

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY : BENCH AT AURANGABAD
WRIT PETITION NO. 1304 OF 2016**

Sharda Rajendra Aajbe..PETITIONER **VERSUS** State of Maharashtra and Others..RESPONDENTS
Mr. S.V. Natu, Advocate for petitioner. Mr. S.P. Tiwari, A.G.P. for respondent – State. Mr. Cedric Fernandes,
Advocate h/f Mr. A.N. Kakade, Advocate for respondent no.3.

CORAM : S.V. GANGAPURWALA AND R.G. AVACHAT, JJ.

**DATED : 12th DECEMBER, 2018
ORDER**

The learned Counsel for the petitioner submits that the respondents have refused to sanction and suspended the family pension to the petitioner. According to the learned Counsel, the husband of the petitioner was appointed as lecturer in Geography subject on 05th August, 1996. His appointment was approved by Pune University under order dated 18th December, 2010. The University Grants Commission has also granted approval as is clear from the communication of the University Grants Commission to Pune University. According to the learned Counsel, the stand of Respondent Nos. 1 and 2 that the petitioner cleared M.Phil. qualification only in the year 2009, and as such, is not entitled for the pension is erroneous.

2. The learned Counsel for Respondent No.3 submits that **the husband of the petitioner was appointed after following due selection process on 05th August, 1996 and his services are approved by the University Grants Commission, though the petitioner does not possess requisite qualification of NET/SET and possesses only M.Phil.**

3. We have considered the submissions of the parties. The petitioner is claiming the benefit of Government Resolution dated 27th June, 2013. The husband of the petitioner was appointed on 05th August, 1996 as a lecturer in Respondent No.3 – College. It is not disputed that the appointment of the petitioner is made after following the due selection process. The communication of the University Grants Commission dated

27th March, 2010 to the Pune University refers that the University Grants Commission has granted exemption from NET examination as qualified candidate, at the relevant time, was not available. Government Resolution dated 27th June, 2013 has been interpreted by this Court at its Principal Seat in Writ Petition No. 13166 of 2017 under order dated 03rd October, 2018. **It has been held by this Court that as per the said Government Resolution, the State Government has exempted the lecturers appointed between 23rd October, 1992 to 03rd April, 2000 from possessing the NET/SET qualification.** Appointment of the husband of the petitioner appears to have been approved even exemption has been granted by the University Grants Commission. The husband of the petitioner died on 18th September, 2013. **The said Government Resolution would apply to the husband of the petitioner. The date of death and/or retirement would not make any difference.**

4. In light of the above, the impugned communication is quashed and set aside. **The respondents are directed to sanction the family pension to the petitioner as per the rules, after verifying all other aspects of the matter within three months from today. Writ Petition is allowed and disposed of. No costs.**
(R.G. AVACHAT, J.) (S.V. GANGAPURWALA, J.)

**विद्यापीठीय व महाविद्यालयीन शिक्षकांना
सातवा वेतन आयोग लागू
करण्याचा निर्णय**

मंत्रीमंडळ निर्णय - उच्च व तंत्रशिक्षण विभाग

मुंबई, दि. ५ मार्च - उच्च शिक्षण विभागांतर्गत राज्यातील अकृषी विद्यापीठे/विधी विद्यापीठे व संलग्नीत अशासकीय अनुदानित महाविद्यालये, शासकीय महाविद्यालये/विज्ञान संस्था अनुदानित अभिमत विद्यापीठे (गोखले राज्यशास्त्र व अर्थशास्त्र संस्था पुणे, डेक्कन कॉलेज पदव्युत्तर व संशोधन संस्था, पुणे, महाराष्ट्र विद्यापीठ, पुणे) मधील शिक्षक व शिक्षक समकक्ष संवर्गांना सातव्या वेतन आयोगाच्या शिफारशी तसेच विद्यापीठ अनुदान आयोगाच्या सुधारीत शैक्षणिक अर्हता आणि पात्रता लागू करण्याबाबत, आज झालेल्या मंत्रीमंडळ बैठकीत मान्यता देण्यात आली आहे. सातवा वेतन आयोग लागू केल्यामुळे अकृषी विद्यापीठे व संलग्नीत अशासकीय अनुदानित महाविद्यालयातील सुमारे २६ हजार ७४९ शिक्षक व शिक्षक समकक्ष पदावरील कर्मचाऱ्यांना लाभ होणार आहे. यासाठी दि. १ जानेवारी २०१६ ते ३१ जानेवारी २०१९ पर्यंत सुमारे २५८४.४७ एवढा वाढीव खर्च येणार असून, त्यामध्ये राज्य शासनाचा ५० टक्के हिस्सा (रुपये १२९२.२३ कोटी) व केंद्र शासनाचा ५० टक्के (रुपये १२९२.२३ कोटी) आहे. सदरहू खर्चास मान्यता देण्यात आली आहे. तसेच १ एप्रिल २०१९ नंतर येणाऱ्या वाढीव सुमारे ८०० कोटी खर्चास मान्यता देण्याचा निर्णय आजच्या मंत्रीमंडळ बैठकीत घेण्यात आला.

Nagpur University Teachers' Association

MEETING NOTICE : 1

DATED : 03.03.2019

From :
Dr. Vilas Dhone
Secretary, NUTA
14, Samruddhi Nagar,
Sewagram Road, Wardha-442 001

To,
All the members
of the Nagpur University Teachers' Association
Dear members,

I have the honour to inform you that the General Body meeting of the Nagpur University Teachers' Association will be held at 12.00 noon, on the Day and the Date mentioned below.

2. If you propose to move any resolution for the consideration of the General Body, you are requested to send such resolution to me, with a copy to Prof. P.B. Raghuvanshi, President NUTA, Buty Plot, Near Mahajan wadi, Rajapeth, Amravati 444 601 within a period of 10 days from the date of the posting of this Bulletin.

3. It will not be possible to include in the agenda, resolutions received after the due date. So please make it convenient to send such resolutions, if any, within the stipulated time. The place of the meeting will be intimated to you alongwith the agenda.

Thanking you.

Yours faithfully
Sd/- Dr. Vilas Dhone,
Secretary, NUTA.

**Time, Day and Date of the Meeting
12.00 Noon on Sunday, the
12th May, 2019**

SUPREME COURT OF INDIA

Election Commission Of India vs St. Marys School And Others on 6 December, 2007 : Author : S.B. Sinha

Bench : S.B. Sinha, Harjit Singh Bedi : CASE NO. : Appeal (civil) 5659 of 2007

PETITIONER: Election Commission of India RESPONDENT: St. Mary's School and Others

DATE OF JUDGMENT : 06/12/2007

JUDGMENT:

CIVIL APPEAL NO. 5659 OF 2007

[Arising out of S.L.P. (Civil) No. 21963 of 2004]

S.B. SINHA, J.:

1. Leave granted.

2. A short but interesting question, as to how conflict in two constitutional rights should be balanced, is involved in this appeal which arises out of a judgment and order dated 11.08.2004 passed by a Division Bench of the Delhi High Court in Writ Petition (Civil) No. 1076 of 2003.

3. Respondent No.1 is an unaided school. It is governed by the provisions of the Delhi School Education Act, 1973 (for short, 'the Act') and the rules framed thereunder. It filed a writ petition in public interest, questioning the action of the appellants and the respondents Nos. 2 to 5 herein as regards utilizing the services of the teachers of the Government schools for various purposes during school timings, as a result whereof the students reading in the said schools are deprived of obtaining instructions from their teachers during such period. In the writ petition it

was pointed out that the absence of teachers occur due to their deployment for non-educational purposes; and as the teaching and administrative staff of these schools have been used by the State agencies as well as the appellant herein for various other duties outside school during school hours including:

? Polling duties to general election to Lok Sabha ? Polling duties to general election to Delhi Legislative Assembly ? Polling duties to MCD elections ? Gurudwara election ? Revision of polling lists ? Pulse polio drive ? Preparation of census lists ? Surveys on malaria, pollution etc.

4. The Act and the Rules framed thereunder which govern the field mandate that all the schools in Delhi have to function for a minimum of 210 days in a year. It was pointed out that although the extent of the period differed, the teachers were asked to perform polling duties for a few months and also for census duties for considerable period. The writ petition highlighted that absence of teachers from the school for a long time resulted in unfinished courses, high drop out rates, poor results and inability to compete in open examinations, such as medicine, engineering etc. and/or to get admission in other

न्यायालयीन निर्णयांनी प्रदान केलेले संरक्षण : १

नेट-सेटमुक्त शिक्षकांना जुनी पेन्शन योजनाच लागू करावी लागेल

- डॉ. प्रवीण रघुवंशी, अध्यक्ष, 'नुटा'

स्वातंत्र्यपूर्व काळात भारतात लहान-मोठी सहाशेच्या जवळपास संस्थाने होती. या संस्थानांचा कारभार त्या त्या संस्थानिकांच्या मर्जीप्रमाणे किंवा लहरी प्रमाणे चालत असे. भारतीय संविधान अस्तित्वात आल्यानंतर भारतभर कायद्याचे राज्य सुरू झाले हे खरे असले तरी उच्च शिक्षण खात्याच्या अंतर्गत काम करणाऱ्या विभागीय सहसंचालकांची परिस्थिती ही जुन्या संस्थानिकांप्रमाणेच आहे असे दिसून येते. प्रत्येक सहसंचालक हा आपण स्वतंत्र राज्याचे संस्थानिक आहेत या धाट्यात आपला कारभार चालवित आहे असे दिसून येते. सन १९९१ ते १९९९ या काळात विधिवतरित्या सेवेत आलेल्या नेट-सेटमुक्त शिक्षकांना जुनी पेन्शन योजना लागू करणे व ती अदा करणे याबाबतीत निरनिराळ्या विभागामध्ये वेगवेगळी परिस्थिती असल्याचे दिसून येते.

(१) काही विभागीय सहसंचालकांनी अशा सेवानिवृत्त शिक्षकांना जुनी पेन्शन योजना लागू केली असून अशी पेन्शन योजना लागू न केल्याचे एकही प्रकरण त्या विभागामध्ये उपलब्ध नाही.

(२) काही विभागीय सहसंचालकांनी या शिक्षकांना जुनी पेन्शन योजना लागू होत नाही अशी भूमिका घेतली असून त्या विभागात एकाही अशा सेवानिवृत्त शिक्षकाला जुनी पेन्शन योजना लागू करण्यात आलेली नाही.

(३) या दोन प्रकारापेक्षा आश्चर्यकारक असा तिसरा प्रकार म्हणजे एखाद्या विभागात एका सहसंचालकांनी सर्व सेवानिवृत्त नेट-सेटमुक्त शिक्षकांना जुनी पेन्शन योजना लागू केली, मात्र ती सहसंचालक असलेली व्यक्ती बदलून गेली तर नव्या सहसंचालकांनी त्याच विभागात अशा एकाही शिक्षकाला जुनी पेन्शन योजना लागू केली नाही अशी स्थिती आहे.

२. सन १९९१ ते २००० या काळात विधिवतरित्या सेवेत शिक्षक म्हणून भरती झालेल्या नेट-सेटमुक्त शिक्षकांना जुनी पेन्शन योजनाच लागू करावी लागेल असे निर्णय मुंबई उच्च न्यायालयाच्या विविध खंडपीठांनी आतापावेतो दिलेले आहेत. नुकताच दिनांक १२ डिसेंबर २०१८ रोजी मुंबई उच्च न्यायालयाच्या औरंगाबाद खंडपीठाने सन २०१६ च्या याचिका क्रमांक १३०४ मध्ये निर्णय दिलेला आहे. दिनांक ५ ऑगस्ट १९९६ रोजी नेट-सेट ही पात्रता धारण न करणाऱ्या उमेदवाराची विधिवतरित्या निवड समिती मार्फत निवड व त्यानंतर नेमणूक झालेली होती. सदरहू शिक्षकांच्या मरणोपरांत कुटुंब निवृत्ती वेतन प्रदान करण्यास सहसंचालकांनी नकार दिल्यातून हे प्रकरण उच्च न्यायालयात गेले. या प्रकरणी उच्च न्यायालयाच्या औरंगाबाद खंडपीठाने पुढीलप्रमाणे निर्णय दिला :- **"The respondents are directed to sanction the family pension to the petitioner as per the rules,"** नेट-सेटमुक्त शिक्षकांना जुनी पेन्शन योजनाच लागू करावी लागेल असे स्पष्टपणे आदेश देणारा संघटनेच्या लक्षात आलेला मा.उच्च न्यायालयाचा हा तिसरा निर्णय होय.

