

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

R/SPECIAL CIVIL APPLICATION NO. 5279 of 2019

WITH R/SPECIAL CIVIL APPLICATION NO. 7976 of 2019 WITH R/SPECIAL CIVIL APPLICATION NO. 5282 of 2019 WITH R/SPECIAL CIVIL APPLICATION NO. 11419 of 2019 WITH R/SPECIAL CIVIL APPLICATION NO. 11651 of 2019

**AKHIL GUJARAT UNIVERSITY AND COLLEGE PENSIONER SAMAJ THROUGH ITS PRESIDENT SHRI RAMESHCHANDRA JASH VERSUS STATE OF GUJARAT**

**APPEARANCE:** MR SN SHELAT, SENIOR ADVOCATE WITH MRS VD NANA VATI AND MS. DN NANA VATY (1206) for the Petitioner(s) No. 1, 10, 100, 101, 102, 103, 104, 105, 106, 107, 108, 11, 12, 13, 14, 15, 16, 17, 18, 19, 2, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 3, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 4, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 5, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 6, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 7, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 8, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 9, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99

RULE SERVED(64) for the Respondent(s) No. 1,2,3

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE ANANT S. DAVE and HONOURABLE MR. JUSTICE BIREN VAISHNAV

**Date : 10/07/2019 : ORAL JUDGMENT**

(PER : HONOURABLE THE ACTING CHIEF JUSTICE ANANT S. DAVE AND HONOURABLE MR. JUSTICE BIREN VAISHNAV)

1. All these petitions are filed by the petitioners for the following reliefs and involve common questions of law. With the consent of learned advocates appearing for the respective parties, the petitions are taken up for final disposal today.

"B. YOUR LORDSHIP may be pleased to issue writ in the nature of mandamus or any other appropriate writ, order or direction quashing and setting aside the resolution dated 12.03.2018 and resolution dated 10.08.2018 in so far as limiting revised pension to those who were the petitioners before this Hon'ble Court as the same is ultra-vires to Articles 14 & 19 of the Constitution of India.

C. YOUR LORDSHIP may be pleased to issue writ in the nature of mandamus or any other appropriate writ, order or direction and direct the respondent authorities to grant arrears of enhanced pension that the petitioners are entitled to with effect from 01.01.2006 in accordance with the directions of this Hon'ble Court.

D. YOUR LORDSHIP may be pleased to issue writ in the nature of mandamus or any other appropriate writ, order or direction directing the respondents to make payment of arrears of enhanced pension with interest accrued thereon within a period of four weeks from the date of the orders."

2. At the outset, we are at pains to state that the sentiments expressed time and again by decisions of this Court and the Supreme Court have been belied, compelling the petitioners, senior citizens, to approach this Court. In the case of **State Of Gujarat Vs. Secretary, Labour and Welfare and Tribal Development Department reported in 1982(1) GLR 61**, the Full Bench of this Court observed as under:

"9. The legal position regarding the binding nature of judgments delivered by High Courts was clearly explained as far back as 1962 by the Supreme Court. In **East India Commercial Co. Ltd. V. Collector of Customs, Calcuttam A.I.R. 1962 S.C. 1893**, Subba Rao, J. (as he then was) speaking for himself and Mudholkar J., has explained though A.K. Sarkar J. who was the legal position, the legal

position in paragraph 29 of the report as follows:

*This raises the question whether an administrative tribunal can ignore the law declared by the highest court in the State and initiate proceedings in direct violation of the law so declared. Under Art. 215, every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. Under Art. 226, it has a plenary power to issue orders or writs for the enforcement of the fundamental rights and for any other purpose to any person or authority, including in appropriate cases any Government, within its territorial jurisdiction. Under Art. 227 it has jurisdiction over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. It would be anomalous to suggest that a tribunal over which the High Court has superintendence can ignore the law declared by that court and start proceedings in direct violation of it. If a tribunal can do so, all the subordinate courts can equally do so, for there is no specific provision, just like in the case of Supreme Court, making the law declared by the High Court binding on subordinate courts. It is implicit in the power of supervision conferred on a superior tribunal that all the tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working; otherwise, there would be confusion in the administration of law and respect for law would irretrievably suffer. We, therefore, hold that the law declared by the highest court in the State is binding on authorities or tribunals under its superintendence, and that they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding. If that be so, the notice issued by the authority, signifying the launching of proceedings contrary to the law laid down by the High Court would be invalid and the proceedings themselves would be without jurisdiction.*

*The position was reiterated in **Makhan Lal Vs. State of Jammu and Kashmir, A.I.R. 1971 S.C. 2206**. It was the context of the law declared by the Supreme Court that the decision laid down to that effect so far as Article 141 of the Constitution was concerned, but what has been observed in paragraph 5 at page 2209 by Grover J. speaking for the Supreme Court has equal application so far as pronouncements by the*

**The Petitioners are retired lecturers. They were holding the posts of Lecturers in the Selection Grade in the Pay-Scale of Rs.37400-67000 when they retired.**

(See Para 3.1 of the Judgment of Gujrat High Court dated 10th July, 2019)

High Courts are concerned. Grover J. observed at page 2209:

*“The Judgment which was delivered did not merely declare the promotions granted to the respondents in the writ petition filed at the previous stage as unconstitutional but also laid down in clear and unequivocal terms that the distribution of appointments, posts or promotions made in implementation of the communal policy was contrary to the constitutional guarantee of Article 16. The law so declared by this court was binding on the respondent State and its officers and they were bound to follow it whether a majority of the present respondents were parties or not to the previous petition.”*

*It cannot, therefore, be contended by anyone, that since Acharya, the petitioner in Special Civil Application No. 2215 of 1979, was not a party to Special Civil Application No. 806 of 1975, that the law laid down by D.A. Desai, J. in his judgment in that case on August 7, 1975 was not applicable to the case of Acharya. Whether the law is declared by the Supreme Court or whether the law is declared by the High Court, the legal position as regards authorities and tribunals subordinate to the Supreme Court and High Courts respectively is the same as pointed out by Subba Rao J. in East India Commercial Co.s case (supra).*

*10. In Shri Baradakanta Mishtra V. Shri Bhimsen Dixit, A.I.R. 1972 S.C. 2466, the legal position regarding binding nature of the High Court's decision was once again reiterated by the Supreme Court and after quoting the above passage which we have extracted from the judgment of Subba Rao J. in East India Commercial Co. s case (supra) in paragraphs 15 and 16 of the judgment, Drwivedi J. speaking for the Supreme Court observed at page 2169:*

*“The conduct of the appellant in following the previous decision of the High Court is calculated to create confusion in the administration of law. It will undermine respect for law laid down by the High Court and impair the constitutional authority of the High Court. His conduct is therefore comprehended by the principles underlying the law of contempt. The analogy of the inferior court's disobedience to the specific order of a superior court also suggests that his conduct falls within the purview of the law of contempt. Just as the disobedience to a specific order of the Court undermines the authority and dignity of the court in a particular case, similarly any deliberate and mala fide conduct of not following the law laid down in the previous decision undermines the constitutional authority and respect of the High Court. Indeed, while the former conduct has repercussions on an individual case and on a limited number of persons, the latter conduct has a much wider and more disastrous impact. It is calculated not only to undermine the constitutional authority and respect of the High Court generally, but is also likely to subvert the Rule of law and engender harassing uncertainty and confusion in the administration of law.”*

*In Hashmukhlal C. Shah V. State of Gujarat, 19 G.L.R. 378, a Division Bench of this High Court consisting of J.B. Mehta and P.D. Desai JJ. after examining several decisions on the point, observed:*

*“... in a Government which is ruled by laws, there must be complete awareness to carry out faithfully and honestly lawful orders passed by a Court of law after impartial adjudication. Then only will private individuals, organizations and institutions learn to respect the decisions of Court. In absence of such attitude on the part of all concerned, chaotic conditions might arise and the function assigned to the Courts of law under the Constitution might be rendered a futile exercise.”*

*From these four decisions, the following propositions emerges:*

*1. It is immaterial that in a previous litigation the particular petitioner before the Court was or was not a party, but if law on a particular point has been laid down by the High Court, it must be followed by all authorities and tribunals in the State.*

*2. The law laid down by the High Court must be followed by all authorities and subordinate tribunals when it has been declared by the highest Court in the State and they cannot ignore it either in initiating proceeding of deciding on the rights involved in such a proceeding.*

*3. If in spite of the earlier exposition of law by the High Court*

*having been pointed out and attention being pointedly drawn to that legal position in utter disregard of that position proceedings are initiated, it must be held to be a wilful disregard of the law laid down by the High Court and would amount to civil contempt as defined in section 2(b) of the Contempt Courts Act, 1971.”*

**2.1** In the case of **Hashmukhlal C Shah v State Of Gujarat reported in 19 GLR 378**, the decision on which the Full Bench relied upon in the above order stated as under:

*“... in a Government which is ruled by laws, there must be complete awareness to carry out faithfully and honestly lawful orders passed by a Court of law after impartial adjudication. Then only will private individuals, organizations and institutions learn to respect the decisions of Court. In absence of such attitude on the part of all concerned, chaotic conditions might arise and the function assigned to the Courts of law under the Constitution might be rendered a futile exercise.”*

**3. In spite of such several decisions rendered by the Apex Court and this Court, the petitioners are constrained to file these petitions which show utter disregard on the part of the State authorities of the law laid down time and again.** It would be fruitful to pen down the background of facts leading to filing of the present petitions:

**3.1 The Petitioners are retired lecturers. They were holding the posts of Lecturers in the Selection Grade in the Pay-Scale of Rs.37400-67000 when they retired.** All the Petitioners have retired pre 1.1.2006. The State Government issued a Government Resolution dated 13.04.2009 for Revision of Pension of Pre-2006 pensioners/family pensioners etc. It provided for regulation of pension and family pension of the existing pre-1.1.2006 pensioners/family pensioners.

