dearness pension/dearness pay. Consequently, dearness relief at the rate of 74% on pension (excluding the effect of merger) has been taken for the purposes of computing revised pension as on 1/1/2006. This is consistent with the fitment benefit being allowed in case of the existing employees. A table (Annex 5.1.1) showing fixation of the pension of the existing pensioners in the revised dispensation consequent to implementation of the recommendations of this Commission has been prepared and should be used for fixing the revised pension of the existing pensioners. The fixation as per this table will be subject to the provision that the revised pension, in no case, shall be lower than fifty percent of the sum of the minimum of the pay in the pay band and the grade pay thereon corresponding to the pre-revised pay scale from which the pensioner had retired. To this extent, a change would need to be allowed from the fitment shown in the fitment table.” [emphasis supplied]*

Thus, the learned Additional Advocate General and State were not justified in contending that their cannot be any benefit of revision in pension without rendering actual service in the scale. With profound respect to learned Single Judge, who rendered this decision, partly allowing the petitions, also has proceeded on the premise which in our view was erroneous.

**24.** The communication dated 15.12.2009 issued by Government of India to the Secretary University Grants Commission, deserve to be reproduced hereinbelow for ready reference:

*“F No.15-1/2009-IFD/U-II  
Government of India  
Ministry of Human Resource Department's  
Department of Higher Educational  
New Delhi, Dated the 15th December 2009*

*To  
The Secretary,  
University Grants Commission,  
Bahadur Shah Zafar Marg,  
New Delhi*

*Sub: Revision of Pension of Pre-2006 Pensioners/Family Pensioners who retired as Readers/Lectures (Selection Grade) & equivalent Cadres, and Deputy Registrars/equivalent cadres in Central Universities and Colleges.*

*Sir,*

*I am directed to refer to the Government's decision regarding pension/family pension of all the pre 2006 pensioners/family pensioners issued vide Department of Pension and Pensioner's Welfare O.M. No.38/37/08-P&PW(A) dated 1.9.2008. In this connection a question has arisen about the Pay Band applicable to pre-2006 pensioners in Central Universities/colleges, who had retired from the posts in the pre-revised scale of pay of Rs.12000-420-1833 (or the corresponding pay scales applicable prior to 1.1.1996) mentioned below to determine their pension/family pension in terms of para 4.2 of Ministry of Personnel, Public Grievances and Pensions (Department of Pension and Pensioners' Welfare) O.M. No.38/37/08-P&PW(A) dated 1.9.2008.*

*Category (A)*

*Readers/Lecturers (Selection Grade)*

*Category (B)*

*(i) Deputy Librarian/ Assistant Librarian (Selection Grade)/  
College Librarian (Selection Grad)*

*(ii) Deputy Director of Physical Education/Assistant Director  
of Physical Education (Selection Grade), College Director of Physical  
Education (Selection Grade).*

*Category (C)*

*(i) Deputy Registrars*

*(ii) Deputy Finance Officer*

*(iii) Deputy Controller of Examinations*

*2. According to the revised pay scales applicable to Teachers/  
Equivalent Cadres in Central Universities/ Colleges as notified vide  
Ministry's letter No.1-32/2006-U.II/U.I(i) dated 31.12.2008,  
incumbents of the posts mentioned at categories (A) and (B) above who  
had completed 3 years of service in the pay scale of Rs.12000-420-  
18300 on 1.1.2006 have been placed in Pay Band of Rs.37400-67000  
with Academic Grade Pay (AGP) of Rs.9000. Similarly, in terms of  
this Ministry's letter No.1-32/2006-U.II/U.I(ii) dated 31.12.2008,  
incumbents of the posts of Deputy Registrars/Deputy Finance  
Officers/Deputy Controllers of Examinations who had completed 5  
years of service in pre-revised pay scale of Rs.12000-420-18300 on  
1.1.2006 were placed in the Pay Band of Rs.37400-67000 with Grade  
Pay (GP) of Rs.8700.*