३. याबाबतीत पहिला निर्णय हा दिनांक ३ ऑक्टोबर २०१८ रोजी मा.मुंबई उच्च न्यायालयाच्या मुंबई खंडपीठाने सन २०१७ च्या याचिका क्रमांक १३१६६ मध्ये दिला असून त्या निर्णयाच्या परिच्छेद ६ मध्ये अर्जदाराविषयीची माहिती पुढील शब्दात नमूद आहे :- **"the Petitioner when he was appointed in 1999 was possessing the requisite qualification except the net set examination. Not only this but the Petitioner's appointment was already approved by the Competent Authority and as such requisite scale was made applicable to the Petitioner till his retirement."** या प्रकरणात मा.उच्च न्यायालयाने पुढीलप्रमाणे आदेश दिलेला :- **"(ii) The Respondents are directed to make the pension applicable to the Petitioner on the basis of his last drawn salary."** मा.उच्च न्यायालयाचा हा निर्णय सन २०१८ च्या नुटा बुलेटीनच्या पृष्ठ क्रमांक १२० व १२१ वर यापूर्वी प्रसृत करण्यात आलेला आहे.

४. यानंतर दुसरा निर्णय मा.उच्च न्यायालयाच्या मुंबई खंडपीठाने दिनांक १९ ऑक्टोबर २०१८ रोजी सन २०१७ च्या याचिका क्रमांक १२१९ मध्ये दिला असून पुढील प्रमाणे आदेश पारित केले :- **"(i) The Respondents are directed to make the pension applicable to the Petitioner on the basis of her last drawn salary. (ii) The pension is to be paid to the Petitioner from the month of November 2018. All the arrears between the date of superannuation till 31/10/2018 shall be cleared within a period of 3 months from today. मा.उच्च न्यायालयाचा हा निर्णय सन २०१८ च्या नुटा बुलेटीनच्या पृष्ठ क्रमांक १३७ वर यापूर्वी प्रसृत करण्यात आलेला आहे.**

५. आज आता औरंगाबाद खंडपीठाने दिलेला तिसरा निर्णय याच अंकात प्रसृत करण्यात आलेला आहे. या संदर्भात आपल्या कोणत्याही नेट-सेटमुक्त सहकाऱ्यावर जुन्या पेन्शन योजनेपासून वंचित राहण्याची पाळी येणार नाही याची काळजी घेण्यात यावी असे सूचविण्यात येत आहे. कोणत्याही विभागाच्या सहसंचालकांनी तसा प्रयत्न केल्यास मा.उच्च न्यायालयाचे उपरोक्त तीनही निर्णय उधृत करून सेवानिवृत्ती वेतन अदा न करण्याचा सहसंचालकांचा निर्णय हा वेकायदेशीर असून न्यायालयाचा अवमान करणारा आहे अशी कायदेशीर नोटीस उपरोक्त सहसंचालकांना पाठविण्यात यावी. इतक्या उपर त्यांनी आपले अपकृत्य दुरुस्त न केल्यास मा.उच्च न्यायालयासमोर याचिका दाखल करावी व त्या याचिकेच्या माध्यमातून उपरोक्त तीनही निर्णय मा.उच्च न्यायालयाच्या लक्षात आणून द्यावेत.

prestigious or professional colleges. It was contended that an informal survey conducted by the petitioner therein demonstrated that about 9,00,000 students had enrolled themselves in class 1 of the schools run by the Municipal Corporation of Delhi, but only 50,000 of them appeared in the secondary examination.

5. The Municipal Corporation of Delhi (MCD) in its counter affidavit contended that absence of the teachers and other administrative staff of schools for performing duties allocated by the officers of the Election Commission is in national interest. In the counter affidavit, it was, stated:

"3. That the main work assigned to teachers is in relation to teaching work. However, in the larger national interest, some of the teachers are called upon to do some other Government work relating to public interests like polio vaccination, preparation of voter list, etc.

4. That only during the work of census in the year 2001, a slightly large number of teachers were required for the purpose. Even for this purpose, to take care that the teaching activities are not hampered in any manner, letter No. F-4/12/2000 dated 04.02.01, referring to the Order of Lt. Governor of the NCT of Delhi having been passed, whereby the enumerators were directed to perform their census enumeration duties before/after their normal school hours. The census work is conducted only once in a decade."

5. That it is reiterated that it is seen that the government work relating to public interest done by the teachers does not hamper the teaching activities. The additional government public work is some time assigned to some of the teachers in national interest."

6. The New Delhi Municipal Committee (NDMC) in its additional affidavit filed before the High Court, stated :

"2. That the total number of sanctioned posts of teachers in NDMC Schools are about 1200. For polling duty, almost 90% of the teaching staff is deployed on duty. For census work in the year 2000 and enumeration work in the year 2001, 90% of the staff were assigned duty. For Revision of electoral rolls, almost 50% of the teaching staff is put on duty.

3. For polling duties, the Election Commission deploys the teachers of the NDMC Schools for the purposes of holding Parliamentary

Elections, Delhi Assembly Elections and even Municipal Corporation Elections. Generally the elections are held on Sundays, but before the actual polling takes places, the teaching staff is called for three working days for the purposes of training, collection of election material etc. In the year 1998-99, all the elections were held i.e. Parliamentary, Delhi Assembly and Corporation Elections and hence the teachers were not on duty for 9 working days.

4. That in the year 2001, when the work of Special Revision of Electoral Roll was required to be conducted, the then Chief Electoral Officer informed the Respondent NDMC that the said work shall be conducted by the teachers between 13.9.2001 to 12.10.2001 by the teachers. Initially it was supposed to be a part time job, however, it was later on converted into a full time work so as to complete the assignment within the prescribed time."

7. During the pendency of the writ petition before the High Court, the Government of NCT of Delhi issued a circular letter, relevant portion whereof is as under :

"This duty binds the State-Governments to provide the requisite number of staff to the Election Commission for conducting elections and taking into consideration the insufficient number of staff available in generalist cadre, the government proposes to utilize the services of teaching staff for the following duties :

(a) Election Duty

(b) Revision of Electoral Rolls

(b) Revision of Electoral Rolls : For the intensive revision of electoral rolls, we require approximately 55,000 employees whereas the Cadre strength of the General cadre of the Govt. of NCT of Delhi is only around 9000. In view of this, the services of teachers are indispensable for intensive Revision of Election Rolls. This intensive revision of electoral rolls is not a regular process and this takes place with a periodicity of 4 to 5 years as per instructions of the Election Commission of India.

The Summary/Special Revision of Electoral Rolls takes place once in a year and the services of teachers are normally not utilized and this is managed within the cadre strength. However, in some of the institutions that are declared as designated locations, the services of the Head of the Institution are taken to receive the Form and they are

न्यायालयीन निर्णयांनी प्रदान केलेले संरक्षण : २

निवडणुकीची कामे व शिक्षकांची कायदेशीर स्थिती

- डॉ. प्रवीण रघुवंशी, अध्यक्ष, 'नुटा'

केंद्रीय निवडणूक आयोगाकडून किंवा राज्य निवडणूक आयोगाकडून विद्यापीठीय व महाविद्यालयीन तसेच इतर स्तरावरच्या शिक्षकांना निवडणुकीशी संबंधित कामे अनेकदा दिली जातात. याबाबतची निश्चित कायदेशीर स्थिती ही ठाऊक नसल्यामुळे त्यातून निरनिराळे वाद उद्भवतात. याबाबतची स्थिती मा.सर्वोच्च न्यायालयाच्या व त्यानंतर उच्च न्यायालयाच्या विविध खंडपीठांनी दिलेल्या निर्णयामुळे निश्चित झालेली आहे. "Election Commission of India Vs. St. Mary School 2008 (2) SCC 390" याप्रकरणामध्ये मा.सर्वोच्च न्यायालयाने दिनांक ६ डिसेंबर २००७ रोजी दिलेला निर्णय याबाबतीत अत्यंत महत्त्वाचा असून कायदेशीर स्थिती स्पष्ट करणारा आहे व आज या बाबतची कायद्याची स्थिती नमूद करणारा तो अंतिम शब्द आहे असे म्हणता येईल. या निर्णयामध्ये मा.सर्वोच्च न्यायालयाने पुढीलप्रमाणे निवाडा दिलेला आहे. :-

"We, therefore, direct that all teaching staff shall be put on the duties of roll revisions and election works **on holidays and non teaching days**. Teachers should not ordinarily be put on duty on teaching days and within teaching hours. Non-teaching staff, however, may be put on such duties on any day or at any time, if permissible in law."

२. सर्वोच्च न्यायालयाचा उपरोक्त निर्णय झाल्यानंतर तो अनेक शिक्षकांना ठाऊक नसल्यामुळे व अधिकाऱ्यांना ठाऊक असला तरी त्यांनी त्या निर्णयाकडे डोळेझाक केल्यामुळे पुढे त्यातून अनेक वाद निर्माण झाले. महाराष्ट्र प्राध्यापक महासंघाचे विद्यमान सरकार्यवाह डॉ.शामराव पांडुरंग लवांदे आणि इतर यांनी मुंबई उच्च न्यायालयामध्ये सन २०१२ मध्ये याबाबतीत एक याचिका (W.P.No. 1011 of 2012) दाखल केली होती. त्या याचिकेवरील निर्णय मा.मुंबई खंडपीठाने दिनांक ३१ जानेवारी २०१२ रोजी दिला. त्या निर्णयाच्या परिच्छेद २ मध्ये मा.सर्वोच्च न्यायालयाचा उपरोक्त निर्णय उद्धृत करण्यात आला असून शेवटी मा.खंडपीठाने परिच्छेद ५ मध्ये पुढील आदेश पारित केले :- "Having

regard to the aforesaid, all the three writ petitions deserve to be allowed. Accordingly, the petitions are allowed, and it is directed that the **election duties be not assigned/allotted to the teachers on school/college working days** and to the above extent the impugned requisitions will be inoperative." मा.उच्च न्यायालयाचा हा निर्णय यापूर्वी सन २०१९ च्या नुटा बुलेटीनच्या पृष्ठ २१ वर प्रसृत करण्यात आलेला आहे.

३. इतक्या उपर सुद्धा याबाबतीत संबंधित अधिकाऱ्यांनी योग्य ते धोरण स्वीकारले नाही. शैक्षणिक कामापासून शिक्षकांना दूर ठेऊन निवडणुकीची कामे लादण्याचा प्रकार सुरूच राहिला. त्यातून आणखी एक वाद मुंबई उच्च न्यायालयाच्या मुंबई खंडपीठासमोर "Chandmal Tarachand Bora College Teachers' Association...Petitioner Versus State of Maharashtra and Ors ...Respondents" या प्रकरणामुळे पोचला. सन २०१५ च्या याचिका क्रमांक ७४८२ मध्ये दिनांक ३१ जुलै २०१५ रोजी मा.खंडपीठाने निर्णय दिला. त्या निर्णयामध्ये मा.उच्च न्यायालयाने पुढीलप्रमाणे आदेश पारित केले :- "It is, however, made clear that hereinafter the directions given by the Apex Court in the case of **Election Commission of India vs. St. Mary School (supra.)** be scrupulously followed." मा.उच्च न्यायालयाचा हा निर्णय यापूर्वी सन २०१९ च्या नुटा बुलेटीनच्या पृष्ठ २४ वर प्रसृत करण्यात आलेला आहे.