**3.2** The Petitioners, who were all pre-1.1.2006 retirees through their Association approached this Court by filing Petitions on being aggrieved by the formula of the calculation of pension as per para 9.2 of the Government Resolution dated 13.4.2009 qua the benefits of pension on account of revision on the basis of the minimum of the pay scale on the basis of the posts held by them. It was their case that while working out the quantum of minimum scale in the revised pay scale the selection grade or senior grade which the pensioners have received are not being taken into consideration.

**3.3** The litigation did not end at the stage of petitions. It travelled to the Division Bench by way of Letters Patent Appeal Number 1175/2014 and allied appeals. In the interregnum of the litigation the Government issued another Government Resolution dated 24.2.2014 for purpose of revision of pensioners including the pay scales of various Universities etc in the Government Resolution dated 13.04.2009.

**3.4** It was in the context of this challenge to the formula of computation of pension that the Division Bench of this Court vide CAV judgement dated 20.06.2017 rendered in Letters Patent Appeal No. 1175 of 2014 and allied appeals in the case of **Prabhudas Barot and Others vs. State of Gujarat** held as under:

*“... 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.*

*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*

**In spite of such several decisions rendered by the Apex Court and this Court, the petitioners are constrained to file these petitions which show utter disregard on the part of the State authorities of the law laid down time and again.**

(See Para 3 of the Judgment of Gujrat High Court dated 10th July, 2019)

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-I 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
Rule 6(1)	Paragraph 5 (I)
(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 prervised pay scale from which the pensioner had retired.	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.

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 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.37400-67000/- 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

**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.**

(See Para 10 of the Judgment of Gujrat High Court dated 10th July, 2019)

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.

**3.5** The State challenged the judgement before the Supreme Court which also failed. Having failed to secure compliance of the directions of the Division Bench where the Court held that while computing pension the services rendered by the petitioners in the selection grade pay shall be taken as the corresponding pay scale for revision of pension, the Petitioners were constrained to file a contempt petition before this Court being Miscellaneous Civil Application No.338 of 2017. By an oral order dated 5/3/2018, the Division Bench of this Court granted time of four months to the State when it sought time to comply with the directions.

**3.6** However, rather than make payments the State Government came out with a Government Resolution dated 12.3.2018 stating that the effect of revision so directed shall be effective on a notional basis with effect from 1.3.2018. The Resolution in effect stated that no pension of the basis of the recomputed formula shall be paid from 1.1.2006 to 1.3.2018. The relevant extract of the Resolution dated 12.3.2018 reads as under:

**Regarding to take into account the pay scale achieved by the employee at the time of retirement for the purpose of pay revision.**

**GOVERNMENT OF GUJARAT : FINANCE DEPARTMENT,  
Resolution No. PRC-102017-CC-27- P  
Sachivalay, Gandhinagar : Date: - 12/03/2018**

**Read:-** (1) Finance Department's G.R. No. PPF/1099/Bha.S.1 (2)/P Dated: 1/11/2000 (2) Finance Department's G.R. No. PGR-1009/4/Pay Cell (N) Dated: 13/4/2009 (3) Finance Department's G.R. No. PSN/102014/CC-36(61446)/P Dated: 26/2/20145 (4) Finance Department's G.R. No. PGR/102016/Pa Cell Dated 15/10/2016 (5) Special Leave Petition No. 25810-11/017, State of Gujarat V/S Prabhudas C. Barot

**Preamble :** Instructions have been published by state government vide the resolutions cited at no. (1), (3) and (4) above to sanction pension at the rate of 50% and family pension at the rate of 30% of the minimum pay of the post held by the pensioner/family pensioner at the time of his/her retirement! Demise (proportionate to the pensionable service in the case of employees retired before 1-12006). While fixing pension in this manner, the higher pay scale, selection grade, senior grade given to the concerned employee are not taken into account but only the basic pay scale revised for the relevant post is taken into account.

Therefore, representations from pensioners to take into account the pay scale instead of the post of the employee at the time of retirement while revising the pension are received frequently. In this regard, pensioners have filed petitions in Honourable Gujarat High Court as well as Honourable Supreme Court. With the decision in the case of State of Gujarat v/s Prabhudas C. Barot going in favour of the pensioners, the matter of revising pension by taking into account the pay scale instead of the post of the employee at the time of retirement was und<sup>er</sup> consideration of the Government.

**Resolution:** After careful consideration, it s. decided that in the case of pensioner/family pensioner, proceedings shall be taken up for sanctioning pension at the rate of 50% and family pension at the rate of 30% of the pay scale in force in the revised pay scale corresponding to the pay scale the pensioner was receiving at the time of his/her retirement/demise (proportionate to the pensionable service in the case of employees retired before 1-1-2006), which means, the higher pay scale, selection grade, senior grade received by the employee shall be taken into account. For availing this benefit, the pensioner/family pensioner will have to follow the procedure prescribed in the resolution dated 1-11-2000.

Pension of the employees who have taken voluntary retirement during the period from 1-1-2006 to 12-4-2009 under the resolution, Finance Department No. PSN/1009/725/p dated 1-9-2017 and received maximum five increments and received pension in proportion

to their pensionable service shall be revised proportionate to their pensionable service under this resolution irrespective of the fact whether they have given up the benefit of five maximum increments or not.

The resolution shall be implemented with effect from 1-3-2018 and benefit of the earlier years shall be treated as "notional".

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

Sd/- (K.K. Patel)

Deputy Secretary Finance Department

**3.7** The present petitioners have been denied the benefit of their pensions being re-computed on the basis of the formula as per the the directions of the Division Bench which we have quoted hereinabove. As the Resolution was in violation of the directions of the Division Bench, the petitioners therein were constrained to file MCA No. 673 OF 2018 before this Court. The State Government amended the Government Resolution dated 12.3.2018 and resolved to pay the enhanced pensionary benefit. However, the Resolution dated 10.08.2018 stated that the benefit of such revision from 1.1.2006 shall be available to the petitioners who were before the Court i.e. the Government Resolution dated 12.3.2018 was modified accepting that the benefit of revision shall be given from 1.1.2006 however only restricting it to the petitioners who were before the court. Rest of the pensioners were to be paid according to the Resolution dated 12.3.2018 i.e. only from 1.3.2018 treating the earlier period as notional. The modified resolution dated 10.08.2018 issued by the Government (translated version) reads as under:

No. PSN/102018/HC/134-P

Government of Gujarat, Finance Department,  
Gandhinagar. : Date: 10-08-2018

To

(1) The Principal Secretary Education Department, Gandhinagar.

(2) The Principal Secretary Agriculture, Farmers' Welfare, Gandhinagar.

**Sub:-** MCA No. 588 of 2018 in Letters Patent Appeal No. 499 of 2015 in Special Civil Application No. No. 15094 of 2013, MCA No. 589 of 2018 in Letters Patent Appeal No. 1175 of 2014 in Special Civil Application No. No. 13590 of 2013 and MCA No. 673 of 2018 in Letters Patent Appeal No. 1248 of 2014 in Special Civil Application No. No. 3202 of 2014 on contempt notice.

Sir,

I have honour to state on above subject that pension should be sanctioned (in proportion to pensionable service) at 50% of minimum pay-scale corresponding with the corresponding posts and at 30% of family pension. While doing so, highest pay-scale, selection grade/senior scale etc. should be taken in view. For revision of pension, revised original pay-scale corresponding to the designation was taken in view only. Inshort, the policy was in vague to from post to post but not scale to scale.

According to para No.9.2 of resolution dated 13-04-2009, for revision of pension, it was provided scale to scale instead of from post to post. The lecturers availed benefit of service scale, selection grade etc. at the time of revision of pension, which was adverse to policy of resolution dated 01-11-2000 of Finance Department and proviso of Rule 80 (2-A) of G.C.R. Pension Rules. Therefore, the provision made in para No. 9.2 of the resolution dated 13-04-2009 of Finance Department was revoked by resolution dated 26-02-2014.