*3. Accordingly, the Government has decided that in the case of teachers  
and equivalent cadres, the pre- 1.1.2006 pensioners mentioned at  
categories (A) and (B) above who had completed 3 years of service in the  
pre-revised pay scale of Rs.12000-420-18300 (and/or the corresponding  
pay scale(s) applicable prior to 1.1.1996) shall be placed at the minimum  
of the Pay Band of Rs.37400-67000 with AGP of Rs.9000; for revision  
of their pension/family pension with effect from 1.1.2006 pensioners  
mentioned at category (C) above who had completed 5 years of service in  
the pre-revised pay scale of Rs.12000-420-18300 (and the corresponding  
pay scale(s) applicable prior to 1.1.1996) shall be placed at the minimum  
of the Pay Band of Rs.37400-67000 with GP of Rs.8700 for revision  
of their pension/family pension with effect from 1.1.2006. The pension/  
family pension of these pre-2008 pensioners may be revised accordingly.*

*4. These orders shall apply to only those pensioners/family pensioners  
who were drawing pension/family pension on 1.1.2006 under the Central  
Civil Services (Pension) Rules 1972.*

*5. This issues with the approval of the competent authority.*

*Yours faithfully,  
Sd/-*

*(R. Chakravarty)  
Deputy Secretary to the  
Government of India*

*Copy to :-*

The fact remains to be recorded that the present group of petitions and LPAs essentially addresses a question of educational institutions and college teachers, lecturers etc. who were essentially governed by the University Grant Commission and their recommendations accepted by the State Government.

( See Para 16 (e) of the Gujrat High Court Judgment dated 20th June 2017. )

1. Vice Chancellors of all Central Universities/Institutions Deemed to be Universities fully funded by the Central Government.

2. Secretary, Department of Expenditure, North Block, New Delhi

3. Secretary, department of Personnel & Training, North Block, New Delhi

4. Secretary, Department of Pension and Pensioner's Welfare, North Block, New Delhi.

5. Member Secretary, All India Council for Technical Education, New Delhi.

6. Chief Secretaries of all State Governments.

7. Web Master, Ministry of Human Resource Development for publication on the website of the Ministry, hosted by the National Informatics Centre.

Sd/-

(R. Chakravarty)

Deputy Secretary to the Government of India

Thus, the pensioners like the present petitioners, who were retired as lecturers (Selection grade) after putting in more than 3 years as such prior to the retirement, are required to be granted revision in pension on the basis of the corresponding scale of Rs.37400-67,000/- with grade pay of Rs.9000/- as they cannot be deprived of the scale, which actually they received prior to their retirement for three years namely selection grade pay.

**25. This Court is unable to accept the submission of learned Additional Advocate General that the pension is essentially a policy of State, on the contrary, right to receive pension forms one of the vested right akin to the property right, which cannot be denied on specious plea of policy. In the catena of judgment of the Apex Court, it has been time and again held that pension is not bounty but a right of retiree. The authorities and decisions cited at bar on behalf of the respondents needs no elaborate discussion as the present matters and the facts would be govern by the Supreme Court's judgment in case of State of Rajasthan Vs Mahendranath Sharma (supra) and therefore, other judgments, which are on different facts, will have no applicability.**

**26.** The perusal of the terms of Reference to the 6th Central Pay Commission, the observations of the Central Pay Commission unequivocally recording that modified parity has already been conceded between the pre and post 1.1.1996 pensioners and full nutilisation of price rise on or after 1.1.1996 has been extended to all the pensioners the modified parity was maintained. When this observation clearly indicates that all along it was an endeavour of Central Govt, UGC and all to see to it that there is a parity amongst the pre and post pensioners of 1.1.1996 and when the GRs have also accepted the benefits of revision based upon the recommendations of the pay commissions, mere insertion of a rider that selection grade scale would not be considered would in itself be contrary to the very spirit and letters of the notification under which the recommendations were accepted. By way of the rider of not counting the selection pay scale, the author of the GR affected the rights of the pensioners like present petitioners to receive the pension revision on the corresponding pay scale, which is a pay scale of selection post. **In other words, it can be said that the truncated applicability of the recommendations without any cogent justification in law would amount to arbitrariness and violation of Articles 14 and 16 of the Constitution of India.**