४. कायद्याची उपरोक्त अंतिम स्थिती शिक्षकांना ज्ञात असावी म्हणून मुद्दाम हे तपशील जाहिर केलेले आहेत. सर्वोच्च न्यायालयाने व उच्च न्यायालयाने कायद्याचा जो अर्थ सांगितलेला आहे त्याच्या विपरित जर कोणी वागत असेल तर त्यांना कायदेशीर नोटीस देऊन सर्वोच्च व उच्च न्यायालयाचे निर्णय संबंधितांच्या लक्षात आणून दिले पाहिजेत.

declared as Designated Officers. Normally, these officials are not engaged in teaching and handle the work in addition to their administrative duties. They are assisted by non-teaching staff.

The Staff thus deployed function under the superintendence and control of the Chief Electoral Officer and remain under the administrative control of Chief Electoral Officer during this period.

Elections being a sovereign function of the State, the work of conduct of elections cannot be delegated to persons who are not employees of government or to any non-governmental agency, parastatal organizations etc. The Government draws staff from every govt. department and it is not true that only teachers are deployed for election work. Staff from other categories from almost every department is engaged for election duty.

However, with a view to ensure that election work does not come in conflict with the interest of education, the respondent Government would like to take the following steps to ensure that teaching work is least

affected:

(i) As far as possible the revision of Electoral roll shall be taken up during holidays or teachers would be deployed to perform the work on holidays.

(ii) The teachers who are on non-teaching posts i.e. Physical Education Teachers, Drawing Teachers, Librarian and Lab Assistants, Yoga instructors etc. would be deployed for election work.

(iii) The teaching hour loss, if any, shall be compensated by holding extra classes, so that the minimum prescribed teaching hours are completed.

(iv) The Principals/Heads of Institutions will be directed to make internal adjustment of time tables and reschedule the classes for making up any possible teaching losses."

8. Learned counsel appearing for the parties, however, as it appears from the impugned judgment, accepted before the High

No.1-6/2016- IC/E-III A

Govt. of India : Ministry of Finance

Department of Expenditure

North Block, New Delhi : Dated the 7th February, 2019

OFFICE MEMORANDUM

Subject : Bunching of stages of pay in the pre- 7th CPC pay scales consequent upon fixation of pay in the revised pay scales based on 7th CPC-Regarding

The undersigned is directed to invite attention to this Departments OM No. 1-6/2016-IC dated 3rd August, 2017, explaining in detail the methodology for applying the principle of "bunching" consequent upon pay fixation in the revised pay scales (applicable Levels of the Pay Matrix) effective from 1.1.2016 based on implementation of the recommendations of the 7th Pay Commission.

2. Notwithstanding the fact that the said OM dated 3.8.2017 has elaborately explained the issue of bunching in the context of the revised pay scales based on 7th Central Pay Commission, references are being received in this Ministry seeking clarification as to the methodology to carry out the principle of bunching. It is seen that some of the clarifications received seem to arise out of the position on bunching as obtaining during the pay structure in vogue based on 6th Pay Commission before 1.1.2016 vis-a-vis the position explained in terms of this Ministry's aforesaid OM dt. 3.8.2017 in the context of pay structure currently in vogue from 1.1.2016 based on the recommendations of the 7th Pay Commission.

3. Therefore, the matter has been considered keeping in view the clarifications sought and the issue is clarified heretofore. At the very outset, bunching as a sequel to pay fixation based on the formula for such pay fixation on the date of effect of revised pay scales based on the recommendations of the 7th Pay Commission, is to be considered strictly as per the recommendations of the 7th Pay Commission, as illustrated in para 5.1.37 of its report. The principle of bunching as recommended by the 7th Pay Commission, as accepted by the Government in terms of the erstwhile Implementation Cell's OM dt. 7.9.2016 and 3.8.2017, is different from the principle recommended by the 6th Pay Commission and as accepted by the Government based thereon. Therefore, the principle of bunching in the revised pay structure based on the recommendations of the 7th Pay Commission is independent of the principle followed earlier and has no link thereto.

4. The 6th Central Pay Commission in para 2.2.21 of its Report recommended - "To alleviate the problem of bunching in these cases, the Commission has allowed the benefit of one extra increment wherever two or more stages in any of the pre-revised pay scales were getting bunched together at one level in the revised pay bands The Commission has prepared a detailed fixation chart which gives the fitment in the revised running pay bands in every stage". However, in the fitment charts prepared by the 6th Pay Commission, the Commission illustrated the bunching meant by it. The examples from the fitment tables prepared by the 6th Pay Commission are given in **Annexure I**.

5. The same principle of bunching was adopted in terms of the fitment table prescribed by the Ministry of Finance, Department of Expenditure, as per the OM No.1-1/2008-IC dated 30.8.2008. The examples of which are given in **Annexure II**.

6. The 7th Pay Commission has dealt with the issue of bunching in paras 5.1.36 and 5.1.37, which are reproduced below.

"5.1.36 Although the rationalisation has been done with utmost care to ensure minimum bunching at most levels, however if situation does arise whenever more than two stages are bunched together, one additional increment equal to 3 percent may be given for every two stages bunched, and pay fixed in the subsequent cell in the pay matrix.

5.1.37 For instance, if two persons drawing pay of Rs. 53,000 and Rs. 54,590 in the GP 10000 are to be fitted in the new pay matrix, the person drawing pay of Rs. 53,000 on multiplication by a factor of 2.57 will expect a pay corresponding to Rs. 1,36,210 and the person drawing pay of Rs. 54,590 on multiplication by a factor of 2.57 will expect a pay corresponding to Rs. 1,40,296. Revised pay of both should ideally be fixed in the first cell of level 15 in the pay of Rs.1,44,200 but to avoid bunching the person drawing pay of Rs. 54,590 will get fixed in second cell of level 15 in the pay of Rs.1,48,500."

7. Accordingly, the essence of the recommendations of the 7th Pay Commission is contained in the above illustration given by the 7th Pay Commission. As per this illustration, the pay of Rs. 53,000 and Rs. 54,590 were the pay applicable in PB-4 plus Grade Pay of Rs. 10,000 as applicable prior to 1.1.2016, which corresponds to Level-14 of the Pay Matrix applicable from 1.1.2016. The pay of Rs. 54,590 was 3% more than the pay of Rs. 53,000. That is, these two Pays were separated by a difference of 3% of Rs. 53,000. Thus, the pay of Rs. 54,590 was the stage next to the pay of Rs. 53,000. Considering that the 7th Pay Commission allowed the benefit of bunching at the level of the pay of Rs. 54,590 itself, it materially departed from the principle followed at the time of 6th Pay Commission because in the 6th Pay Commission regime the benefit was allowed at the 3rd consecutive stage and not at the 2nd stage itself (next stage) for the purpose of bunching.

8. Furthermore, in the illustration given in para 5.1.37 of its report, the 7th Pay Commission has not mentioned about the pay in respect of pre-revised pay of Rs. 56,230 which is 3% more than the pay of Rs. 54,590. The revised pay fixed in the Level 14 with reference to the pre-revised pay of Rs. 56,230 will be Rs. 1,48,500.

This will be the same as the pay to be given with reference to the pre-revised pay of Rs. 54,590 after allowing bunching. However, the 7th Pay Commission did not recommend any additional benefit in such cases, as it did not include in its illustration for any benefit in case of the further stages of pre-revised pay, consequent upon bunching at the lower stage.

Court that the services of the teachers should be utilized for non-teaching purposes only on a day which is not a working day for the students.

9. The Election Commission is, thus, before us.

10. Mr. K.K. Venugopal, learned Senior Counsel appearing on behalf of the appellant, would, inter alia, submit :

(i) Holding of an elections is a sovereign function.

(ii) The Election Commission having regard to the provisions contained in the Constitution of India as also the Representation of the People Act, 1951 is required to conduct elections for the purpose of upholding democracy.

(iii) Democracy being a basic feature of the Constitution of India, it is obligatory on the part of the Election Commission to ensure that the citizens who are entitled to vote are not deprived of their right and those who are not entitled thereto are not

9. In view of the above, the benefit of bunching consequent upon fixation of pay in the revised pay structure effective from 1.1.2016 based on the recommendation of the 7th Pay Commission is to be considered in the light of the above and the clarifications already issued in terms of the aforesaid letter dated 3.8.2017. Accordingly :

(i) Where consequent upon fixation of pay in terms of Rule 7 (1) (A)(i) of the CCS (RP) Rules, 2016, two different pay drawn in the pay structure obtaining immediately before 1.1.2016, which were separated by one another by 3% of the previous stage, are fixed at the same cell of the applicable Level of the Pay Matrix effective from 1.1.2016, then the benefit of bunching by way of one additional increment as on 1.1.2016 shall be admissible in respect of the pay which is more-than 3% of the previous pay, as per the illustration given by the 7th Pay Commission in para 5.1.37, as mentioned above. This is further illustrated as below:

6th CPC Pay scale: PB-4 (37,400-67,000) 7th CPC Pay Scale - Level-13 + Grade Pay Rs.8,700/- (1,23,100-2,15,900)

6th CPC Pay Structure (PB-4 and GP of Rs. 8,700)	Pay fixation in 7th CPC Pay Matrix (Level-13)		
Pay	Consolidation based on 2.57 multiple	Pay fixed as on 1.1.2016	Pay after bunching
46,100	Rs.1,18,477	Rs.1,23,100/-	Rs.1,23,1001-
47,490 (46,100+3%)	Rs.1,22,049	Rs.1,23,100/-	Rs.1,26,800/-

(ii) In view of the position explained in para 8 above and the specific recommendation of the 7th Pay Commission as per its illustration given in para 5.1.37 of its report, no further action is to be taken after the benefit of bunching as a result of application of Rule 7(1)(A)(i), as indicated above. This is as illustrated below :

6th CPC (PB-4 and GP of Rs. 8,700)	Pay fixation in 7th CPC Pay Matrix (Level-13) Structure			
Pay	Consolidation based on 2.57 multiple	Pay fixed as on 1.1.2016	Pay after bunching as on 1.1.2016	Remarks
46,100	Rs.1,18,477	Rs.1,23,1001	RS.1,23,1001	
47,490 (46,100 +3%)	RS.1,22,049	RS.1,23,1001	RS.1,26,8001	Pay raised because of bunching.
48,920 (47,490 +3%)	RS.1,25,724	Rs.1,26,800	Rs.1,26,800	No change.

10. In the light of the above, the points of clarification as referred to this Ministry are explained in the **Annexure III**.

11. These orders are issued after consultation with the Comptroller and Auditor General of India in their application to the employees belonging to the Indian Audit and Accounts Department.

12. Hindi version of these orders is attached.

(Arnar Nath Singh)
Director

** AF : P 197 **

permitted to do so.

(iv) In terms of the provisions of clauses (1) and (6) of Article 324 of the Constitution of India, it is mandated that whenever the Election Commission asks for deployment of staff for the purpose of conducting elections, it is obligatory on the part of the President of India or the Governor of the State to make such number of staff made available to it, and with a view to fulfill the said constitutional object, the Parliament amended Section 159 of the 1951 Act so as to provide :

"159. Staff of certain authorities to be made available for election work. -

(1) The authorities specified in sub-section (2) shall, when so requested by a Regional Commissioner appointed under clause (4) of article 324 or the Chief Electoral Officer of the State, make available to any returning officer such staff as may be necessary for the performance of any duties in connection with an election. (2) The following shall be the authorities for the purposes of sub-section (1), namely:—

(i) every local authority;

(ii) every university established or incorporated by or under a Central, Provincial or State Act;

(iii) a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(iv) any other institution, concern or undertaking which is established by or under a Central, Provincial or State Act or which is controlled, or financed wholly or substantially by funds provided, directly or indirectly, by the Central Government or a State Government."