As a consequence, some lecturers of Agriculture, Farmers' Welfare and Cooperation Department filed petition being Special Civil Application No. 15094 of 2013 for benefit of resolution dated 04-12-2009 of Education Department also. As judgment dated 26/27-09-2014 was against the Government, the State Government filed Letters Patent Appeal. In this Letters Patent Appeal, the Gujarat High Court gave judgment on 20-06-2017 against the State Government. Therefore, the State Government filed Special Leave Petition in Hon'ble the Supreme Court which was dismissed by Hon'ble the Supreme Court on 23-10-2017.

Therefore, the Finance Department issued instructions to revise pension and pay according to judgment of Letters Patent Appeal dated 20-06-2017 but as there was no mention of definite date of scale to scale pension revision in the judgment dated 20-06-2017 in Letters Patent Appeal, taking in view the particulars of financial burden that would have imposed on the State Government, policy instructions were issued on revision of pension taking in view the payscale at the time of retirement instead of posts held at the time of retirement for all pensioners of the State under resolution dated 12-03-2018 with effect

from 01-03-2018. Contempt petition was filed to give benefit of revision of pension with effect from 01-01-2006 by the concerned petitioners of Special Civil Application/Letters Patent Appeal concerned with their case.

Taking in view contempt petition filed in the Gujarat High Court, sanction has been accorded as a special case to grant benefit to the pensioners of pension revision scale with effect from 01-01-2006. Thus, the benefit of resolution dated 12-03-2018 of Finance Department shall have effect from 01-01-2006. All the pensioners except petitioners shall be paid according to resolution of policy decision dated 12-03-2018 of the State Government.

While making payment to the petitioners, the petitioners who were given the benefit of scale-to-scale pension revision under resolution of 13-04-2009 of the Finance Department and whose benefits have been withdrawn under resolution dated 13-04-2009. In order to ensure that there may not be over payments on repayments, the concerned officers/drawing and disbursing officer and treasury officers should ensure. The said sanction is issued on file of even number of competent officer.

In order to see that there may not arise any issue of contempt of the Hon'ble High Court, the concerned departments are issued instructions to take immediate action.

Yours faithfully,

[K.K. Pate!]

Deputy Secretary (Pension & Treasury)

**3.8** The Division Bench taking up contempt matters passed order dated 14.08.2018 without deciding the validity of the Government Resolution dated 10.08.2018. Having been denied the benefit of the revised pension on the basis of the revised formula of recomputation as per the directions in the Appeals, with effect from 1.1.2006, solely on the ground that the present petitioners were not parties to the earlier litigation, the petitioners are before this Court with the prayers so reproduced hereinabove:

**4.** Mr. Suresh N. Shelat, learned Senior Counsel appearing with Ms. V.D. Nanavati and Ms. D.N. Nanavaty, learned advocates for the petitioners submitted as under:

i) The petitioners are pre-2006 pensioners and/or receiving family pension, who are denied the benefit of the Government Resolution dated 12.3.2018. Pension is not a bounty. All pre-2006 pensioners are entitled to be treated alike and receive the pension on the basis of the resolution dated 13.04.2009. There can be no artificial cut-off date of 1.3.2018 for curtailing the benefit.

ii) The pre-2006 pensioners form a homogenous class. The State Government while implementing a new scheme for payment of pension or grant of pensionary benefits may formulate a policy for a different class of pensioners governed by a different set of rules. In the present case all the pensioners are pre-2006 retirees forming a homogenous class and are governed by the same Government Resolution dated 13.4.2009 by which the benefit of revision of pension as per the Sixth Pay Commission was granted to all pre-2006 retirees. The petitioners are also "existing pensioners" forming the same class.

iii) The cut-off date of 1.3.2018 results into creation of class within a class of pensioners of pre-2006 retirees. The petitioners who have not approached the Court still form a homogenous class and are entitled to receive equal treatment. By fixing a cut-off date the equals are treated unequally resulting in violation of Article 14 of the Constitution Of India.

iv) The issue involved is the question of enhancement of pension as per the Government Resolution dated 13.4.2009 whereby the pension has to be computed on the basis of the corresponding pay scale and not post.

There is no new scheme or a new class of pensioners. It is re-computing of a formula for all the pre-2006 pensioners and therefore they form a homogenous class and no discrimination

can be made.

v) There can be no denial of such benefits on the basis of financial liability of the State. The Supreme Court in several decisions have held that the legitimate claim of the pensioners cannot be denied on the count of financial liability. Once by a resolution dated 13.04.2009 the financial implications were accepted to grant revision of pension to all pre-2006 retirees and now for a part of the same class it cannot be denied.

**4.1** Shri Shelat relied upon the decisions in the case of **K.T.Veerappa vs. State of Karnataka reported in (2006) 9 SCC 406** and in the case of **U. Raghavendra Acharya and Others vs. State of Karnataka and Others reported in AIR 2006 SC 2145**.

**5.** Ms. Nisha Thakore has appeared on behalf of the State Government and has taken us extensively through the Affidavit-In-Reply filed on behalf of the State Government. She would contend that pursuant to Government Resolution dated 13.04.2009, another Government Resolution dated 26/27.08.2014 was issued whereby certain directions were carried out and accordingly decision was taken that benefits of revision of pension will be relegated in terms of the above resolution.

**5.1** By inviting our attention to Gujarat Civil Service Pension Rules, 2002 (for short '2002 rules') and various definitions therein namely pay, pension, pensionable pay, pensioner and pensional pay under Rules 9(53), 9(55), 9(56), 9(57) and 9(63) respectively, it is emphatically submitted that revision of pension did not form part of the 2002 rules and therefore no vested right accrues to receive pension. According to her, when pensionable pay has been defined under the 2002 rules read with explanations contained therein, pension of the petitioners at the time of retirement have been fixed on the basis of the last ten months' average i.e. pensionable pay and length of service as per Rule 6 of revised pension rules, 1950 read with Government Resolution dated 31.07.1987 issued by the Finance Department of State of Gujarat read with Rule 80(2)(a) of the 2002 rules. Therefore, the revision of pension is based on recommendations of the pay commission constituted from time to time and acceptance of recommendations made by pay commissions by the State Government is based on many factors which include financial liabilities and in the are of giving effect of benefits of revision of pension, it is always open for state authorities to prescribe a date from which such benefits will accrue to pensioners.

**5.2** It is submitted that by virtue of Government Resolution dated 12.03.2018, the State has uniformly applied the formula qua all pre 2006 pensioners and the only difference as against the earlier set of petitioners is that they had approached this Court and the actual benefits of revised pension were extended to them with effect from 01.01.2006 whereas in the case of the petitioners since they had not approached this Court and keeping in mind huge financial burden upon the public exchequer it was resolved to treat the period from 01.01.2006 to 2018 as notional pay and from 12.03.2018, the petitioners are to be paid as per formula of the revised pension so envisaged vide Government Resolution dated 13.04.2009 and therefore it cannot be said that such a course of action on the part of the state authorities is unreasonable, arbitrary and discriminatory and therefore contrary to Article 14 of the Constitution of India. That if notional benefit is not given to the petitioners who have not taken timely action it would result into fastening liability to pay more than 3 lakhs pensioners of various 26 departments of the State of Gujarat and such a prudent and rationale decision on the part of the State of Gujarat cannot be termed as detrimental to the interest of pensioners especially when revised pension is not a fundamental right unlike that of pension to be received initially on the date of retirement.

**5.3** It is therefore submitted by Ms. Thakore that all these petitions filed by the petitioners having a common thread of submissions based on the belief of they belonging to a

**The petitions are accordingly allowed. Rule is made absolute with the costs of Rs.5,000/- each to be paid to each individual petitioner for being compelled to enter into litigation.** (See Para 16 of the Judgment of Gujrat High Court dated 10th July, 2019)

homogeneous group deserves to be dismissed and entitlement for revised pension is also to be dismissed. In support of her submissions, Ms Thakore has relied on a decision in the case of **State Of Haryana vs Rai Chand Jain reported in (1997)5 SCC 167.**

6. Having considered the submissions of the learned advocates for the respective parties we need to consider, whether it was appropriate for the State to issue Government Resolution dated 12.3.2018, restricting the benefit of revision of pension based on the recomputed formula, on a notional basis i.e. with effect from 1.3.2018 denying past benefit. Secondly whether it was open for the Government by a communication dated 10.08.2018 to suggest and restrict the benefit of revision of pension as directed by the decision of the Division Bench, only to the Petitioners who were before the Court, from 1.1.2006 whereas for the non-parties the benefit was extended only from 1.3.2018.

