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सन २०१० च्या रेग्युलेशन्स बाबतीत राज्याच्या मंत्रिमंडळाने त्यावेळी घेतलेल्या भुमिकेसारखीच भूमिका आज सन २०१९ मध्ये राज्य मंत्रिमंडळाने घेतलेली असतांना उच्च शिक्षण विभागावर असे कोणते आभाळ कोसळलेले आहे की, त्या विभागाने सन २०१८ चे विद्यापीठ अनुदान आयोगाचे रेग्युलेशन्स खुंटीला टांगून ठेवण्याचा निर्णय तर घेतलाच पण त्याचबरोबर भारतीय घटनेच्या तरतुर्दींच्या विरोधात व विद्यापीठ अनुदान आयोग कायद्याशी संपूर्णपणे विसंगत असे शासननिर्णय एकामागून एक निर्गमित करण्याचा सपाटा लावलेला आहे.

(ठरावाचा परिच्छेद ३० पहा.)

MAHARASHTRA FEDERATION OF UNIVERSITY & COLLEGE TEACHERS' ORGANISATIONS (MFUCTO)
महाराष्ट्र प्राध्यापक महासंघाच्या कार्यकारी मंडळाच्या रविवार, दिनांक २३ जून २०१९ रोजीच्या
बैठकीत संमत करण्यात आलेला ठराव

- 99. विद्यापीठ अनुदान आयोगाने प्रस्तावित केलेल्या व केंद्रशासनाने मान्य केलेल्या सातव्या वेतन आयोगाशी समकक्ष वेतनश्रेण्यांच्या प्रस्तावांची ज्या तन्हेने महाराष्ट्रात अंमलवजावणी होत आहे त्याबावतीत महाराष्ट्र प्राध्यापक महासंघाच्या कार्यकारी मंडळाने रविवार, दिनांक २१ एप्रिल २०१९ रोजीच्या बैठकीत संमत केलेला १६ परिच्छेदांचा एक तपशीलवार ठराव दिनांक २९ व ३० एप्रिल २०१९ रोजी राज्याच्या मा.मुख्यमंत्र्यांना व मा.उच्च शिक्षण मंत्र्यांना यथोचितरित्या संघटनेतर्फे सादर करण्यात आला. मात्र मा.उच्च शिक्षण मंत्र्यांनी त्याबावतीत गेली दोन महिने कोणतीही कार्यवाही केली नाही. निदान या ठरावावर ते संघटनेशी चर्चा करतील ही अपेक्षासुद्धा फोल ठरली. त्यामुळेच राज्याच्या उच्च शिक्षण विभागाने घटनाबाह्य व कायद्याला सोडून एका मागून एक शासनिर्णय निर्गमित करण्याचा सपाटा लावला आहे. त्यातील बेकायदेशीरपणा सर्व तथ्यांसह लोकांसमोर विशेषतः विद्यार्थ्यांसमोर 'उघडे' करण्याच्या कामाला सुख्वात करण्याशिवाय कोणताही पर्याय राहिलेला नाही असे या संघटनेला वाटते. त्यामुळे याबावतचे आणखी तपशील नमूद करण्यात येत आहेत.
- 9८. सबंध देशभर उच्च शिक्षणाचा दर्जा ठरविणे व निरनिराळ्या राज्यात असा दर्जा कायम ठेवण्याच्या बाबतीत समन्वय राखणे हा विषय भारतीय संविधानाच्या सातव्या परिशिष्टातील केंद्रसूचीत ६६व्या क्रमांकावर समाविष्ट असल्यामुळे घटनेने ते संपूर्णपणे केंद्रशासनाकडे सोपविलेले काम असून केंद्र शासनाने "१९५६ चा विद्यापीठ अनुदान आयोग अधिनियम" या कायद्यान्वये स्थापन केलेल्या विद्यापीठ अनुदान आयोगामार्फत ही कार्ये पार पाडली जातात. १९५६ च्या कायद्याच्या कलम २६ अन्वये रेग्युलेशन्स करण्याचे अधिकार विद्यापीठ अनुदान आयोगाला असून त्याबावतीत पहिली आणि महत्त्वाची अट अशी आहे की, असे रेग्युलेशन्स केंद्र शासनाच्या संमतीनेच करता येतील. दुसरी अट अशी आहे की, ते रेग्युलेशन्स भारत शासन राजपत्रामध्ये प्रकाशित करावे लागतील.
- 9९. सन २०१० पूर्वी विद्यापीठ अनुदान आयोगाने १९९१ ते २००९ या काळात निर्गमित केलेले रेग्युलेशन्स हे फक्त "शिक्षकीय पदाची अर्हता" या एकाच विषयाभोवती फिरत राहिले. विद्यापीठीय व महाविद्यालयीन शिक्षकांची भरती व पात्रता, थेट भरती व बढतीने भरती, निवड समितीची रचना, आश्वासित प्रगती योजनेबाबतचे तपशील, रजेबाबतच्या तरतुदी, संशोधन उत्तेजनार्थ द्यावयाचे अनुदान, प्रोबेशनचा कालखंड व कन्फर्मेशनच्या तरतुदी, कामाचे