(v) The High Court, in that view of the matter could not have issued any direction which may for all intent and purport interfere with the electoral process.

11. Learned counsel appearing on behalf of the Municipal Corporation of Delhi, New Delhi Municipal Committee and Union of India adopted the submissions of Mr. Venugopal.

12. Ms. Reena George, learned counsel appearing on behalf of the writ petitioner-respondent, on the other hand, submit that :

(a) the impugned order having been passed in terms of consent of the parties, this Court should not exercise its jurisdiction under Article 136 of the Constitution of India.

(b) Right to education being a fundamental right having regard to Article 21A of the Constitution of India, it is obligatory on the part of the State to ensure that the students are not deprived thereof.

(c) In the affidavit filed on behalf of the NDMC, it was clearly demonstrated that in some schools where teaching or instructions are imparted for Class IX or X students, no teacher was available for a period of two months.

(d) The purpose for which the education is imparted in the schools is to see that the Government in the municipal schools must ensure that they compete with the standard maintained by the private schools.

13. Indisputably, for upholding the democracy and the democratic values, holding of elections is imperative. There cannot also be any doubt or dispute that keeping in view the constitutional mandate provided for under clauses (1) and (6) of Article 324 of the Constitution of India, the President of India or the Governor of a State i.e. the Central Government as also the State Government have a duty to make available to the Election Commission, or to a Regional Commissioner such staff, as may be necessary for the discharge of functions conferred on the Election Commission by clause (1) in terms whereof a power of superintendence, direction and control of elections is to be vested in the Election Commission, if request in this regard is made. Article 327 of the Constitution of India empowers the Parliaments to make laws with respect to all matters relating to, or in connection with, elections to either House of the Parliament or to the House or either House of the Legislature of a State including the preparation of the electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses.

The Parliament with a view to give effect to the said constitutional functions enacted the Representation of the People Act, 1950 (1950 Act) and the Representation of the People

Act, 1951 (1951 Act).

15. We may notice certain provisions of the said Acts.

1950 Act :

Section 13-A of 1950 Act provides for the designation or nomination of the Chief Electoral Officers, by the Election Commissioner; whereas Section 13-AA provides for designation or nomination of a District Election Officer, who is to be an officer of Government. Sections 13B, 13CC and Section 29 of the 1950 Act read as under :

“13B - Electoral registration officers. - (1) The electoral roll for each parliamentary constituency in the State of Jammu and Kashmir or in a Union territory not having a Legislative Assembly, each assembly constituency and each Council constituency shall be prepared and revised by an electoral registration officer who shall be such officer of Government or of a local authority as the Election Commission may, in consultation with the Government of the State in which the constituency is situated, designate or nominate in this behalf.

(2) An electoral registration officer may, subject to any prescribed restrictions, employ such persons as he thinks fit for the preparation and revision of the electoral roll for the constituency.”

“13CC. Chief Electoral Officers, District Election Officers, etc., deemed to be on deputation to Election Commission. - The officers referred to in this Part and any other officer or staff employed in connection with the preparation, revision and correction of the electoral

rolls for, and the conduct of, all elections shall be deemed to be on deputation to the Election Commission for the period during which they are so employed and such officers and staff shall, during that period, be subject to the control, superintendence and discipline of the Election Commission.”

“29. Staff of local authorities to be made available. - Every local authority in a State shall, when so requested by the chief electoral officer of the State, make available to any electoral registration officer such staff as may be necessary for the performance of any duties in connection with the preparation and revision of electoral rolls.”

1951 Act :

Sections 2(1)(bb) and 2(1)(cc) of 1951 Act provide for the meanings of the terms “Chief Electoral Officer” and the “District Election Officer”, who would be an officer appointed under Sections 13-A and 13-AA of the 1950 Act.

Part IV of 1951 Act, does not lay down any procedure for requisitioning of a person for being appointed as the Returning Officer, an Assistant Returning Officer ; or Presiding Officer, or Polling Officer. However, it may be noticed that after Section 22, which provides for appointment of Assistant Returning Officers a proviso was added by reason of Act No. 47 of 1966 in terms whereof the words “an Officer of Government or of a local authority” had been inserted.

Sections 26, 28A, 151 and Section 159 read as under :

खुल्या प्रवर्गातील आर्थिकदृष्ट्या दुर्बल घटकांसाठी शासकीय सेवा व शैक्षणिक संस्थांमध्ये प्रवेशाकरिता १०% जागा आरक्षित करण्याबाबत.

महाराष्ट्र शासन : सामान्य प्रशासन विभाग

शासन निर्णय क्रमांक : राआधो-४०१९/प्र.क्र.३१/१६-अ : हुतात्मा राजगुरु चौक, मादाम कामा रोड, : मंत्रालय, मुंबई-४०००३२.

दिनांक :- १२ फेब्रुवारी, २०१९

प्रस्तावना :- संसदेने संविधानात १०३ वी घटना दुरुस्ती कायदा, २०१९ पारित केलेला आहे. त्याद्वारे भारताच्या संविधानाच्या अनुच्छेद १५ व १६ मध्ये सुधारणा करण्यात आलेली आहे. उक्त घटना दुरुस्तीन्वये राज्यघटनेच्या अनुच्छेद १५ मध्ये खंड (६) चा समावेश करण्यात आला आहे. या सुधारणेनुसार अनुच्छेद १५ च्या खंड (४) व (५) मध्ये नमूद वर्गाव्यतिरिक्त आर्थिकदृष्ट्या दुर्बल घटकांच्या नागरिकांच्या प्रगतीसाठी कोणतीही विशेष तरतूद करता येईल, तसेच खंड (४) व (५) मध्ये नमूद वर्गाव्यतिरिक्त आर्थिकदृष्ट्या दुर्बल घटकांसाठी अनुच्छेद ३० च्या खंड (१) मध्ये संदर्भित अल्पसंख्यांक शैक्षणिक संस्थांखेरीज, अन्य शैक्षणिक संस्थांमध्ये तसेच खाजगी शैक्षणिक संस्थांमध्ये - मग त्या राज्य शासनाकडून अनुदान प्राप्त असोत अगर अनुदान प्राप्त नसोत - प्रवेश देण्याशी संबंधित असतील तेथवर राज्य शासनास १० टक्के पर्यंत जागा आरक्षित करता येतील. अनुच्छेद १५ मधील कोणत्याही तरतूदीचा किंवा अनुच्छेद १९ च्या खंड (१) च्या उपखंड (g) किंवा अनुच्छेद २९ च्या खंड (२) चा वरीलप्रमाणे विशेष तरतूद करण्यास राज्यास प्रतिबंध होणार नाही. हे आरक्षण सध्या मागासवर्गीयांसाठी विहित असलेल्या आरक्षणाव्यतिरिक्त राहिल. (स्पष्टीकरण : अनुच्छेद १५ व १६ करिता आर्थिकदृष्ट्या दुर्बल घटक म्हणजे राज्य शासन वेळोवेळी आर्थिक उत्पन्न आणि अन्य आर्थिक दुर्बलतेच्या आधारावर अधिसूचित करेल त्याप्रमाणे राहिल.)

तसेच संविधानाच्या अनुच्छेद १६ मध्ये सुधारणा करून त्यामध्ये खंड (६) चा समावेश करून त्याद्वारे शासकीय सेवांमध्ये अनुच्छेद १६ च्या खंड (४) मध्ये नमूद केलेल्या आरक्षणाव्यतिरिक्त आर्थिकदृष्ट्या दुर्बल घटकांसाठी १०% पर्यंत आरक्षण ठेवण्यास राज्यास प्रतिबंध होणार नाही अशी तरतूद करण्यात आली आहे. संसदेने पारित केलेला घटना दुरुस्तीचा कायदा हा दिनांक १४ जानेवारी, २०१९ रोजीच्या राजपत्रान्वये अंमलात आला आहे.

सदर घटना दुरुस्तीची राज्यात अंमलबजावणी करणे आवश्यक आहे. ही वाव विचारात घेता राज्यातही खुल्या प्रवर्गातील आर्थिकदृष्ट्या दुर्बल घटकांसाठी शासकीय/निमशासकीय सेवा व शासनाचे उपक्रम यामधील सेवेसाठी व अल्पसंख्यांक शैक्षणिक संस्था वगळता शासकीय, खाजगी, अनुदानित, विना अनुदानित संस्थांमध्ये प्रवेशासाठी १०% आरक्षण ठेवण्याचा निर्णय शासनाच्या विचाराधीन होता. त्यानुसार राज्यशासन पुढीलप्रमाणे निर्णय घेत आहे :-

शासन निर्णय :- भारतीय संविधानातील अनुच्छेद १५ (४) व (५) आणि अनुच्छेद १६ (४) अन्वये आरक्षणाचा लाभ देण्यात आलेल्या प्रवर्गाव्यतिरिक्त (मागासवर्गीय) राज्यातील आर्थिकदृष्ट्या दुर्बल घटकांसाठी, शासकीय शैक्षणिक संस्था/अनुदानित विद्यालये, महाविद्यालये, सर्व उच्च शिक्षण देणाऱ्या शैक्षणिक संस्था, विना अनुदानित विद्यालये, महाविद्यालये व शैक्षणिक संस्था यामध्ये एकूण प्रवेश द्यावयाच्या जागांमध्ये १०% आरक्षण विहित करण्यात येत आहे. सदर आरक्षण राज्यघटनेच्या अनुच्छेद ३० च्या खंड (१) मध्ये संदर्भित अल्पसंख्यांक संस्थांना लागू होणार नाही.

तसेच राज्यातील आर्थिकदृष्ट्या दुर्बल घटकांसाठी शासकीय आस्थापना, निमशासकीय आस्थापना, मंडळे/महामंडळे/नागरी स्थानिक स्वराज्य संस्था/ग्रामीण स्थानिक स्वराज्य संस्था, प्राधिकरणे यांच्या आस्थापनावरील नियुक्तीसाठी सरळसेवेच्या पदांमध्ये १०% आरक्षण विहित करण्यात येत आहे.

२. आर्थिकदृष्ट्या दुर्बल घटकासाठीच्या आरक्षणाचा लाभ खालील अटींच्या अधीन अनुज्ञेय राहिल :-

(अ) राज्यातील आर्थिकदृष्ट्या दुर्बल घटकासाठी ज्या व्यक्तीच्या जातीचा महाराष्ट्र राज्य लोकसेवा अनुसूचित जाती, अनुसूचित जमाती, निरधिसूचित जमाती (वि.जा.) भटक्या जमाती, विशेष मागास प्रवर्ग आणि इतर मागासवर्ग यांच्यासाठी आरक्षण अधिनियम, २००१ (सन २००४ चा महाराष्ट्र अधिनियम क्रमांक ८) व महाराष्ट्र राज्य सामाजिक आणि शैक्षणिक मागास (एसईबीसी) वर्गाकरिता (राज्यातील शैक्षणिक संस्थांमधील जागांच्या प्रवेशाचे आणि राज्याच्या नियंत्रणाखालील लोकसेवांमधील नियुक्त्यांचे किंवा पदांचे) आरक्षण अधिनियम, २०१८ (सन २०१८ चा महाराष्ट्र अधिनियम क्रमांक ६२) यामधील प्रवर्गांमध्ये समावेश नाही त्यांच्यासाठी शासकीय शैक्षणिक संस्था/अनुदानित महाविद्यालये, महाविद्यालये, शैक्षणिक संस्था, विना अनुदानित विद्यालये, महाविद्यालये, शैक्षणिक संस्था यामध्ये एकूण प्रवेश द्यावयाच्या जागांमध्ये १०% आरक्षण विहित करण्यात येत आहे. सदर आरक्षण राज्यघटनेच्या अनुच्छेद ३० च्या खंड (१) मध्ये संदर्भित अल्पसंख्यांक शैक्षणिक संस्थांना लागू होणार नाही.