6.1 The State Government, in line with the revision of pay pursuant to the Sixth Central Pay Commission, considered revision of pension/family pension of pre-2006 pensioners i.e. pensioners who had retired before the adoption of the 6th Pay Commission recommendations. Accordingly, it framed the Government Resolution dated 13.04.2009. At this stage of discussion, it will be in the fitness of things to refer to the Resolution dated 13.04.2009 and the same is reproduced hereinbelow:

**Sixth Central Pay Commission-Revision of pension of Pre-2006 pensioners/family pensioners etc.**

Government of Gujarat, Finance Department,  
Resolution No. PGR-1009-4-Pay Cell (M),  
Sachivalaya, Gandhinagar. : Dated the 13th April, 2009

**Read: (1) Finance Department, Government Resolution No. PGRI1098/7/M, dated 20-1-1998 (2) Finance Department, Government Resolution No. PGR/1009/1/ Pay Cell (M), dated 12-2-2009**

**Preamble:-** In pursuance of the Government of India decision on the recommendations of 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 1-9-2008 and clarifications issued vide Office Memorandum No.F.38/37/08-P&PW(A) Part-f dated 3-10-2008 and Office Memorandum of even number dated 14-10-2008, the matter regarding revision of pension/family pension of pre-2006 pensioners was under consideration of the State Government. After careful consideration, the State Government is pleased to accord sanction to the regulation of pension/family pension of existing pre-1-1-2006 pensioners/ family pensioners in the following manner :-

**RESOLUTION:** 1.1 These orders shall apply to all pensioners/family pensioners who were drawing pensioners/family pensioners on 1.1.2006 under Gujarat Civil Services (Pension) Rules, 2002 as amended from time to time

1.2 These orders do not apply to the pensioners whose pension, etc is governed by separate rules/orders.

2. In these orders:-

(a) The "existing pensioner" or "existing family pensioner" means a pensioner who was drawing/entitled to pension/family pension on

31/12/2005.

The "existing pensioner" or "existing family pensioner" would include a pensioner/family pensioner who became entitled to pension/family pension with effect from 1/1/2006 consequent on retirement/death of government servant on 31/12/2005.

(b) The "existing pension" means the basic pension inclusive of commuted portion, if any, due on 31-12-2005. It covers all classes of pension under Gujarat Civil Services (Pension) Rules, 2002 as amended from time to time.

The "existing pension" would include a pension which became due with effect from 1/1/2006 consequent on retirement/death of Government servant on 31/12/2005.

(c) The "existing family pension" means the basic family pension drawn on 31/12/2005 under Gujarat Civil Services (Pension) Rules, 2002 as amended from time to time.

The "existing family pension" would include a family pension which became due with effect from 1/1/2006 consequent on retirement/death of government servant on 31/12/2005.

(d) Existing "temporary increase" (dearness relief) means temporary increase due to pensioners/family pensioners up to average AICPI-536 (i.e. @ 24%) as provided in Finance Department, Government Resolution No. HGV/2005/2174/P, dated 15-5-2006.

3.1 The pension /family pension of existing pre-2006 pensioners/family pensioners will be consolidated with effect from 1/1/2006 by adding together :-

1. The existing pension / family pension.

2. Dearness Pension where applicable.

3. Temporary Increase (Dearness Relief) at AICPI drawing average index 536 (Basic year 1982=100) (i.e. @ 24%) of Basic pension/Basic Family Pension plus dearness pension as admissible vide Finance Department, Government Resolution No. HGV/2005/2174/P, Dated 15th May 2006.

4. Fitment weightage @ 40 % of the existing pension / family pension.

Where the existing pension in (1) above includes the effect of merger of 50 % of dearness relief w, e.f. 1/4/2004, the existing pension for the purpose of fitment weightage will be re-calculated after excluding the merged dearness pay/dearness relief of 50 % from the pension. The amount so arrived at will be regarded as consolidated pension/family pension with effect from 1/1/2006.

3.2 The upper ceiling on pension/family pension laid down vide Finance Department, Government Resolution No. PGRI 1098/ 6/M, dated 20-1-1998 has been increased from Rs. 19,500/- and Rs. 11,700/- (after merger) to 50 % and 30 % respectively of the highest pay (revised with effect from 1/1/2006) in the government.

3.3 Since the consolidated pension will be inclusive of commuted portion of pension, if any, the commuted portion will be deducted from the said amount while making monthly disbursements.

3.4 Since the consolidated pension / family pension arrived at as per the paragraph 3.1 above, includes temporary increase (dearness relief) up to average index level 536 (Base year 1982 =100), temporary increase (dearness relief) will be admissible thereon only beyond index level 536

**The Petitioners shall pay the arrears of the revised pension as paid in the case of the litigants in the case of Prabhudas Barot and Others (supra) and all other similarly situated pre-2006 retirees, in terms of such directions, without them having to approach this Court, within a period of 6 weeks from the date of receipt of the certified copy of this Order, with interest at the rate of 6% per annum, from the date they became entitled to till the date of actual payment.**

(See Para 16 of the Judgment of Gujrat High Court dated 10th July, 2019)

(Base year 1982 = 100) in accordance with the revised scheme of temporary increase (dearness relief) for which orders are being issued separately. The four installments of temporary increase (dearness relief) sanctioned earlier from 1/7/2006, 1/1/2007, 1/7/2007 and 1/1/2008 vide Finance Department, Government Resolutions No. HGV-2005-2174-P, dated 7-10-2006, dated 20-4-2007, dated 4-10-2007, and Finance Department, Government Resolution No. HGV-2008-500-P, dated 15-4-2008 respectively, shall be adjusted against revised temporary increase (dearness relief) becoming due on the consolidated pension./ family pension.

3.5 The quantum of pension / family pension available to the old pensioners / family pensioners shall be increased as follows:

Age of pensioner / family Additional quantum of pensioner pension/family pension

From 80 years to less than 85 years 20 % of revised basic pension / family pension

From 85 years to less than 90 years 30 % of revised basic pension / family pension

From 90 years to less than 95 years 40 % of revised basic pension / family pension

From 95 years to less than 100 50 % of revised basic pension / years family pension

100 years or more 100 % of revised basic pension / family pension.

The amount of additional pension will be shown distinctly in the pension payment order. For example, in case where a pensioner is more than 80 years of age and his/her consolidated pension in terms of para-3.1 and 3.2 above is Rs. 10,000 p.m., the pension will be shown as (i) Basic pension = Rs. 10,000 and (ii) Additional pension = Rs. 2000 p.m. The pension on his/her attaining the age of 85 years will be shown as (i) Basic pension = Rs. 10,000 and

(ii) Additional pension = Rs. 3000 p.m.

The additional quantum of pension/family pension, on attaining the age of 80 years and above, would be admissible from the 1st day of the month in which his date of birth falls. For example, if a pensioner/family pensioner completes age of 80 years on any date in the month of August, 2008, he will be entitled to additional pension/family pension with effect from 1/8/2008. Those pensioners/family pensioners whose date of birth is 1st August, will also be entitled to additional pension/family pension with effect from 1/8/2008 on attaining the age of 80 years and above.

Temporary Increase (Dearness Relief) will also be admissible on the additional quantum of pension available to the old pensioners, in accordance with the orders issued from time to time.

3.6 In the cases, where the date of birth of pensioners is not available in the records, the Director of Accounts and Treasuries will issue 6-57 suitable instruction to Disbursing Officers to sanction and grant additional pension as mentioned in para-3.5.

4.1 Where the consolidated pension / family pension in terms of paragraph 3 above works out to an amount less than Rs. 3500/- the same shall be stepped up to Rs. 3500/-. This will be regarded as pension / family pension with effect from 1/1/2006. In the case of pensioners who are in receipt of more than one pension, the floor ceiling of Rs. 3500/- will apply to the total of all pensions taken together.

In case, a person is in receipt of pension as well as family pension, the floor ceiling of Rs.3500 will apply individually to such pension and family pension.

4.2 Where the wound and injury pension is drawn in addition to invalid pension under the Gujarat Civil Services (Pension) Rules, 2002, the minimum limit of Rs. 3500/- will apply to total of two pensions as indicated in paragraph 4.1. Where the wound and injury pension is drawn in isolation, the minimum limit of Rs. 3500/- will apply for 100 % disability. For lesser degree of disability the minimum limit will be proportionately less.

The amount of wound and injury pension and invalid pension should in no case exceed the last pay drawn. These instructions would continue to apply in the context of revised minimum pension of Rs. 3500/- p.m.

5. The employed / re-employed pensioners/family pensioners are not getting temporary increase (dearness relief) on pension at present under the existing orders. In their cases the notional temporary increase (dearness relief) which would have been admissible to them but for their employment / re-employment will be taken into account for consolidation of their pension in terms of paragraph 3.1 above as if they were

drawing the temporary increase (dearness relief). Their pay will be revised with effect from 1/1/2006 with reference to consolidated pension becoming admissible to them. Temporary increase (dearness relief) beyond 1-1-2006, will, however not be admissible to them during the period of employment/re-employment.

The cases of State Government employees who have been permanently absorbed in Public Sector Undertakings / autonomous bodies will be regulated as follows:-

Pension:-

(i) Where the government servants on permanent absorption in Public Sector Undertakings / Autonomous bodies continue to draw pension separately from the government, the pension of such absorbees will be updated in terms of these orders.