**27.** It is further required to be noted that the entire controversy arose on account of splitting of scales of Rs.12,000-420-18300 into two corresponding scales namely 15600-39100 with grade pay of Rs.8000/- and 37400-67000 with grade pay of Rs.9000/-. The selection grade held by the petitioners before the retirement was also an independent scale and it cannot be said

to be a post and therefore, that scale needs to be borne in mind while examining the plea for seeking revision in pension on the corresponding scale. **The corresponding scale to their selection grade prior to the retirement with a condition of 3 years would only be a scale of Rs.37,400-67000 with grade pay of Rs.9000/- . Thus on this count also when the word corresponding would apply, the same should have been to its dictionary meaning and on this count also the same scale is required to be taken into consideration for counting the revision in pension.**

**28.** The fact remains to be noted that the petitioners have been given benefit of revision in pay in past based upon the UGCs and Central Govt. recommendations like similarly situated lectures in other State and therefore, this time when the 6th Pay Commission Recommendations to be translated into revision, they cannot be deprived of their right to be considered accordingly. The learned Single Judge in the proceedings of SCA No. 705 of 2013 has extensively relied upon the observations of the Apex Court in case of **State of Rajasthan Vs Mahendranath Sharma** (Supra). The following observations of the Supreme Court, therefore deserve to be set out hereinabove for ready reference:

*“para-1: The respondents were working on different posts of Lecturers, Librarians and PTIs, who retired prior to 1.1.2006. It is not in dispute that all of them were appointed in different years from 1950 to 1976 and all of them retired between 1991 to 2004. It is also not in dispute that all of them had been granted Lecturers (Selection Scale) on or before 1.1.1986. Thus, all of them had completed three years of service in the said pay-scale prior to 1.1.2006. After the pay revision took place, on the basis of the recommendation of the 4th Pay Commission, the respondents/ similarly situated employees got the benefit of revision of the pay scale with effect from 1.1.1986 vide notification dated 3.6.1988.*

*“para-25: To appreciate the controversy in proper perspective, we think it appropriate to compare in juxtaposition Rule 6(1) of the Haryana Civil Services (Revised Pension) Part-1 Rules, 2009 and paragraph 5(i) of the Memorandum dated 12.9.2008 and accordingly they are reproduced hereunder:-*

Haryana Civil Services (Revised Pension) Part 1 Rules, 2009	Circular / Memorandum
<p><b>Rule 6 (1)</b> (1) The fixation of revised entitlement of pension shall be subject to the provision that the revised entitlement of pension so worked out shall, in no case, be lower than fifty percent of the minimum of the pay in the pay band + grade pay in the corresponding revised scale in terms of Haryana Civil Services (Revised Pay) Rules, 2008, or as the case may be, Haryana Civil Services (Assured Career Progression) Rules, 2008, to the preremised pay scale from which the pensioner had retired.</p>	<p><b>Paragraph 5 (I)</b> The consolidated pension (treated as final 'basic pension') as on 1.9.2006 of pre-01.9.2006 pensioner shall not be lower than 50% of sum of the minimum pay of the post in the running pay band plus grade pay introduced w.e.f. 1.9.2006 corresponding to the pre-revised pay scale of the post from which pensioner had retired. Subject to the condition that the existing provisions in the rules governing qualifying service for grant of pension and minimum pension shall continue to be operative.</p>

*27. Paragraph 5 requires to be scrutinized and on such a scrutiny it becomes graphically clear that pension of a pre-1.9.2006 pensioner shall not be lower than 50% of sum of the minimum of post in the running pay band plus grade pay introduced w.e.f. 1.9.2006 corresponding to the pre-revised scale of the post. If the pay scale is taken into consideration, the corresponding pay revision would be Rs.37400-67000 with Rs.9000*

In other words, it can be said that the truncated applicability of the recommendations without any cogent justification in law would amount to arbitrariness and violation of Articles 14 and 16 of the Constitution of India.