तसेच शासकीय आस्थापना, निमशासकीय आस्थापना, मंडळे/महामंडळे/नागरी स्थानिक स्वराज्य संस्था/ग्रामीण स्थानिक स्वराज्य संस्था, प्राधिकरणे यांच्या आस्थापनेवरील सरळसेवेच्या पदांच्या सर्व संवर्गातील नियुक्तीसाठी १०% पदे ही आर्थिकदृष्ट्या दुर्बल घटकांसाठी राखीव राहतील.

(ब) हे १०% आरक्षण राज्यात सध्या महाराष्ट्र राज्य लोकसेवा अनुसूचित जाती, अनुसूचित जमाती, निरधिसूचित जमाती (वि.जा.), भटक्या जमाती, विशेष मागास प्रवर्ग आणि इतर मागासवर्ग यांच्यासाठी आरक्षण अधिनियम, २००१ (सन २००४ चा महाराष्ट्र अधिनियम क्रमांक ८) अन्वये विहित करण्यात आलेल्या मागासवर्गांसाठी व महाराष्ट्र राज्य सामाजिक आणि शैक्षणिक मागास (एसईबीसी) वर्गाकरिता (राज्यातील शैक्षणिक संस्थांमधील जागांच्या प्रवेशाचे आणि राज्याच्या नियंत्रणाखालील लोकसेवांमधील नियुक्त्यांचे किंवा पदांचे) आरक्षण अधिनियम, २०१८ (सन २०१८ चा महाराष्ट्र अधिनियम क्रमांक ६२) अन्वये सामाजिक व शैक्षणिकदृष्ट्या मागास घटकांसाठी विहित करण्यात आलेल्या आरक्षणाव्यतिरिक्त राहिल.

(क) आर्थिकदृष्ट्या दुर्बल घटकांच्या आरक्षणाच्या लाभासाठी पात्रता :-

(१) ज्या अर्जदाराच्या/उमेदवाराच्या कुटुंबाचे एकत्रित वार्षिक उत्पन्न रु. ८

“26 - Appointment of presiding officers for polling stations. - (1) The district election officer shall appoint a presiding officer for each polling station and such polling officer or officers as he thinks necessary, but he shall not appoint any person who has been employed by or on behalf of, or has been otherwise working for, a candidate in or about the election:

Provided that if a polling officer is absent from the polling station, the presiding officer may appoint any person who is present at the polling station other than a person who has been employed by or on behalf of, or has been otherwise working for, a candidate in or about the election, to be the polling officer during the absence of the former officer, and inform the district election officer accordingly:

Provided further that nothing in this sub-section shall prevent that district election officer from appointing the same person to be the presiding officer for more than one polling station in the same premises.

(2) A polling officer shall, if so directed by the presiding officer, perform all or any of the functions of a presiding officer under this Act or any rules or orders made thereunder, (3) If the presiding officer, owing to illness or other unavoidable cause, is obliged to absent himself from the polling station, his functions shall be performed by such polling officer as has been previously authorised by the district election officer to perform such functions during any such absence.

(4) References in this Act to the presiding officer shall, unless the context otherwise requires, be deemed to include any person performing any function which he is authorised to perform under sub-section (2) or

sub-section (3), as the case may be.”

“28A. Returning officer, presiding officer, etc., deemed to be on deputation to Election Commission. - The returning officer, assistant returning officer, presiding officer, polling officer and any other officer appointed under this Part, and any police officer designated for the time being by the State Government, for the conduct of any election shall be deemed to be on deputation to the Election Commission for the period commencing on and from the date of the notification calling for such election and ending with the date of declaration of the results of such election and accordingly, such officers shall, during that period, be subject to the control, superintendence and discipline of the Election Commission.”

“151.- Casual vacancies in the State Legislative Councils. - When before the expiration of the term of office of a member elected to the Legislative Council of a State, his seat becomes vacant or is declared vacant or his election to the Legislative Council is declared void, the Election Commission shall, by a notification in the Official Gazette, call upon the Council constituency concerned or the members of the Legislative Assembly of the State, as the case may be, to elect a person for the purpose of filling the vacancy so caused, before such date as may be specified in the notification, and the provisions of this Act and of the rules and orders made thereunder shall apply, as far as may be, in relation to the election of a member to fill such vacancy.”

“159. Staff of certain authorities to be made available for election work. - (1) The authorities specified in sub-section (2) shall, when so

लाखाच्या आत असेल त्या अर्जदारास/उमेदवारास आर्थिकदृष्ट्या दुर्बल समजण्यात येईल व या आरक्षणाच्या लाभासाठी तो पात्र राहिल.

(२) या आरक्षणाच्या लाभासाठी कुटुंब म्हणजे अर्जदाराचे/उमेदवाराचे आई-वडील व १८ वर्षाखालील भावंडे तसेच अर्जदाराची/उमेदवाराची १८ वर्षाखालील मुले व पती/पत्नी यांचा समावेश होईल. कुटुंबाच्या एकत्रित उत्पन्नात त्याच्या कुटुंबातील सदस्यांच्या सर्व स्त्रोतांमधून मिळणाऱ्या उत्पन्नाचा समावेश असेल म्हणजेच वेतन, कृषी उत्पन्न, उद्योग-व्यवसाय या व इतर सर्व मार्गातून होणारे, अर्ज दाखल करण्याच्या दिनांकाच्या मागील आर्थिक वर्षाचे उत्पन्न एकत्रितपणे रु. ८ लाखापेक्षा कमी असावे.

(३) आर्थिक दुर्बल घटकासाठीच्या आरक्षणाचा लाभ घेण्यासाठी या सोबत विहित करण्यात आलेल्या नमुन्यात (परिशिष्ट-अ) सक्षम प्राधिकाऱ्याचे पात्रता प्रमाणपत्र सादर करणे बंधनकारक राहिल. तसेच यासाठी सादर करावयाच्या अर्जाचा नमुना (परिशिष्ट-ब), अर्जासोबत जोडावयाची कागदपत्रे/पुरावा (परिशिष्ट-क) आणि घोषणापत्र (परिशिष्ट-ड) सोबत जोडण्यात आलेल्या नमुन्याप्रमाणे असणे आवश्यक राहिल.

(४) या आरक्षणाचा लाभ घेण्यासाठी ती व्यक्ती किंचा तीचे कुटुंबीय महाराष्ट्र राज्यात दि. १३ ऑक्टोबर १९६७ रोजी किंवा त्यापूर्वीचे रहिवासी असणे आवश्यक राहिल.

(५) सदर प्रवर्गातील उमेदवारांना वय, परीक्षा फी व इतर अनुज्ञेय सवलती ह्या इतर मागास प्रवर्गास राज्य शासनाने वेळोवेळी लागू केलेल्या नियमानुसार राहतील.

(ड) पात्रता प्रमाणपत्रासंबंधातील कार्यपद्धती :-

(१) आर्थिक दुर्बल घटकासाठीच्या आरक्षणाचा लाभ घेण्यासाठी पात्रता प्रमाणपत्र देण्यासाठी सक्षम प्राधिकारी म्हणून तहसिलदार यांना घोषित करण्यात येत आहे आणि आवश्यकता असल्यास जिल्हाधिकारी यांना एकाहून जास्त तहसिलदारांना सक्षम प्राधिकारी म्हणून घोषित करण्याचे अधिकार राहतील.

(२) आर्थिकदृष्ट्या दुर्बल घटकासाठी आवश्यक पात्रता प्रमाणपत्र मिळविण्यासाठी लाभधारकाकडून आवश्यक कागदपत्रांसह अर्ज प्राप्त झाल्याच्या दिनांकापासून एका महिन्यात (३० दिवसांच्या आत) लाभधारकास पात्रता प्रमाणपत्र देणे बंधनकारक राहिल. ते देण्यास नकार दिल्यास अथवा चुकीचे दिल्यास त्या विरुद्ध अपिल दाखल करण्याची कार्यपद्धती खालीलप्रमाणे विहित करण्यात येत आहे.

(i) सक्षम प्राधिकाऱ्याच्या निर्णयाविरुद्ध अपिलिय अधिकारी म्हणून त्यांच्या कार्यक्षेत्राचे उपजिल्हाधिकारी किंवा जिल्हाधिकारी यांना नामनिर्देशित केलेला उपजिल्हाधिकारी पदापेक्षा कमी दर्जाचा नाही असा अधिकारी हे राहतील.

(ii) वर (i) मध्ये नमूद केलेल्या अपिलिय अधिकाऱ्याच्या निर्णयाविरुद्ध अपिलिय अधिकारी म्हणून त्यांच्या कार्यक्षेत्राचे जिल्हाधिकारी हे राहतील.

(iii) वरील अपिलिय अधिकारी यांना अपिल प्राप्त झाल्याच्या दिनांकापासून एका महिन्यात (३० दिवसांच्या आत) निर्णय देणे बंधनकारक राहिल.

(इ) या आरक्षणा अंतर्गत आरक्षित बिंदु व आरक्षणाचा लाभ लागू होण्याचा

दिनांक :-

(१) या आरक्षणा अंतर्गत समाविष्ट होणाऱ्या वर्गाकरिता सामान्य प्रशासन विभागाच्या शासन निर्णय दि. २९.०३.१९९७ व दि. ५.१२.२०१८ अन्वये निश्चित केलेल्या १०० बिंदु नामावलीतील बिंदु क्रमांक ८, १६, २६, ३८, ४६, ५६, ६८, ७६, ८६, ९८ आरक्षित राहतील.

(२) (अ) आर्थिकदृष्ट्या दुर्बल घटकासाठीचे १०% आरक्षण राज्यात अंमलात येण्याचा दिनांक १.२.२०१९ हा राहिल.

(ब) तसेच १०३ व्या घटनादुरुस्ती अन्वये करण्यात आलेला कायदा दिनांक १४ जानेवारी २०१९ पासून अंमलात आलेला असल्याने दिनांक १४ जानेवारी २०१९ ते ३१ जानेवारी २०१९ या कालावधीत ज्या जाहिरातींमध्ये व प्रवेश प्रक्रियेत आर्थिकदृष्ट्या दुर्बल घटकासाठी १० टक्के आरक्षणानुसार पदांचा समावेश केला असेल अशा पदांनासुद्धा हे आरक्षण लागू राहिल.

(३) ज्या उमेदवारांनी या आदेशाच्या दिनांकापूर्वी नियुक्तीसाठी अर्ज केलेले असतील त्यांच्यापैकी तसेच वरील (ब) मध्ये नमूद केल्याप्रमाणे त्या कालावधीत व त्यामध्ये नमूद केल्याप्रमाणे पदांचा समावेश केलेला असेल त्या जाहिरातींनुसार/प्रवेश प्रक्रियेत नियुक्तीसाठी अर्ज केलेले असतील अशांपैकी जे उमेदवार परिच्छेद २ मध्ये नमूद अधिनियमांमधील मागासप्रवर्गांमध्ये समाविष्ट नाहीत अशा उमेदवारांना ते आर्थिकदृष्ट्या दुर्बल घटकांमधून नियुक्तीसाठी इच्छुक आहेत किंवा कसे याबाबत विकल्प देण्याचा पर्याय उपलब्ध राहिल.

(४) आर्थिकदृष्ट्या दुर्बल घटकासाठीचे पात्रता प्रमाणपत्र या आदेशाच्या दिनांकापासून किंवा अर्ज सादर करण्याच्या दिनांकापासून ६ महिने यापैकी जो नंतरचा असेल त्या दिनांकापर्यंत सादर करणे आवश्यक राहिल.