(ii) In cases where the government servants have drawn one time lump sum terminal benefits equal to 100 % of their pensions and have become entitled to the restoration of one third commuted portion by pension as per Supreme Court Judgment dated 15/12/1995, their cases will not be covered by these orders.

Family Pension:-

In cases where, on permanent absorption in Public Sector Undertakings / autonomous bodies, the terms of absorption permit grant of Family Pension under the Gujarat Civil Services (Pension) Rules, 2002, the family pension being drawn by family pensioners will be updated in accordance with these orders.

7. All pension disbursing authorities handling the disbursement of pension to the state government pensioners are hereby authorized to pay pension/family pension to existing pensioners/family pensioners at the consolidated rates without any further authorisation from the concerned authorities which had authorised pension / family pension originally. The public sector banks in Gujarat are, however not authorized for this purpose.

8.1 A table indicating the existing basic pension/family pension without dearness pension, the basic pension/family pension with dearness pension and the revised consolidated pension/family pension is enclosed for ready reference (Annexure-I). This table may be used where the pensioner is in receipt of a single pension only.

8.2 Where a pensioner is in receipt of more than one pension, consolidation may be done separately in terms of paragraph-3.1 and as indicated in paragraph 4, floor ceiling of Rs. 3500/- may be applied to total pension from all sources taken together.

8.3 Wherever the age of pensioner/family pensioner is available on the pension payment order; the additional pension/family pension in terms of para-3.5 above may also be paid by the pension disbursing authorities immediately without any further authorization from the Account Officer/Head of Office, etc concerned.

8.4 A suitable entry regarding the revised consolidated pension shall be recorded by the pension disbursing authorities in both halves of the pension payment order. An intimation, regarding disbursement of revised pension as per Annexure-II, may be sent by the pension disbursing authorities to the office of the Director of Pension and Provident Fund/Assistant Examiner, Local Fund Accounts or authorities concerned, which had issued the Pension Payment Order in the form given at Annexure-H, so that the latter can update the pension payment order register maintained by him. An acknowledgment shall be obtained by the pension disbursing authorities from the Office of Director of Pension and Provident Fund and the respective Accounts Officers in this behalf.

9.1 The Consolidated pension / family pension as worked out in accordance with provisions of Para 3.1 above shall be treated as final 'Basic Pension' effect from 1/1/2006 and shall qualify for grant of temporary increase (dearness relief) sanctioned thereafter.

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 pensioner 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 scale of pay) plus grade pay corresponding to the pre-revised pay scale. For example, if a pensioner had retired in the pre-revised scale of pay of Rs.18400-22400, the corresponding pay band being Rs.37400- 67000 and the corresponding grade pay being Rs. 10,000/- p.m., his

minimum guaranteed pension would be 50% of Rs.37400 + Rs. 10,000/- (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 pay 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 Government 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.

9.3 The pension will be reduced pro-rata, where the pensioner had less than the maximum required service for full pension as per Rule-80 of Gujarat Civil Services (Pension) Rules, 2002 as applicable on 1/1/2006 and in no case it will be less than Rs. 3500/- p.m. In case the pension consolidated as per para-3 is higher than the pension calculated in the manner indicated above, the same (higher consolidated pension) will be treated as Basic Pension.

9.4 The arrears of this consolidation of pension is payable in five equal yearly installments.

10. It is desirable that the benefit of these orders should reach the pensioners as expeditiously as possible. To achieve this objective it is desired that all pension disbursing authorities should ensure that the revised pension and first installment of arrears due to the pensioners in terms of para-3.1 and 3.5 above is paid to the pensioners or credited to their accounts by 30-4-2009 and first installment of arrears due to pensioner should be paid by 30-6-2009 or before positively. Instructions regarding release of rest of the installments of arrears will be issued later,

11. In case of any doubt in individual case the pension disbursing authorities shall refer the matter to the Directorate of Pension and Provident Fund, Gandhinagar.

12. The contents of these orders should be brought to the notice of all concerned on top priority basis. All Pension Disbursing Authorities are also advised to prominently display these orders on their notice board / web site for the benefit of pensioners.

13. Director of Accounts and Treasuries, Gandhinagar will issue suitable instructions to disbursing authorities, if necessary.

By order and in the name of the Govern of Gujarat,

(P. B. Datji)  
Deputy Secretary to the Government  
[Emphasis Supplied]

**6.2** Reading of the Resolution would indicate that the orders shall apply to ALL PENSIONERS/FAMILY PENSIONERS who were drawing pension/family pension on 1/1/2006 under the Gujarat Civil Services (Pension) Rules, 2002. The term “existing pensioner” or “existing family pensioner” means a pensioner who was drawing/entitled to pension/family pension on 31/12/2005. The definition further elaborates that the “existing pensioner” or “existing family pensioner” would include a pensioner/family pensioner who became entitled to pension/family pension with effect from 1/1/2006 consequent upon retirement/death of government servant on 31/12/2005. Even the term “existing pension” means basic pension inclusive of commuted pension if any, due on 31/12/2005. The “existing pension” would include a pension which became due with effect from 1/1/2006 consequent upon retirement/death of government servant on 31/12/2005.

**6.3** Reading the Resolution dated 13.04.2009, it indicates that it defines various terms as “existing pensioners”; “existing pension” etc. As per Para 9.2 of the said Resolution, the revision of pension is subject to the provision that the revised pension in no case shall be lower than 50% of the minimum of the pay band plus grade pay corresponding to the pre-revised pay scale from which the pensioner had retired. The para sets out the methodology of calculation and sets out that the procedure to be adopted for such calculation by the disbursing authorities shall be in line with the Government Resolution dated 1.11.2000. In other words in case of university teachers etc also it was resolved as mentioned in Para 9.2. of the Government Resolution dated 13.04.2009, that the pay scale of the post held and corresponding pay scale shall only be taken into consideration and the senior scale, selection grade or higher pay shall not be considered.

**6.4** The procedure is so set out in the Government Resolution dated 1.11.2000, and the same reads as under:

1.56 Regarding implementation of system to sanction 50% minimum person and 30% family pension of revised pay scale, make some charges in procedure

Govt. of Gujarat, Finance Department  
Order No. PPF/10.09/G.O.I. 1(2)/P, Sachivaiaya,  
Gandhinagar, dated 01.11.2000

Ref: (1) Order No.PPF/1099/G.O.I.1/P. dated 19.04.2000 of Finance Department

**Preamble:** It has been decided by the State Govt. to pay pension 50% of minimum pay (proportionate to pensionable service) and 30% family pension based on revised pay scales as per recommendations of Fifth Pay Commissions to pensioner under Order referred to above No.(1). As pr order, pensioner has to apply first to the Department/ Office where he was last working and, after necessary verification of the application, the application is to be forwarded by the department/ office along with Service Book, to the office of the Commissioner of Provident Fund. It is left that in this administrative process, pensioners face difficulty and delay takes place in getting the benefits of the same. Keeping this in view, and to remove difficulties and with a view that pensioners get their revised pension expeditiously, the Govt., after sympathetic review, has decided to make partial changes in the provisions of Order dated 19.04.2000, as follows:

#### ORDER

1. By making changes in part-1 of Schedule (b) of the specimen of application by pensioner/ family pensioners. And art-2 to be filled in by the concerned departments, ' offices prescribed under Order No.PPF/ 1099/G.O.I./P. dated 19.04.2000 of Finance Department referred to above at No.

(i) for the sanction of pension @ 50% of minimum pay (proportionate to pensionable service) and 30% family pension, now the pensioner, will, be required to application in duplicate as per Part-1 of schedule attached with this order and Part of the same Schedule will be required to be filled by the concerned sanctioning Division I Department! Office.

2, By making partial amendment in the process prescribed in the order dated 19.04.2000, the application prescribed in the Schedule to sanction pension @ 50% and family pension @ 30% of the revised pay scale, will now be forwarded by the concerned Division / Department / Office to the Treasury Office from which pensioner/ family pensioner is receiving pension instead of office of Commissioner of Pension and Provident Fund.

3. Upon submission of application of pensioner for family pension in Part-1 of Schedule attached to this order along with part-2 duly filled in by the concerned Division/Department/Office to the District Treasury Office where the pension/family pension is paid, the concerned District Treasury Office will undertake the process of sanction of Pension Payment Order (P.P.O.) © 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 in to effect from 01.01.1997 in the cases 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 case where clear information about basic pay scale according to post of the pensioner and revised pay scale which is to be considered is not available from the P.P.O. or Part-1/2 of the Schedule to the District Treasury Office, then only such cases will be sent to the Ahmedabad office of the Commissioner of Pension and Provident Fund, along with aetNs of Schedule for guidance and on receipt of instructions from Ahmedabad office of Commissioner of Pension and Provident Fund & finalization of such cases will be done.