- तास, कार्यभाराचे तपशील, सेवा ज्येष्ठता ठरविणे व सेवेचा करारनामा व वेतनश्रेण्या या सर्व वावतीत बंधनकारक रेग्युलेशन्स करण्याचा अधिकार असून सुद्धा विद्यापीठ अनुदान आयोगाने सन २०१० पर्यंत याबावतीत या अधिकारांचा वापर केला असे दिसून येत नाही. ३० जून २०१० रोजी या सर्व वावतीत स्थिती व दर्जा ठरवून देणारे रेग्युलेशन्स विद्यापीठ अनुदान आयोगाने निर्गमित केले. त्यावेळेला महाराष्ट्रातील प्रतिसाद कसा होता? यावावतची माहिती करून घेणे आवश्यक आहे.
- २०. फार मोठ्या संघर्षानंतर कां होईना केंद्रशासनाने व विद्यापीठ अनुदान आयोगाने सहाव्या वेतन आयोगाशी समकक्ष वेतनश्रेण्यांचा पाठविलेला प्रस्ताव जसाच्या तसा अंमलात आणण्याचा निर्णय महाराष्ट्र शासनाने घेतला. त्यासाठी १२ ऑगस्ट २००९ चा शासननिर्णय निर्गमित झाला. त्यानंतर सन २०१० मध्ये विद्यापीठ अनुदान आयोगाचे उपरोक्त रेग्युलेशन्स निर्गमित झालेले होते.
- २१. विद्यापीठ अनुदान आयोगाने व केंद्रशासनाने मान्य केलेल्या सहाव्या वेतन आयोगाशी समकक्ष वेतनश्रेण्या धोरणात्मक निर्णय म्हणून जशाच्या तशा महाराष्ट्रात अंमलात आणण्याचा निर्णय त्यावेळेला महाराष्ट्र शासनाने घेतला होता. याची तपशीलवार माहिती मा.सर्वोच्च न्यायालयाने दिनांक ५ जानेवारी २०१७ रोजी दिलेल्या (Civil Appeal No. 115-116 of 2017) निर्णयाच्या परिच्छेद ६४ व ६५ मध्ये नमूद आहे. ती शब्दशः पुढीलप्रमाणे :-
- "64. However, after adopting such a policy the Government of India thought it fit to suggest to the States by its communication dated 31.12.2008 that the States may also adopt the policy of the Government of India if they so choose. As an incentive for the States to adopt the policy, the Government of India offered to undertake a substantial portion of the financial burden of the States resulting from the adoption of such policy. However, such an undertaking is limited only for a period of five years.
- 65. Accepting the offer made under the scheme of the Union of India, the State of Maharashtra issued the GR dated 12.8.2009 revising the pay scales of the cadres specified

असा निर्णय राज्याच्या मंत्रिमंडळाने घेतलेला आहे असे खुद्द राज्याच्या मा.मुख्यमंत्र्यांच्या सचिवालयाने जाहीर केल्यानंतर शासननिर्णय काढतांना तेवढीच तरतूद वेगळी लपवून ठेवण्याचा किंवा त्या तरतुदीचा समावेश शासननिर्णयामध्ये न करण्याचा अधिकार उच्च शिक्षण विभागातील नोकरशाहीस भारतीय घटनेच्या कोणत्या कलमान्वये बहाल केलेला आहे?

(ठरावाचा परिच्छेद ३१ (४) पहा.)

therein (essentially teaching staff) of the "universities' colleges and other higher educational institutions". By the said GR, the State of Maharashtra declared the revision of the pay scales of the teaching staff of the educational institutions. It is stated in the counter affidavit filed before this Court on behalf of the State:

3. Isay that as things stand today, the Government of Maharashtra has taken a policy decision to implement the recommendations of 6th Pay Commission to teaching and non-teaching staff of

government-run and government-aided educational institutions only."