(५) ज्या घटकांना सेवेमध्ये समांतर आरक्षण लागू आहे त्या घटकांना आर्थिकदृष्ट्या दुर्बल या सामाजिक प्रवर्गांमध्ये देखील सामाजिक समांतर आरक्षण लागू राहिल.

४. शैक्षणिक संस्थांमध्ये प्रवेशाबाबतचे आवश्यक आदेश शालेय शिक्षण, उच्च व तंत्र शिक्षण, वैद्यकीय शिक्षण व औषधी द्रव्ये, कृषि, पशुसंवर्धन, दुग्धव्यवसाय विकास व मत्स्यव्यवसाय व इतर संबंधित विभागांनी तात्काळ निर्गमित करावेत.

५. हा शासन निर्णय शासकीय/निमशासकीय सेवा, मंडळे/महामंडळे, नगरपालिका/महानगरपालिका, जिल्हा परिषदा, शासकीय विद्यालये, महाविद्यालये, शासकीय शैक्षणिक संस्था, खाजगी विद्यालये, महाविद्यालये, शैक्षणिक संस्था, अनुदानित/विना अनुदानित विद्यालये, महाविद्यालये व शैक्षणिक संस्था आणि ज्यांना आदेश देण्याचा अधिकार शासनाला आहे, अशी इतर सर्व प्राधिकरणे, सेवा व संस्था यांना लागू राहिल.

सदर शासन निर्णय महाराष्ट्र शासनाच्या www.maharashtra.gov.in या संकेतस्थळावर उपलब्ध करण्यात आला असून त्याचा संकेतांक २०१९०२१२१४१५०२१४०७ असा आहे. हा शासन निर्णय डिजिटल स्वाक्षरीने साक्षात्कृत करून निर्गमित करण्यात येत आहे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने,

(शिवाजी दौंड)

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सचिव (साविस), महाराष्ट्र शासन

requested by a Regional Commissioner appointed under clause (4) of article 324 or the Chief Electoral Officer of the State, make available to any returning officer such staff as may be necessary for the performance of any duties in connection with an election.

(2) The following shall be the authorities for the purposes of sub-section (1), namely:—

(i) every local authority;

(ii) every university established or incorporated by or under a Central, Provincial or State Act;

(iii) a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(iv) any other institution, concern or undertaking which is established by or under a Central, Provincial or State Act or which is controlled, or financed wholly or substantially by funds provided, directly or indirectly, by the Central Government or a State Government.”

19. We may, however, notice that prior to enactment of Act No. 12 of 1998 in terms of Section 159 of the 1951 Act the obligation to make available to any Returning Officer such staff as may be necessary in connection with an election was only confined to the local authority.

20. The question as to whether the staff of the State Bank of India could be requisitioned for the purpose came up for consideration before this Court in Election Commission of India v. State Bank of India Staff Association, Local Head Office Unit,

Patna and Others [(1995) Supp. 2 SCC 13], wherein this Court upheld the judgment and order of the Division Bench of the Patna High Court, opining that the officers of the State Bank of India cannot be requisitioned in terms of Section 26 of the 1951 Act or otherwise.

21. The constitutional and statutory scheme would lead to a realistic conclusion when emphasis was laid that it is for the Central Government and the State Governments alone to provide for the requisite staff. How would they do it is one thing. It may be by fresh recruitment for the purposes for which the staff are requisitioned or for deployment or by way of deputation. Indisputably, there are certain functions which may be performed only by the Government staff. For the said purposes they may be sent on deputation e.g. Sections 21 and 22 of the 1951 Act provides for the Returning Officers and Assistant Returning Officers who must be an officer of Government or of a local authority. Therefore, their services can be requisitioned under clause (6) of Article 324 of the Constitution of India as also Section 159 of the 1951 Act. The Election Commission or the Regional Commissioner, as the case may be, is also entitled to request for requisitioning the services of the persons in the employment of the Government or the local authority and others who may not be officers of the Government or the local authority. The services of other employees who are not officers may also be requisitioned. The Parliament was aware that in an election, requisition of services of the employees of the Central Government or the State Governments may prove to be

उच्च शिक्षण संचालनालयाच्या अधिपत्याखालील अशासकीय अनुदानित महाविद्यालयातील अनुज्ञेय शिक्षकीय/शिक्षकेतर कर्मचारी व त्यांच्या कुटुंबियांच्या वैद्यकीय खर्चाच्या प्रतिपूर्तीच्या अनुज्ञेयतेची कमाल मर्यादा व मंजूरीच्या अधिकारामध्ये सुधारणा करणेबाबत.

महाराष्ट्र शासन : उच्च व तंत्र शिक्षण विभाग,

शासन निर्णय क्र.संकीर्ण-२०१८/प्र.क्र.३२५/मशि-५ : मंत्रालय विस्तार भवन, मुंबई-४०००३२. दिनांक :- १४ जानेवारी, २०१९

वाचा :- (१) शासन निर्णय, सार्वजनिक आरोग्य विभाग, क्रमांक वैखप्र-२०११/प्र.क्र.३३३/२०११/राकावी-२ दि. १६ नोव्हेंबर, २०११ (२) शासन निर्णय, सार्वजनिक आरोग्य विभाग, क्रमांक वैखप्र-२०११/प्र.क्र.१६/२०१६/राकावी-२ दि. १६ मार्च, २०१६ (३) संचालक, उच्च शिक्षण, महाराष्ट्र राज्य, पुणे यांचे पत्र क्रमांक अमवि/२०१६/वै.दे./सर्व विभाग/३९५७/मवि-२ व ३/७६०५ दि. ३.७.२०१८ चे पत्र.

प्रस्तावना :- महाराष्ट्र राज्यातील उच्च शिक्षण संचालनालयाच्या अधिपत्याखालील अशासकीय अनुदानित महाविद्यालयातील शिक्षकीय/शिक्षकेतर कर्मचारी व त्यांच्या कुटुंबियांच्या महाराष्ट्र राज्य सेवा (वैद्यकीय देखभाल) नियम, १९६१ मधील तरतुदींच्या अधीन राहून आकस्मिक उद्भवणाऱ्या २७ आजारांवर खाजगी रुग्णालयात घेतलेल्या उपलचारंचावरील तसेच ५ गंभीर आजारावर संपूर्ण खर्चाच्या प्रतिपूर्तीसाठी शासनमान्य खाजगी रुग्णालयात घेतलेल्या उपलचारावरील वैद्यकीय खर्चाच्या प्रत्येक प्रकरणी रु. ३,००,०००/- च्या मर्यादित प्रतिपूर्तीस मंजूरी देण्याचे अधिकार कार्यालय प्रमुखांना प्रदान करण्यात आलेले आहेत. या मर्यादेवरील, परराज्यातील उपचार, विशेष बाब, गंभीर आजारांवरील खाजगी रुग्णालयात उपचार इत्यादी प्रकरणी वैद्यकीय खर्चाच्या प्रतिपूर्तीसाठी प्रकरणे संबंधित प्रशासकीय विभागाकडे सादर केली जातात.

उच्च शिक्षण संचालनालयाच्या अधिपत्याखाली सुमारे ११७१ अशासकीय अनुदानित महाविद्यालये अस्तित्वात असून ६६४८३ इतके शिक्षकीय व शिक्षकेतर कर्मचारी कार्यरत आहेत. सदर कर्मचारी व त्यांच्या कुटुंबियांसाठी घेण्यात आलेल्या उपचारापोटी सादर करण्यात आलेली वैद्यकीय देयके रु. ४०,०००/- इतक्या रकमेच्या मर्यादितपेक्षा अधिकची असल्याने मोठ्या प्रमाणात देयके संचालक, उच्च शिक्षण यांचेकडे पाठविली जातात. सार्वजनिक आरोग्य विभागाच्या प्रचलित अधिनियमातील तरतुदी आणि वेळोवेळी निर्गमित करण्यात आलेल्या शासन निर्णयांच्या अधीन राहून देयके मंजूर करण्यात येतात. त्यामुळे प्रकरणे तपासून सादर करण्यामध्ये आणि तपासत असतांना उपस्थित नुट्या संबंधित महाविद्यालयास कळवून पूर्तता होईपर्यंत खूप मोठा कालावधी जातो. त्यामुळे विभागीय सहसंचालक यांना रु. ४०,०००/- ची मर्यादे वाढवून दिल्यास संचालनालयावरील ताण कमी होऊ शकेल.

विभागीय सहसंचाल (उच्च शिक्षण) यांना प्रादेशिक विभाग प्रमुख म्हणून घोषित करण्यात आलेले असून त्यांची वेतनश्रेणी रु. १५६००-३९१०० ग्रेड पे रु. ७६००/- अशी आहे आणि सदरचे पद हे महाराष्ट्र शिक्षण सेवा (गट-अ) (प्रशासन शाखा) या संवर्गातील आहे. सवव, ४०,०००/- वरून रु. १,५०,०००/- पर्यंतच्या वैद्यकीय देयकांची मर्यादा निश्चित करून अधिकार प्रदान करण्याची बाब शासनाच्या विचाराधीन होती.

शासन निर्णय :- सार्वजनिक आरोग्य विभागाच्या संदर्भ क्रमांक २ येथील शासन निर्णयानुसार उच्च शिक्षण संचालनालयाच्या अधिपत्याखालील अशासकीय अनुदानित महाविद्यालयामध्ये कार्यरत असलेल्या शिक्षकीय/शिक्षकेतर कर्मचारी आणि त्यांच्या कुटुंबियांनी घेतलेल्या उपचारापोटी केलेल्या खर्चाच्या प्रतिपूर्ती अनुज्ञेयतेच्या कमाल मर्यादामध्ये वाढ करण्याबाबत व मंजूरीच्या अधिकारामध्ये खालीलप्रमाणे सुधारणा करण्याचा निर्णय घेतला आहे.

अधिकार	पूर्वीचे अधिकार	सुधारित अधिकार
विभागीय सहसंचालक	रु.४०,०००/-	रु. १,५०,०००/- पर्यंत
संचालक, उच्च शिक्षण	रु. ४०,००१/- ते रु. ३,००,०००/-	३,००,०००/-

२. रुपये ३,००,०००/- वरील वैद्यकीय खर्चाच्या प्रतीपूर्तीच्या प्रकरणांना महाराष्ट्र राज्य सेवा (वैद्यकीय देखभाल) नियम, १९६१ व तदनंतर वेळोवेळी निर्गमित करण्यात आलेल्या शासन निर्णयातील तरतुदींच्या अधीन राहून मंजूरी देण्याचे पूर्ण अधिकार प्रशासकीय विभाग प्रमुखांना राहतील.

३. उक्त नमूद केल्याप्रमाणे संचालक, उच्च शिक्षण, महाराष्ट्र राज्य व संबंधित विभागीय सहसंचालक (उच्च शिक्षण) यांचे स्तरावर वैद्यकीय खर्चाच्या प्रतिपूर्तीच्या प्रकरणांना मंजूरी देतांना महाराष्ट्र राज्य सेवा (वैद्यकीय देखभाल) नियम, १९६१ व तदनंतर वेळोवेळी निर्गमित करण्यात आलेल्या शासन निर्णयातील तरतुदींचे काटेकोरपणे पालन करून तपासणीअंती मंजूरी देण्यात यावी.

४. सदर शासन निर्णय हा निर्णयाच्या दिनांकाल प्रलंबित प्रकरणांनाही लागू राहिल.

५. सदरचे आदेश हे संदर्भ क्रमांक २ येथील शासन निर्णय, सार्वजनिक आरोग्य विभाग, क्रमांक वैखप्र-२०११/प्र.क्र.१६/२०१६/राकावी-२ दि. १६ मार्च, २०१६ नुसार वाढविण्यात आलेल्या मर्यादेनुसार निर्गमित करण्यात येत आहे.