4. The revision of pension/family pension will be done by the District Treasury Officer after careful verification of the pensionable service and revised pay scale provided in the Schedule of this Order, and further action is to be taken only if the revised pension is higher / than the present pension, payment is to be made effective 01.01.1997 or thereafter. With references to such cases, the District Treasury Officer will take action considering the details provided in Part-1 and 2 of the Schedule which is certified by the Head of Office/Department to be true and authentic. Naturally, for any mistake in the details shown in Part-i and 2 of the Schedule, the Head of concerned Office/Department will be responsible. A table land guideline giving detailed guidance for revision of service-pension and family-pension will be sent separately by the Commissioner of Accounts and Treasury to the District Treasury Officers, based on which they will be required to calculate revised pension.



5. The District Treasury Officer after preparing the Office Order of revision will send a copy to Commissioner, Pension and Provident Fund, Ahmedabad. Similarly, the cases of Primary Teachers and Panchayat pensioners are also to be sent to District Treasury Offices. Copies of orders in those cases are to be sent to concerned District Assistant Directors which will be verified by the commissioner and if any mistakes are found the same are to be notified to the concerned Treasury Officer, with copies to Commissioner, Accounts & Treasury, Ahmedabad and Finance Department.

111 6. In the procedure prescribed under Order dated 19.04.2000, Service Book was sent along with the cases of sanction of 50% pension and 30% family pension of the revised pay scale by the concerned department/office and after revised pension was sanctioned, the office of Commissioner of Pension and Provident Fund was making note of revised pension in the Service Book. This procedure will now stand changed and now the application in schedule of this Order will be sent by the concerned Division/Department/Office to the District Treasury Officer without Service Book, and after the concerned Division/Department/Office to the District Treasury Office - without Service Book, and after the concerned Division/Department/Office informed by the District Treasury Officer regarding sanction of 50% pension and 30% family pension of the revised pay scale, the concerned Division/Department/Office will record such note in the Service Book without fail.

7.. In the cases of pensioners receiving pension/family pension from the Sub-Treasuries and the cases of pensioners receiving pension/family pension through payment system of Public Sector Banks, will be required to be authorized by the District Treasury Officers.

8. The other conditions prescribed under Order dated 19.04.2000 will remain unchanged. From the date of this Order, such pension cases will be required to be sent to District Treasury Office. The cases submitted to the office of Provident Fund Commissioner before the date of this Order will be required to be finalized. This Order will also be applicable to the cases of Panchayat pensioners whose pension is sanctioned by the District Assistant Director.

By order and in the name of Governor of Gujarat

Shamji Patel  
Joint Secretary to the Govt., Finance Department

Attachment to the Finance Department NO.555/1099/GOI.1(2)/P dated 01.11.2000

**6.5** The procedure as above contemplated calculation and preparation of Pension Payment Orders @ 50% of the minimum pay as per the applicable pay scale applicable according to the post held by the pensioner at the time of retirement. In effect when Para 9.2. of the GR dated 13.4.2009 is read with GR dated 1.11.2000 and with the GR dated 23.2.2014, it provided that while computing the figure of pension the selection grade, higher pay shall not be considered but the post from which the petitioners retired will be considered.

**7.** The Division Bench, as is evident from the reproduction of paras hereinabove, categorically provided that, the stand of the government, while fixing pension by excluding selection grade, higher pay etc, was not in consonance with the pension policy by which the pension was to be fixed in the pay band plus grade pay corresponding to the pre-revised pay scale from which the pensioner had retired. Hence, the contention of the Government that pension had to be fixed on the basis of the post from which the pensioner had retired has to be ignored and the formula of re-computation was on the basis of the pay drawn including selection grade, higher scale etc. **It held that the truncated effect of the rider in not counting the selection pay scale of the pensioners restricted their right to receive pension revision on the corresponding pay scale and the same would amount to arbitrariness.**

**8.** Reading of the Government Resolution dated 13.04.2009 in its entirety leaves no manner of doubt that the entire class of pre-2006 retirees form a homogenous class. The Resolution unequivocally brings into effect the benefit of revision of pension to all pensioners who retired prior to 1.1.2006.

**9.** What the Division Bench in the case of **Prabhudas Barot and Others (supra)** did was to interpret the formula of computation of revised pension and held that while computing the pension, the formula, as envisaged by the Government Resolution dated 1.11.2000 and by the subsequent resolution dated 23.2.2014, which suggested a truncated revision by not including selection grade, higher pay scale for the purposes of revision of pension was not in consonance with the spirit of the scheme of providing relief of counting of pension for all pre-

2006 retirees. It is in this context that it held that, in computation of pension of pre-2006 retirees, selection grade, higher pay grade etc ought to be counted. It only tweaked the formula of computing pension for all pre-2006 retirees and did not bring into being a new concept or policy. The Division Bench in the case of **Prabhudas Barot and Others (supra)** placed reliance on the decision of the Supreme Court in the case of **State Of Rajasthan versus Mahendra Nath Sharma reported in (2015)9 SCC 540**. Relying on Para 19 of the aforesaid judgement, which we reproduce hereunder the Court held that the petitioners were entitled to their selection grade/higher grade being counted for computation of pension.

“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, 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** 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.**”

**10.** We may also add as to how a warning was sounded for the employer to prevent an employee to time and again enter into litigation. In that context we reproduce Para 20 which reads as under:

“20. 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. 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.**”

**11.** The locus classicus, as far as pensioners in context of cut-off date is the judgement of the Supreme Court in the case of **D.S. Nakara vs Union Of India reported in AIR 1983 SC**

**130.** There the Supreme Court categorically held that the fundamental principle is that Article 14 forbids class legislation. The Court further held that the purpose of classification must have a reasonable nexus based on an intelligible differentia. It held that if pensioners form a class, their computation cannot be by different formula affording unequal treatment solely on the ground that some have retired earlier and some have retired later. It will be in the fitness of things to reproduce the relevant paragraphs of **D.S.Nakara (supra)**

*“38. What then is the purpose in prescribing the specified date vertically dividing the pensioners between those who retired prior to the specified date and those who retire subsequent to that date? That poses the further question, why was the pension scheme liberalised? What necessitated liberalisation of the pension scheme?”*

*39. Both the impugned memoranda do not spell out the raison d’être for liberalising the pension formula. In the affidavit in opposition by Shri S.N. Mathur, it has been stated that the liberalisation of pension of retiring Government servants was decided by the Government in view of the persistent demand of the Central Government employees represented in the scheme of Joint Consultative Machinery. This would clearly imply that the preliberalised pension scheme did not provide adequate protection in old age and that a further liberalisation was necessary as a measure of economic security. When Government favourably responded to the demand it thereby ipso facto conceded that there was a larger available national cake part of which could be utilised for providing higher security to erstwhile government servants who would retire. The Government also took note of the 192 fact that continuous upward movement of the cost of living index as a sequel of inflationary inputs and diminishing purchasing power of rupee necessitated upward revision of pension. If this be the underlying intendment of liberalisation of pension scheme, can any one be bold enough to assert that it was good enough only for those who would retire subsequent to the specified date but those who had already retired did not suffer the pangs of rising prices and falling purchasing power of the rupee? What is the sum total of picture? Earlier the scheme was not that liberal keeping in view the definition of average emoluments and the absence of slab system and a lower ceiling. Those who rendered the same service earned less pension and are exposed to the vagary of rising prices consequent upon the inflationary inputs. If therefore, those who are to retire subsequent to the specified date would feel the pangs in their old age, of lack of adequate security, by what stretch of imagination the same can be denied to those who retired earlier with lower emoluments and yet are exposed to the vagaries of the rising prices and the falling purchasing power of the rupee. And the greater misfortune is that they are becoming older and older compared to those who would be retiring subsequent to the specified date. The Government was perfectly justified in liberalising the pension scheme. In fact it was overdue. But we find no justification for arbitrarily selecting the criteria for eligibility for the benefits of the scheme dividing the pensioners all of whom would be retirees but falling on one or the other side of the specified date*

*42. If it appears to be undisputable, as it does to us that the pensioners for the purpose of pension benefits form a class, would its upward revision permit a homogeneous class to be divided by arbitrarily fixing an eligibility criteria unrelated to purpose of revision, and would such classification be founded on some rational 194 principle? The classification has to be based, as is well settled, on some rational principle and the rational principle must have nexus to the objects sought to be achieved. We have set out the objects underlying the payment of pension. If the State considered it necessary to liberalise the pension scheme, we find no rational principle behind it for granting these benefits only to those who retired subsequent to that date simultaneously denying the same to those who retired prior to that date. If the liberalisation was considered necessary for augmenting social security in old age to government servants then those who retired earlier cannot be worst off than those who retire later. Therefore, this division which classified pensioners into two classes is not based on any rational principle and if the rational principle is the one of dividing pensioners with a view to giving something more to persons otherwise equally placed, it would be discriminatory. To illustrate, take two persons, one retired just a day prior and another a day just succeeding the specified date. Both were in the same pay bracket, the average emolument was the same and both had put in equal number of years of service. How does a fortuitous circumstance of retiring a day earlier or a day later will permit totally unequal treatment in the matter of pension? One retiring a day earlier will have to be subject to ceiling of Rs. 8,100 p a. and average emolument to be worked out on 36 months’ salary while the other will have a ceiling of Rs. 12,000 p.a. and average emolument will be computed on the basis of last ten months average. The artificial division stares into face and is unrelated to any principle and whatever principle, if there*