( See Para 26 of the Gujrat High Court Judgment dated 20th June 2017. )

AGP. The only qualifier is three years service in that scale. There is no scintilla of doubt that all the respondents meet that criteria.

28. It is a well known principle that pension is not a bounty. The benefit is conferred upon an employee for his unblemished career. In D.S. Nakara v. Union of India, D.A. Desai, J. speaking for the Bench opined that (SCC pp 319-20, paras 18-20):-

“18. The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service?”

19. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

20. The antiquated notion of pension being a bounty a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through court has been swept under the carpet by the decision of the Constitution Bench in Deokinandan Prasad v. State of Bihar wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone’s discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab v. Iqbal Singh.”

We may hasten to add that though the said decision has been explained and diluted on certain other aspects, but the paragraphs which we have reproduced as a concept holds the filed as it is a fundamental concept in service jurisprudence. It will be appropriate and apposite on the part of the employers to remember the same and ingeminate it time and again so that unnecessary litigation do not travel to the Court and the employers show a definite and correct attitude towards employees. We are compelled to say so as we find that the intention of the State Government from paragraph 5 of the circular/ memorandum has been litigated at various stages to deny the benefits to the respondents. It is the duty of the State Government to avoid unwarranted litigations and not to encourage any litigation for the sake of litigation.

29. 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. True it is, there is slight difference in the use of language in the Haryana Pension Rules 2009 and the circular/ memorandum issued by the State of Rajasthan, but a critical analysis would show that the final consequence is not affected.

30. 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.”

Thus, the aforesaid observations of the Supreme Court in exactly similarly situated lectures can well be said to be squarely covering the position of the present petitioners also and denial to them in revision in pension on the basis of corresponding scale of Rs.37400-670000/- being contrary to provisions of law. The petitioners are required to be granted the declaration and as a result thereof, the petitions succeed. **We hereby declare that the petitioners pensioners, who have rendered more than 3 years service in selection grade pay scale prior to retirement are entitled to fixation of their pension as per the corresponding pay scale admissible to the selection grade, UGC lecturers i.e. 37400-67,000 with grade pay of RS.9000/-.** We confirm the judgment of learned Single Judge rendered in SCA No. 705 of 2013 and allow the petitions being SCA No. 13590 of 2013, 3202 of 2014, 4106 of 2014, 15094 of 2013, 15705 of 2013 and direct the respondents to work out and fix the revision in pension on the said basis and pay the same as expeditiously as possible latest by 21.08.2017.

29. For the aforesaid reasons, the Letters Patent Appeal No. 1175 of 2014 and Letters Patent Appeal No. 1248 of 2014 are allowed. Letters Patent Appeal Nos. 32 of 2015, 459 of 2015, 498 of 2015, 499 of 2015, 500 of 2015 and 92 of 2016 are hereby rejected. There shall be no order as to costs.

30. In view of the final decision and judgment rendered in Letters Patent Appeals, no order in Civil Application No. 1145 of 2016 and is disposed of accordingly.

(S.R.BRAHMBHATT, J.)  
(A.Y. KOGJE, J.)

**FURTHER ORDER:**

At this stage, learned AGP Shri Bharat Shah urges the Court to stay this order for a period of 6 weeks. The request cannot be accepted in view of the fact that sufficient time is given by this Court to implement the direction i.e. 21.08.2017. Looking to age of petitioners and factum that now even 7th Central Pay Commission has been implemented, the request for staying of this judgment and order cannot be exceeded to. Hence, it is rejected.

(S.R.BRAHMBHATT, J.) (A.Y. KOGJE, J.)

It is not in dispute that so far as the present petitioners are concerned, they were all working for more than 3 years in the selection grade prior to date of retirement, bearing that factor in mind, as it is stated hereinabove, the controversy is required to be examined.

See Para 16 (g) of the Gujrat High Court Judgment dated 20th June 2017.

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