६. सदर शासन निर्णय महाराष्ट्र शासनाच्या www.maharashtra.gov.in या संकेतस्थळावर उपलब्ध करण्यात आला असून त्याचा संकेतांक क्रमांक २०१९०११४७१२३६१२०८ असा आहे. हा आदेश डिजिटल स्वाक्षरीने साक्षात्कृत करून काढण्यात येत आहे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने,

(वि.वि.दळवी)

** AF : P 167 **

अवर सचिव, महाराष्ट्र शासन

“(iv) The rules of reservation and roster shall be applied college-wise and subject-wise when there are plurality of posts as indicated above.”

See Para 6(iv) of the Supreme Court Judgment. Full text on page 147-148 of 2018 NUTA Bulletin

insufficient and, thus, a direction for appointment of the staff from amongst the officers of the local authority and others have been made.

22. On the other hand, however, right to education is held to be a fundamental right. It was so stated in *Mohini Jain v. State of Karnataka* [(1992) 3 SCC 666] in the following terms :

“12. “Right to life” is the compendious expression for all those rights which the courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The State Government is under an obligation to make endeavour to provide educational facilities at all levels to its citizens.”

23. The aforementioned ratio has been affirmed with certain modification by this Court in *Unni Krishnan, J.P. & Others v. State of Andhra Pradesh & Others* [(1993) 1 SCC 645], expressly stating :

“—Having regard to the fundamental significance of education to the life of an individual and the nation, and adopting the reasoning and logic adopted in the earlier decisions of this Court referred to hereinbefore, we hold, agreeing with the statement in *Bandhua Mukti Morcha* 27 that right to education is implicit in and flows from the right to life guaranteed by Article 21. That the right to education has been treated as one of transcendental importance in the life of an

individual has been recognised not only in this country since thousands of years, but all over the world. In Mohini Jain, the importance of education has been duly and rightly stressed. The relevant observations have already been set out in para 7 hereinbefore. In particular, we agree with the observation that without education being provided to the citizens of this country, the objectives set forth in the Preamble to the Constitution cannot be achieved. The Constitution would fail—”

24. Article 45 is the only provision in our Constitution which fixes a time limit during which the State is to provide for free and compulsory education for children until they complete the age of 14 years. The Constitution has been amended keeping in view the aforementioned provisions as also the decision of this Court in *Unni Krishnan* (supra) by inserting Article 21A of the Constitution of India, which reads as under :

“The right to education which flows from Article 21 is not an absolute right. It must be construed in the light of directive principles. A true democracy is one where education is universal, where people understand what is good for them and the nation and the right to education have to be determined. Right to education, understood in the context of Articles 45 and 41, means that every child/citizen of this country has a right to free education until he completes the age of fourteen years and (b) after child/citizen completes 14 years, his right to education is circumscribed by the limits of the economic capacity of the State and its development. It is significant that among the several articles in Part IV, only Article 45 speaks of a time limit; no other article does. It is not a mere pious wish and the State cannot flout the said direction even after 44 years on the ground that the article merely calls

MAHARASHTRA FEDERATION OF UNIVERSITY & COLLEGE TEACHER'S ORGANISATION

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

PRESIDENT

Prof. Dr. Tapati Mukhopadhyay (MFUCTO)
Park Side 3, Wing, Flat No. 1308
Kulupwadi Road, Borivali (East)
Mumbai 400 066
Ph. 02228871430/+919820319455
Email: mukhopadhyay_tapati@rediffmail.com

GENERAL SECRETARY

Prof. Dr. S.P. Lawande (PUCTO)
SARANG, Balajinagar
Mandavgan Road, Shrigonds,
Dist Ahmednagar 413 701
Ph: 09422228174
Email: splawande@gmail.com

18th FEBRUARY 2019

To

Shri Prakash Javadekar,
Hon'ble Minister of Human Resource
Development, MHRD,
Government of India
Shashtri Bhavan, New Delhi - 110001

Sub :- Reservation Roster for Faculty in Universities and Colleges.

Hon'ble Sir,

We, on behalf of university and college teachers of 11 universities in Maharashtra wish to convey our deep concern at the recent legal developments in the aforesaid matter. Presently, in Maharashtra, a 100 point Roster is used for implementing reservation policy in recruitment of faculty. This Roster provides reservation for SC/ST/OBC/DT/NT categories, taking a university/college as a Unit, where posts of all departments/subjects in the Unit are clubbed together.

2. The UGC guidelines issued in August 2006 for "Strict Implementation of Reservation Policy of the Government", vide Clause 6(c) prohibited department-wise reservation to prevent "artificial" reduction in number of reserved posts. **Clause 8(a)(v) made provision for application of Roster to total posts in a cadre. Now, as a result of the Order of Hon'ble Allahabad High Court of 7.4.2017 and subsequent Order of the Hon'ble Supreme Court on 22/1/2019, the above two**

clauses stand nullified. Each department/subject is to be taken as a Unit and department-wise Roster is to be applied to number of posts in each category (Assistant Professor, Associate Professor and Professor) within the department

3 . The consequence of taking a department as a unit will be detrimental to the number of posts available for reservation. Recent advertisements of some Central Universities have shown that, given the small strength of departments, the total number of posts have reduced drastically. Departments with less than 4 posts will have no reserved post and as another extreme, first post for ST will be created only when department strength is 14. This situation will lead to nullification of reservation based on constitutionally mandated percentages for various sections.

4. In Maharashtra, 40 percent of the vacant posts in colleges are to be filled as per the GR. dated 3 November 2018 (A1) Thus, the matter has acquired urgency. In this situation, we earnestly appeal to you to intervene urgently and ensure that appropriate legislative measures are undertaken by the Union Government, to restore the college/university wise reservation roster.

Thanking you
Yours Sincerely

Dr. Tapati Mukhopadhyay
(President)

Dr. S.P Lawande
(General Secretary)

Holding of an election is no doubt of paramount importance. But for the said purpose the education of the children cannot be neglected.

See Para 27 of the Supreme Court Judgment. Full text on page 26-34 of 2019 NUTA Bulletin

upon it to "endeavour to provide" the same and on the further ground that the said article is not enforceable by virtue of the declaration in Article 37. The passage of 44 years more than four times the period stipulated in Article 45 has converted the obligation created by the article into an enforceable right. At least now the State should honour the command of Article 45. It must be made a reality."

25. Sixty years of independence, however, has not brought about the desired result of imparting compulsory education to all the children. Education is one of the most important functions of the State. The State has a basic responsibility in regard thereto.

26. In *Brown v. Board of Education* [(98 L.Ed. 873 : 347 US 483 (1954)], Earl Warren, CJ, speaking for the US Supreme Court emphasized the right to education in the following terms :

"Today, education is the most important function of the State and local Governments—it is required in the performance of our most basic responsibility, even services in the armed forces. It is the very foundation of good citizenship. Today it is the principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days it is doubtful any child may reasonably be expected to succeed in life if he is denied the opportunity of an education."

27. The provisions of the 1950 and 1951 Acts although were enacted in terms of Article 324 of the Constitution of India, the same must be given restricted meaning. **Holding of an election is no doubt of paramount importance. But for the said purpose the education of the children cannot be neglected.** Therefore, it is necessary to maintain the balance between the two.

28. With an advent of technology requisitioning of a large number of people for carrying out the election may not be necessary. We may notice that the Election Commission has different roles to play. Preparation of an electoral rolls, revision of electoral rolls, when objections are filed, hearing the parties and determining the objections, enumeration of the voter list and to hold elections as and when due. The Election Commission and its officers, in our opinion, can formulate an effective scheme to see that the services of a large number of teachers are not required. The State admittedly is not in a position to perform its sovereign function of imparting education. Such functions necessarily are required to be performed by the private actors. Those students who are in a position to get admission in the public schools presumably would also be in a position to appoint tutors whereas those students who are admitted to the Government schools ordinarily would be from the middle or lower middle class or poor families. The state of primary education in India is in deplorable condition. There admittedly is a heavy drop outs from the schools particular from amongst the girl schools. **The question if right to exercise franchise whereupon the emphasis is laid by Mr. Venugopal is an important one, right to education is also no less important being a fundamental right.**

29. The Human Rights Conventions have imposed a duty on the Contracting States to set up institutions of higher education which would lead to the conclusion that the citizens thereof should be afforded and an effective right of access to them. In a democratic society, a right to education is indispensable in the interpretation of right to development as a

human right. [See *Leyla Sahin v. Turkey*, decided by the European Court of Human Rights on 10th November, 2005]. Thus, right to development is also considered to be a basic human right.

30. It is probably with that end in view the counsel appearing for the Election Commission had also joined the other counsel appearing for the respondents, to suggest the court that the services of the teachers may not be requisitioned on the days on which the schools are open. Submission of Mr. Venugopal that such a contention had not been made by the learned counsel appearing on behalf of the Election Commission cannot be accepted.

31. We have, however, considered the matter at some details as the question in regard to the application of the constitutional right and in particular fundamental right cannot be thwarted only by reason of a concession made by a counsel.

32. We would, however, notice that the Election Commission before us also categorically stated that as far as possible teachers would be put on electoral roll revision works on holidays, non-teaching days and non-teaching hours; whereas non-teaching staff be put on duty any time. We, therefore, direct that all teaching staff shall be put on the duties of roll revisions and election works on holidays and non-teaching days. Teachers should not ordinarily be put on duty on teaching days and within teaching hours. Non-teaching staff, however, may be put on such duties on any day or at any time, if permissible in law.

33. Subject to the aforementioned modifications, this appeal is dismissed. However, in the facts and circumstances of this case, there shall be no order as to costs.

2007 DGLS(SC) 1365 : (SUPREME COURT)

Election Commission of India **VERSUS** St.Marys School and Others
Case No. : Civil Appeal No. 5659 of 2007
Date of Decision : 06-Dec-2007

ACTS REFERRED

Representation of People Act,S.22* Representation of People Act,S.21* Representation of People Act,S.139* Constitution of India,Art.45* Constitution of India,Art.324(6)* Constitution of India,Art.24*

CASES REFERRED

(1) *Bandhua Mukti Morcha Vs. Union of India* (2) *Election Commission of India Vs. State Bank of India Staff Association Local Head office Unit, Patna: Northern Zone Insurance Employees Association Through Its Divisional Secretary, Shri Durgamal Tripathi* (3) *Mohini Jain Vs. State of Karnataka*

Delhi School Education Act,1973 -- Service Law -- Education Service -- Government School Teachers -- Requisition for election duties -- Deployment for various purposes during school timings -- **Holding of an election no doubt of paramount importance, but for the said purpose the education of children can not be neglected -- Right to exercise franchise is an important right, right to education is no less important being a fundamental right**

[Paras 19, 21, 27, 31 & 32]

Right to exercise franchise is an important right, right to education is no less important being a fundamental right

See Para 28 of the Supreme Court Judgment. Full text on page 26-34 of 2019 NUTA Bulletin

महाराष्ट्र खाजगी शाळांतील कर्मचारी (सेवेच्या शर्ती) नियम, १९७७ मधील व्याख्येनुसार असलेल्या अनुदानित अशासकीय शाळांतील पूर्णवेळ शिक्षक व शिक्षकेतर कर्मचाऱ्यांना सुधारित वेतन संरचना लागू करण्याबाबत.