*be any, has absolutely no nexus to the objects sought to be achieved by liberalising the pension scheme. In fact this arbitrary division has not only no nexus to the liberalised pension scheme but it is counter productive and runs counter to the whole gamut of pension scheme. The equal treatment guaranteed in Art. 14 is wholly violated inasmuch as the pension rules being statutory in character, since the specified date, the rules accord differential and discriminatory treatment to equals in the matter of commutation of pension. A 48 hours difference in matter of retirement would have a traumatic effect. Division is thus both arbitrary and unprincipled. Therefore the classification does not stand the test of Art. 14.*

*45. Let us clear one misconception. The pension scheme including the liberalised scheme available to the Government employees is non-contributory in character. It was not pointed out that there is something like a pension fund. It is recognised as an item of expenditure and it is budgeted and voted every year. At any given point of time there is no fixed or predetermined pension fund which is divided amongst eligible pensioners. There is no artificially created fund or reservoir from which pensioners draw pension within the limits of the fund, the share of each being extensive with the available fund. The payment of pension is a statutory liability undertaken by the Government and whatever becomes due and payable is budgeted for. One could have appreciated this line of reasoning where there is a contributory scheme and a pension fund from which alone pension is disbursed. That being not the case, there is no question of pensioners dividing the pension fund which, if more persons are admitted to the scheme, would pro rata affect the share. Therefore, there is no question of dividing the pension fund. Pension is a liability incurred and has to be provided for in the budget. Therefore, the argument of divisions of a cake, larger the number of sharers, smaller the share and absence of residue and therefore by augmentation of beneficiaries, pro rata share is likely to be affected and their absence making relief impermissible, is an argument born of desperation, and is without merits and must be rejected as untenable.*

*47. That takes us to the last important contention of the learned Attorney General. It was urged that the date from which the scheme becomes operative is an integral part of the scheme and the doctrine of severability cannot be invoked. In other words, it was urged that date cannot be severed from the main object of the scheme because the Government would have never offered the scheme unless the date was an integral part of it. Undoubtedly when an upward revision is introduced, a date from which it becomes effective has to be provided. It is the event of retirement subsequent to the specified date which introduces discrimination in one otherwise homogeneous class of pensioners. This arbitrary selection of the happening of event subsequent to specified date denies equality of treatment to persons belonging to the same class, some preferred and some omitted. Is this eligibility qualification severable?*

**11.1** What has been held by the Supreme Court in the aforesaid decision is that, pension is not a bounty. That the pensioners for the purpose of pension benefits form a class. An upward revision for a homogeneous class cannot be divided by arbitrarily fixing a cut-off date unrelated to purpose of revision.

**11.2** The case on hand exhibits rank arbitrariness on part of the State. Once a homogeneous class of pensioners has been created, by virtue of a Government Resolution dated 13.04.2009, in as much as the class is of all pensioners pre-2006 and the State as defined who such pensioners and pension is by emphasising that such pensioners and pension are “existing pensioners” and their “existing pension” is to be counted. Merely because, the formula, as envisaged in Para 9.2 of the Resolution is modified for computation of working out the figure pension, the State Government could not have created a class within the class by bringing in the Government Resolution dated 12.3.2018 and further restrict the benefit by a simple executive fiat dated 10.08.2018 to truncate the benefit of the revised formula to only those pensioners who had approached the Court and for those who had not, it curtailed the benefit only with effect from 1.3.2018. Such an exercise amounted to creating an artificial distinction between all the pre-2006 retirees who otherwise fell under the umbrella of the Government Resolution dated 13.04.2019.

**12.** The argument of the State that it was open for them to prescribe a cut-off date when a new scheme is brought into effect, cannot be disputed. Even in the case of **D.S. Nakara (supra)** that is accepted. What the State, in its perception understands it as a new scheme and justifies the cut-off date of 1.3.2018 is entirely a misconceived submission. The question at hand was a question of a formula of revision of pay and its

consequential working out of revision in pension. It was not a case of grant of pension for the first time. Only a modality of computing the pension quantum was required to be determined. It is in this context that we may gainfully refer to the decision of the Supreme Court in the case of **U. Raghendra Acharya and Ors. Vs. State of Karnataka and Ors.** [AIR 2006 SC 2145].

“22. The State while implementing the new scheme for payment of grant of pensionary benefits to its employees, may deny the same to a class of retired employees who were governed by a different set of rules. The extension of the benefits can also be denied to a class of employees if the same is permissible in law. The case of the appellants, however, stands absolutely on a different footing. They had been enjoying the benefit of the revised scales of pay. Recommendations have been made by the Central Government as also the University Grant Commission to the State of Karnataka to extend the benefits of the Pay Revision Committee in their favour. The pay in their case had been revised in 1986 whereas the pay of the employees of the State of Karnataka was revised in 1993. The benefits of the recommendations of the Pay Revision Committee w.e.f. 1.1.1996, thus could not have been denied to the appellants.

23. The stand of the State of Karnataka that the pensionary benefits had been conferred on the appellants w.e.f. 1.4.1998 on the premise that the benefit of the revision of scales of pay to its own employees had been conferred from 1.1.1998, in our opinion, is wholly misconceived. Firstly, because the employees of the State of Karnataka and the appellants, in the matter of grant of benefit of revised scales of pay, do not stand on the same footing as revised scales of pay had been made applicable to their cases from a different date. Secondly, the appellants had been given the benefit of the revised scales of pay w.e.f. 1.1.1996. It is now well settled that a notification can be issued by the State accepting the recommendations of the Pay Revision Committee with retrospective effect as it was beneficent to the employees. Once such a retrospective effect is given to the recommendations of the Pay Revision Committee, the concerned employees despite their reaching the age of superannuation in between the said dates and/or the date of issuance of the notification would be deemed to be getting the said scales of pay as on 1.1.1996. By reason of such notification as the appellants had been derived of a vested right, they could not have been deprived therefrom and that too by reason of executive instructions.

24. The contention of the State that the matter relating to the grant of pensionary benefits vis-à-vis the revision in the scales of pay stands on different footing, thus, must be rejected.

25. Pension, as is well known, is not a bounty. It is treated to be a deferred salary. It is akin to right of property. It is co-related and has a nexus with the salary payable to the employees as on the date of retirement.

26. These appeals involve the question of revision of pay and consequent revision in pension and not the grant of pension for the first time. Only the modality of computing the quantum of pension was required to be determined in terms of the notification issued by the State of Karnataka. For the said purpose, Rule 296 of the Rules was made applicable. Once this rule became applicable, indisputably the computation of pensionary benefits was required to be carried out in terms thereof. The Pension Rules envisage that pension should be calculated only on the basis of the emoluments last drawn. No order, therefore, could be issued which would be contrary to or inconsistent therewith. Such emoluments were to be reckoned only in terms of the statutory rules. If the State had taken a conscious decision to extend the benefit of the UGC pay scales w.e.f. 1.1.1996, to the appellants allowing them to draw their pay and allowances in terms thereof, we fail to see any reason as to why the pensionary benefits would not be extended to them from the said date.

27. In fact the status of the appellants that they were at par with teachers of the Government colleges was not disputed. A Division Bench of the Karnataka High Court in *V.P. Babar & Ors. vs. State of Karnataka* (W.P. Nos.32163-32208/1998) has clearly held so. It has not been disputed that the said judgment has become final as the State of Karnataka did not prefer any appeal thereagainst.

28. The impugned orders furthermore is opposed to the basic principles of law inasmuch as by reason of executive instructions an employee cannot be deprived of a vested or accrued right. Such a right to draw pension to the extent of 50% of the emoluments, computed in terms of the rules, w.e.f. 1.1.1996, vested to the appellants in terms of Government notification read with Rule 296 of the Rules.

29. As the amount calculated on the basis of the revised scales of pay on and from 1.1.1996 to 31.3.1998 have not been paid to the appellants by the State of Karnataka as *ex gratia*, and in fact was paid by way of emoluments to which the appellants became entitled to in

terms of their conditions of service, which in turn are governed by the statutory rules, they acquired a vested right therein. If the appellants became entitled to the benefits of the revised scales of pay, and consequently to the pension calculated on the said basis in terms of the impugned rules, there would be reduction of pension with retrospective effect which would be violative of Articles 14 and 16 of the Constitution of India.

30. In *Chairman, Railway Board and Ors. vs. C.R. Rangadhamaiah and Ors.* [1997 (6) SCC 623], a Constitution Bench of this Court opined:

“Apart from being violative of the rights then available under Articles 31(1) and 19(1)(f), the impugned amendments, insofar as they have been given retrospective operation, are also violative of the rights guaranteed under Articles 14 and 16 of the Constitution on the ground that they are unreasonable and arbitrary since the said amendments in Rule 2544 have the effect of reducing the amount of pension that had become payable to employees who had already retired from service on the date of issuance of the impugned notifications, as per the provisions contained in Rule 2544 that were in force at the time of their retirement.”