२२. "उच्च शिक्षणाचा दर्जा ठरविणे" हा विषय केंद्रसूचीत (घटनेतील सातवे परिशिष्ट : यादी पहिली : क्रमांक ६६) असल्यामुळे त्यावर केंद्र सरकारचाच अधिकार चालतो. १९७६ पूर्वी (४२ व्या घटनादुरुस्ती पूर्वी) "विद्यापीठ शिक्षण" हा विषय राज्यसूचीमध्ये (घटनेतील सातवे परिशिष्ट : यादी दुसरी : क्रमांक ११) होता. पण १९७६ नंतर तो विषय राज्यसूचीत राहिला नाही, तर तो समवर्ती सूचीमध्ये (घटनेतील सातवे परिशिष्ट : यादी तिसरी : क्रमांक २५) समाविष्ट झाला. याची मोठी तपशीलवार माहिती मा.सर्वोच्च न्यायालयाच्या उपरोक्त निर्णयाच्या परिच्छेद ४१,४२ व ४३ मध्ये

UNIVERSITY GRANTS COMMISSION

Clarifications on Frequently Asked Questions on UGC Regulations on Minimum Qualifications for Appointment of Teachers and other Academic staff in Universities and Colleges and measures for the maintenance of standards in Higher Education, 2010

F.17-6/2013(PS/MISC) : SEPTEMBER, 2015

UGC has been receiving a large number of queries from the Stakeholders viz. Universities, Colleges and individuals related to the appointment of Assistant Professors as per UGC Regulations on Minimum Qualifications for Appointment of Teachers and other Academic staff in Universities and Colleges and measures for the maintenance of standards in Higher Education, 2010. In view of larger public interest, following clarifications on Frequently Asked Questions (FAQs) on the above subject are issued:

	Query	Clarification
2.	Are the State Governments empowered to raise the qualifying standards prescribed under the regulations? Are the State Governments empowered to incorporate additional qualifying standards over and above those prescribed under UGC?	UGC has prescribed the minimum qualifications for appointment of teachers and other academic staff through "UGC Regulations on Minimum Qualifications for Appointment of Teachers and other Academic staff in Universities and Colleges and measures for the maintenance of standards the regulations of in Higher Education, 2010" amended from time to time. The Appointing Authority may raise the qualifying standards without deviation from the minimum qualifications prescribed by UCC; if it so desires.
3.	When UGC Regulation only provides for minimum 55% at Master's degree level in the relevant subject, does the State Govt have powers to insist that the candidates must possess qualification in relevant subject at the under graduate level? While assessing academic background of a candidate as per Table-2(c) of appendix-III should a bachelor degree be considered or not. If considered, should that be in relevant subject or any subject or discipline?	The 'Good Academic Record' has been left to be defined by the concerned University/Appointing Authority.
4.	What does relevant subject mean by provision in Para 4.4.0? When recruiting a candidate for 'Commerce' subject; does a candidate having done MBA (Management Subject) become relevant subject for Commerce?	The relevance of subject or inter-disciplinary nature of subject is required to be decided by the concerned University/Appointing Authority with the help of subject experts in the concerned/relate field as per its requirement UGC Regulations, 2010 defines the same.
5.	While considering good academic record when a candidate has changed discipline at different levels of UG/PG/NET/Ph.D; should that be considered?	As clarified under Point No.3 & 4 above.
6.	Are the State Governments empowered not to accede to the regulation under local circumstances, on the condition of bearing entire establishment cost?	The UGC Regulations are mandatory in nature and are required to be followed in their letter and spirit without any deviation therefrom.
7.	If a candidate has a different subject at UG/PG level and applies for the Assistant Professor in different subject, is he eligible for applying for the post?	All the cases that pertain to relevance of subject/interdisciplinary nature of subject and 'Good Academic Record' are required to be decided as clarified under Point No.3 & 4 above.
8.	A declaration on incorporation of additional selection criteria amounts to 'change in rules of the game' subsequently and unacceptable in the eyes of the UGC?	As clarified under Point No.1 & 2 above.
9.	How 'good academic record' at UG level is defined in the context of present UGC Regulation? Does Master Degree have any relevance with undergraduate degree or both are to be considered with no relevance with each other?	'Good Academic Record' is mandatorily required to be considered for the appointment of Assistant Professor. However, relevance may be decided as clarified under Point No.1 and 2 above.
10.	For conferring a master degree, is it pre-requisite that a candidate must hold bachelor degree at least in that relevant subject?	As per UGC (Minimum Standards of Instructions for the Grant of the Master's Degree through Formal Education) Regulations, 2003, no student shall be eligible for admission to a Master's Degree programme in any of the faculties unless he/she has successfully completed three years of an undergraduate degree and as clarified under Point No.4 with regard to relevance of subject.