महाराष्ट्र शासन : शालेय शिक्षण व क्रीडा विभाग

शासन निर्णय क्रमांक : वेतन-१२१९/प्र.क्र.१९/१९/टिएनटी-३ : मादाम कामा रोड, हुतात्मा राजगुरू चौक, मंत्रालय, मुंबई - ३२

दिनांक :- २२ फेब्रुवारी, २०१९

वाचा :- (१) शासन निर्णय शालेय शिक्षण व क्रीडा विभाग क्र.सवेआ/१००८/(५२१/०८)/माशि-२, दिनांक १२ जून २००९ (२) शासन निर्णय वित्त विभाग क्र.वेपुर-२०१८/प्र.क्र.४४/सेवा-९, दिनांक १ जानेवारी २०१९ (३) शासन अधिसूचना वित्त विभाग क्र.वेपुर २०१९/प्र.क्र.१/सेवा-९, दिनांक ३० जानेवारी २०१९ (४) शासन परिपत्रक वित्त विभाग क्र.वेपुर २०१९/प्र.क्र.८/सेवा-९, दिनांक २० फेब्रुवारी २०१९

प्रस्तावना :- सातव्या केंद्रीय वेतन आयोगाच्या शिफारशीवरील केंद्र शासनाचे निर्णय विचारात घेऊन राज्य शासकीयव इतर पात्र कर्मचाऱ्यांच्या वेतनश्रेणीत सुधारणा करण्याकरिता श्री.के.पी.वक्षी, सेवानिवृत्त अप्पर मुख्य सचिव, यांच्या अध्यक्षतेखाली राज्य वेतन सुधारणा समिती, २०१७ ची स्थापना करण्यात आली होती. सदर समितीच्या शिफारशी शासनाने काही फेरफारासह स्वीकृत करण्याचा निर्णय संदर्भ क्र. २ येथील शासन निर्णयान्वये घेतला आहे. त्या अनुषंगाने इतर राज्य शासकीय कर्मचाऱ्यांवर शासकीय शाळांतील पूर्णवेळ शिक्षक व शिक्षकेतर कर्मचाऱ्यांना दिनांक १ जानेवारी २०१६ पासून सुधारित वेतन संरचना लागू करण्याबाबत महाराष्ट्र नागरी सेवा (सुधारित वेतन) नियम, २०१८ च्या संदर्भ क्र. ३ अन्वये अधिसूचित केले आहेत. तसेच संदर्भ क्र. ४ च्या परिपत्रकानुसार प्रारंभिक वेतननिश्चितीबाबत व थकवाकी अदा करण्यासंदर्भात सविस्तर कार्यपद्धती विहित करण्यात आलेली आहे. या आधारे राज्यातील या विभागाच्या अखत्यारित येणाऱ्या अनुदानित खाजगी प्राथमिक, माध्यमिक, उच्च माध्यमिक शाळा, कनिष्ठ महाविद्यालये, अध्यापक विद्यालये व सैनिकी शाळांतील पूर्णवेळ शिक्षक/शिक्षकेतर कर्मचाऱ्यांना सुधारित वेतन संरचना लागू करण्याची बाब शासनाच्या विचाराधीन होती.

शासन निर्णय :- शासन आता असे आदेश देत आहे की, संदर्भ क्र. ३ अन्वये अधिसूचित केलेल्या महाराष्ट्र नागरी सेवा (सुधारित वेतन) नियम, २०१९ मधील सुधारित वेतन संरचना व वेतननिश्चितीचे नियम तसेच संदर्भ क्र. ४ अन्वये वेतन निश्चिती व थकवाकी अदा करण्यासंदर्भात निर्गमित करण्यात आलेल्या सूचना सोबतच्या जोडपत्रातील अनुदानित खाजगी प्राथमिक, माध्यमिक, उच्च माध्यमिक शाळा, कनिष्ठ महाविद्यालये, अध्यापक विद्यालये व सैनिकी शाळांतील पूर्णवेळ शिक्षक/शिक्षकेतर कर्मचाऱ्यांना (सुधारित वेतन संरचना) योग्य त्या फेरफारासह लागू करण्यात येत आहेत.

२. सुधारित वेतन संरचनेत वेतननिश्चिती करण्यासाठी आवश्यक तो विकल्प हे आदेश निर्गमित झाल्याच्या २ महिन्यांच्या आत देण्यात यावा. एकदा दिलेला विकल्प अंतिम राहिल.

३. या आदेशान्वये लागू करण्यात आलेल्या सुधारित वेतन संरचनेमुळे होणारा अतिरिक्त खर्च शिक्षक व शिक्षकेतर कर्मचाऱ्यांचे भत्ते ज्या लेखाशिर्षाखाली खर्च घालण्यात येतो त्याच लेखाशिर्षाखाली खर्च घालण्यात यावा व त्या खालील मंजूर अनुदानातून भागविण्यात यावा. शिक्षण संचालक, महाराष्ट्र राज्य, पुणे यांनी सुधारित अंदाज तयार करतांना सदर अतिरिक्त खर्च विचारात घ्यावा.

४. सदर शासन निर्णय महाराष्ट्र शासनाच्या www.maharashtra.gov.in या संकेतस्थळावर उपलब्ध करण्यात आला असून त्याचा संकेतांक २०१९०२२२१२४८०९८४२१ असा आहे. हा आदेश डिजिटल स्वाक्षरीने साक्षात्कृत करून काढण्यात येत आहे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने,

(चारुशीला चौधरी)

उपसचिव, महाराष्ट्र शासन

शासन निर्णय क्रमांक : वेतन-१२१९/प्र.क्र.१९/टिएनटी-३

दि.२२.०२.२०१९ सोबतचे सहपत्र जोडपत्र

अनुदानित अशासकीय प्राथमिक, माध्यमिक व उच्च माध्यमिक शाळा तसेच अध्यापक विद्यालयातील पूर्णवेळ शिक्षक व शिक्षकेतर कर्मचारी यांना दिनांक १ जानेवारी २०१६ पासून लागू करावयाच्या सुधारित वेतनसंरचनेचा तपशील

(1) Sr.No. (2) Designation Existing Pay Structure (3) Pay Band (4) Grade Pay (5) Pay Level in Revised Pay Matrix

PRIMARY TEACHERS		
(1) Center in Charge (B.A./B.Com./B.Sc Plus B.Ed / B.P.Ed / D.Ed)		
Existing Pay Structure	Pay Level in	
Pay Band	Grade Pay	Revised Pay Matrix
3	4	5
9300-34800	4400	S-15: 41800-132300
9300-34800	4500	S-16: 44900-142400
(Senior Scale)		
9300-34800	4900	S-18: 49100-155800
Selection Scale for 20 % Posts		

Existing Pay Structure		Pay Level in
Pay Band	Grade Pay	Revised Pay Matrix
3	4	5
(2) Trained Graduate Primary Teachers (Bachelors Dergee with B.Ed. Or D.Ed)		
9300-34800	4300	S-14: 38600-122800
9300-34800	4400	S-15: 41800-132300
(Senior Scale)		
9300-34800	4800	S-17: 47600-151100
Selection Scale for 20 % Posts		
(3) Head Master of Primary School (having enrolment over 200 puils or I to VII Stds.)		
9300-34800	4300	S-14: 38600-122800
9300-34800	4400	S-15: 41800-132300
(Senior Scale)		
9300-34800	4800	S-17: 47600-151100
Selection Scale for 20 % Posts		
TRAINED PRIMARY TEACHERS		
(4) S.S.C. & D.Ed. (Two years)		
5200-20200	2800	S-10: 29200-92300
9300-34800	4200	S-13: 35400-112400
(Senior Scale)		
9300-34800	4300	S-14: 38600-122800
Selection Scale for 20 % Posts		
UNTRAINED PRIMARY TEACHERS		
(5) S.S.C. Passed		
5200-20200	2000	S-7: 21700-69100
(Sr.No. 6 to 10 not printed)		
SECONDARY SCHOOL TEACHERS		
(11) Commandant (Military School)		
15600-39100	6600	S-23: 67700-208700
(12) Head Master of Secondary Schools		
9300-34800	4800	S-17: 47600-151100
15600-39100	5700	S-22: 60000-190800
(Senior Scale)		
(13) Assistant Head Master Of Secondary School (Having more than 20 Classes)		
9300-34800	4600	S-16: 44900-142400
15600-39100	5400	S-20: 56100-177500
(Senior Scale)		
(14) Supervisor		
9300-34800	4400	S-15: 41800-132300
9300-34800	4500	S-16: 44900-142400
(Senior Scale)		
9300-34800	4900	S-18: 49100-155800
Selection Scale for 20 % Posts		

Existing Pay Structure		Pay Level in
Pay Band	Grade Pay	Revised Pay Matrix
3	4	5
(15) Teachers Possessing Post Graduate Degree in Class II With B.T./ B.Ed.		
9300-34800	4300	S-14: 38600-122800
9300-34800	4400	S-15: 41800-132300
(Senior Scale)		
9300-34800	4800	S-17: 47600-151100
Selection Scale for 20 % Posts		
(16) Agriculture Graduate with B.T. / B.Ed. (In Multi Purpose High Schools)		
9300-34800	4300	S-14: 38600-122800
9300-34800	4400	S-15: 41800-132300
(Senior Scale)		
9300-34800	4800	S-17: 47600-151100
Selection Scale for 20 % Posts		
(17) Graduate with B.T. / B.Ed.		
9300-34800	4300	S-14: 38600-122800
9300-34800	4400	S-15: 41800-132300
(Senior Scale)		
9300-34800	4800	S-17: 47600-151100
Selection Scale for 20 % Posts		
(18) Graduate with Diploma in Teaching (2 years)		
9300-34800	4300	S-14: 38600-122800
9300-34800	4400	S-15: 41800-132300
(Senior Scale)		
9300-34800	4800	S-17: 47600-151100
Selection Scale for 20 % Posts		
(19) Graduate with D.Ed. Or D.P./Ed.(Nagpur University) Or (Mumbai University)		
9300-34800	4300	S-14: 38600-122800
9300-34800	4400	S-15: 41800-132300
(Senior Scale)		
9300-34800	4800	S-17: 47600-151100
Selection Scale for 20 % Posts		
(20) Graduate with S.T.C./Dip.T./T.D. (One year Course) /D.P.Ed. (One year course)		
9300-34800	4300	S-14: 38600-122800
9300-34800	4400	S-15: 41800-132300
(Senior Scale)		
9300-34800	4800	S-17: 47600-151100
Selection Scale for 20 % Posts		

Existing Pay Structure		Pay Level in
Pay Band	Grade Pay	Revised Pay Matrix
3	4	5
(21) Untrained Graduated		
5200-20200	2800	S-10: 29200-92300
TRAINED UNDERGRADUTES		
(22) Matric/S.S.C. and D.Ed Or H.S.C. & Dip. Ed. (Nagpur University) T.D. (Mumbai University)/Matric/S.S.C. with S.T.C./T.D./Dop.T./D.Ed. (one year)		
5200-20200	2800	S-10: 29200-92300
9300-34800	4200	S-13: 35400-112400
(Senior Scale)		
9300-34800	4300	S-14: 38600-122800
Selection Scale for 20 % Posts		
(23) Untrained Matric/S.S.C./Intermediate untrained and Munshi Passed		
5200-20200	2000	S-7: 21700-69100
(Sr.No. 24 to 69 not printed)		
TEACHERS IN HIGHER SECONDARY SCHOOLS AND JUNIOR COLLEGES		
(70) Head Masters of Secondary Schools having Higher Secondary Classes		
9300-34800	4900	S-18: 49100-155800
15600-39100	5800	S-22: 60000-190800
(Senior Scale)		
(71) Head Master of Independent Higher Secondary School/ jr. Colleges (Post Graduate in IInd Class+B.Ed.)		
9300-34800	4700	S-16: 44900-142400
15600-39100	5500	S-21: 57100-180800
15600-39100	5800	S-22: 60000-190800
(72) Teachers with Post Graduate Degree in IInd Class with B.Ed. (Qualified)		
9300-34800	4600	S-16: 44900-142400
15600-39100	5400	S-20: 56100-177500
15600-39100	5700	S-22: 60000-190800
(Sr.No. 73 to 89 not printed)		

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