31. The appellants had retired from service. The State therefore could not have amended the statutory rules adversely affecting their pension with retrospective effect.

32. In *Subrata Sen and Ors. vs. Union of India and Ors.* [2001 (8) SCC 71], a Division Bench of this Court applying the principles laid down in *D.S. Nakara vs. Union of India* [1983 (1) SCC 305], observed:

“In our view the aforesaid para does not in any way support the contention of the respondents. On the contrary, on parity of reasoning, we would also reiterate that let us be clear about this misconception. Firstly, the Pension Scheme including the liberalised scheme available to the employees is non-contributory in character. Payment of pension does not depend upon Pension Fund. It is the liability undertaken by the Company under the Rules and whenever becomes due and payable, is to be paid. As observed in *Nakara case* (1983 (1) SCC 305), pension is neither a bounty, nor a matter of grace depending upon the sweet will of the employer, nor an *ex gratia* payment. It is a payment for the past services rendered. It is a social welfare measure rendering socio-economic justice to those who in the heyday of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in the lurch. Maybe that in the present case, the trust for Pension Fund is created for income tax purposes or for smooth payment of pension, but that would not affect the liability of the employer to pay monthly pension calculated as per the Rules on retirement from service and this retirement benefit is not based on availability of Pension Fund. There is no question of pensioners dividing the Pension Fund or affecting the pro rata share on addition of new members to the Scheme. As per Rule 1 quoted above, an employee would become a member of the Fund as soon as he enters into a specified category of service of the Company. Under Rule 8, trustees may withhold or discontinue a pension or annuity or any part thereof payable to a member or his dependants, and that pension amount is nonassignable. Further, the payment of pension was the liability of the employer as per the Rules and that liability is required to be discharged by the Union of India in lieu of its taking over of the Company. The rights of the employees (including retired) are protected under Section 11 of the *Burmah Oil Company [Acquisition of Shares of Oil India Limited and of the Undertakings in India of Assam Oil Company Limited and the Burmah Oil Company (India Trading) Limited] Act, 1981.*”

**12.1** While introducing the New Pension Scheme, it may be open for the State to some extent to deny the same to a class of retired employees who were governed by a different set of rules but once it is accepted that benefits are conferred under same scheme or rules governing the pension, no discrimination can be made. It can also be possible that the State creates a cut-off date when a new scheme is introduced considering its financial resources but the same shall not be the case when the persons belong to a homogeneous class. The distinction therefore is clear. Once the Division Bench of this Court in the case of **Prabhudas Barot and Others (supra)** held that while computing the quantum of pension in case of retirees governed by the Government Resolution dated 13.04.2009, the selection grade/higher grade has to be included, it would automatically render the State liable, in fact, obligatory to extend the benefit to all pre-2006 retirees, irrespective of the fact of they having approached the Court or not. That principle has well been enunciated in the case of **Mahendra Nath Sharma (supra)**.

**12.2** Even in the case of **K.T. Veerappa vs. State Of**

**Karnataka reported in (2006)9 SCC 406** identically situated employees are given the same benefit. Para 16 of the judgement reads as under :

*“16. The defence of the State Government that as the appellants were not the petitioners in the writ petition filed by 23 employees of the respondent- University to whom the benefit of revised pay scales was granted by the Court, the appellants are estopped from raising their claim of revised pay scales in the year 1992-94, is wholly justified, patently irrational, arbitrary and discriminatory. As noticed in the earlier part of this judgment, revised pay scales were given to those 23 employees in the year 1991 when the contempt proceedings were initiated against the Vice- Chancellor and the Registrar of the University of Mysore. The benefits having been given to 23 employees of the University in compliance with the decision dated 21.6.1989 recorded by the learned Single Judge in W.P. Nos. 21487-21506/1982, it was expected that without resorting to any of the methods the other employees identically placed, including the appellants, would have been given the same benefits, which would have avoided not only unnecessary litigation but also the movement of files and papers which only waste public time.”*

**13.** The argument of the State that it has huge financial implications is also misconceived. That argument was advanced even before the Division Bench in the case of **Prabhudas Barot and Others (supra)**. The relevant paras of the Apex Court in case of **Mahendra nath Sharma (supra)** quoted therein read as under:

*“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 presenti and the State cannot take a plea of financial burden to deny the legitimate dues of the respondents.”*

**13.1** Moreover once the State had taken a conscious decision to extend the benefits of Revision Of Pension on the basis of the 6th Pay Commission’s recommendations to the pre 2006 retirees, the question of financial implications would be irrelevant to extend the benefit of a revised formula of computation to a part of the homogenous class of pre-2006 retirees. The distinction to grant the benefit to the pre-2006 pensioners, who were not the petitioners, notionally with effect from 1.3.2018, by a executive fiat, seeking to fall back on the resolution dated 12.3.2018, whereas the benefits were restricted in actual terms to the persons who had approached the Court is also contrary to the law laid down by the Supreme Court in the case of **K.T. Veerappa (supra)** and therefore on this count also the Government Resolution dated 12.3.2018 and the communication dated 10.08.2018 deserve to be quashed and set aside.

**14.** The submissions made by learned Assistant Government Pleader to which reference is made in earlier paragraph of this judgement are self defeating inasmuch as class of pensioners as homogeneous namely recipients of pension prior to 2006 remain undisputed. A line of difference drawn by the authorities is mainly on the basis of huge financial burden as projected if benefits are to be given to pensioners whose entitlement to receive pension with effect from 01.01.2016 are compared with those pensioners who approached this Court as such remain undisputed. That only ground for denial of such benefit by treating the period from 01.01.2006 to 12.02.2018 as notional pension and from 12.03.2018 the petitioners are to be paid based on formula of revised pension for which recourse is taken to Government Resolution dated 13.04.2009 and in our view two basic arguments of the State of Gujarat so canvassed

by learned Assistant Government Pleader namely revision of pension is not a basic fundamental right of the petitioners and granting them actual benefit with effect from 01.01.2006 which may result into huge financial burden are misconceived and on a wrong notion about entitlement of pensioners who are treated alike as pre 2006 recipients of pension and form homogeneous class could not have been discriminated simply because they failed to approach this Court in time or along with association of pensioners who ventilated grievances not only about member pensioners but also similarly situated all such pensioners. The state authorities are time and again told not to discriminate similarly situated pensioners on the ground of prescribing any cut off line when the issue is about receiving any benefit and revision of pension from time to time cannot be said to be not forming part of the right to receive pension which is accruing and recurring. This act of grouping the pensioners into different groups on the basis of a cut off date for granting them revised pension is arbitrary and unconstitutional.

**14.1** A classification based on entitlement to receive revised pension is not in question but by introducing the concept of ‘notional pension’ from a particular date with prospective effect and thus a cut off line is alien to pension regime and that too is based on so called financial burden and it creates unreasonable classification amongst pre-2006 pensioners a homogeneous class which is irrational and has no nexus with the object sort to be achieved namely to pay revised pension to all pre-2006 pensioners. Therefore, it is unjust, unreasonable, discriminatory, arbitrary and colourable exercise of powers by the State authorities – respondents herein and therefore violative of Article 14 of the Constitution of India as well as contrary to pronounced decisions to which reference is made in preceding paragraphs of the judgement.

**15.** Once having agreed to extend the benefit of the recomputed formula of computing pension for pre-2006, based on the root of the benefit, namely the Government Resolution dated 13.04.2009, by only, changing the formula of working the amount, without disturbing the soul of the 13.04.2009 resolution, was accepted, to discriminate solely between a homogeneous class of the pre-2006 retirees, on the fact of such petitioners not having approached the Court, though similarly situated, is violative of Article 14 of the Constitution Of India.

**16.** Accordingly we quash and set aside the Government Resolution dated 12.3.2018 read with the communication dated 10.08.2018 in so far as it limits/restricts the revision of pension only to those petitioners who were before this Court as ultra vires and arbitrary and violative of Articles 14 and 19 of the Constitution Of India. We therefore direct the Respondents to grant arrears of enhanced pension based on the decision in the case of **Prabhudas Barot and Others (supra)** to all the pre-2006 pensioners with effect from 1.1.2006 on actual basis. **The Petitioners shall pay the arrears of the revised pension as paid in the case of the litigants in the case of Prabhudas Barot and Others (supra) and all other similarly situated pre-2006 retirees, in terms of such directions, without them having to approach this Court, within a period of 6 weeks from the date of receipt of the certified copy of this Order, with interest at the rate of 6% per annum, from the date they became entitled to till the date of actual payment.**

**The petitions are accordingly allowed. Rule is made absolute with the costs of Rs.5,000/- each to be paid to each individual petitioner for being compelled to enter into litigation.**

**(ANANTS.DAVE,ACJ) (BIREN VAISHNAV,J)**

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