दिलेली आहे. ती शब्दशः पुढीलप्रमाणे :-

"41. Under the Constitution of India, both the Parliament and the Legislative Assemblies of the States are conferred with the power to legislate upon various aspects of education.

The power to legislate with respect to the field of education vested basically with the State Legislatures under Article 246 (3) read with Entry 11 of List II of the Seventh Schedule as it stood prior to the Constitution 42nd Amendment.

UNIVERSITY GRANTS COMMISSION

Guidelines for Recruitment of Faculty in Universities, Colleges and Institutions Deemed to be Universities

PREAMBLE: The University Grants Commission (UGC) has the mandate to take steps for the promotion and coordination of university education and for determination and maintenance of standards of teaching, examination and research in Universities, Colleges and Institutions Deemed to be Universities (i.e. in Higher Educational Institutions or "HEIS"). The University Grants Commission (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulations, 2018 provides for minimum qualifications for appointment and other service conditions of University and College teachers and cadres of Librarians, Directors of Physical Education and Sports for maintenance of standards in higher education and revision of pay-scales.

Shortage of quality teaching faculty in HEIs is one amongst the many issues presently confronting the higher education system in the country. This is also affecting the quality of higher education. Therefore, these guidelines should be followed by HEIs to ensure timely filling up of vacant faculty posts with appropriately eligible and competent candidates.

SELECTION PROCEDURE

- 1. HEIs should follow the selection process as per their Acts, Statutes or constituent documents and in accordance with the University Grants Commission (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulations, 2018.
- 2. HEIs should, however, ensure that all the vacant posts, along with the reservations details, are uploaded on the online portal https://nherc.in. The monitoring of the filling up of the vacancies would be done by the MHRD and UGC through this portal.

UNIVERSITY GRANTS COMMISSION SECRETARY PROF. RAJNISH JAIN,

(Ministry of Human Resource Development, Govt. of India)

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D.O.No.F.1-14/20019(CPP-II)

4th JUNE, 2019

Sub. : Guidelines for Recruitment of Faculty in Universities, Colleges and Institutions Deemed to be Universities.

Respected Madam/Sir,

As you are aware, the shortage of quality teaching faculty in Higher Education Institutions is a major concern and requires to be addressed immediately for improving the quality of Higher Education. To address this issue, the UGC has prepared the Guidelines for Recruitment of Faculty in Universities, Colleges and Institutions Deemed to be Universities outlining the selection procedure and the time frame for recruitment. A copy of the Guidelines is enclosed

All the Universities, Colleges and Institutions Deemed to be Universities are hereby requested that the enclosed Guidelines shall be adhered to in letter and spirit.

You are requested to kindly take steps to ensure that the vacancies in the University as well as the Colleges to your University are filled at the earliest.

With kind regards.

Yours sincerely, (Rainish Jain)

Encl : As above.

To the Vice-Chancellors of all the Universities.

3. HEIs should initiate and complete the selection process within a period of 6 months in terms of the schedule given below.

Time Frame for Recruitment : HEIs should follow the time-frame of six months set out below for filling up of vacant teaching posts:

S.No. Activity Description Time frame

S.No.: 1.: Activity: Identification of vacancies

Description: Assessment of number of existing vacant teaching posts and those likely to fall vacant during next six months along with the reserved posts for various categories as per the reservation roster in various departments/schools of the HEIs and notifying on HEI's website and MHRD online portal.

Time frame: Within 15 days from the date of initiation of recruitment process.

S.No.: 2.: **Activity**: Permission for filling up vacancies

Description: The Competent Authority will permit filling up of vacancies within 30 days from the date of sending the proposal by the HEI, failing which it would be considered as deemed to be approved.

Time frame: Within next 30 days

S.No.: 3.: **Activity:** Release of advertisement for vacancies

Description: Advertisement of vacant posts in the National Dailies, Employment News and HEI Website with one month's notice period for receiving applications.

Time frame: Within next 15 days.

S.No.: 4. : **Activity:** Constitution of Selection Committee

Description : Constitution of Selection Committee as per the provisions made under the Acts and Statutes of the HEI.

Time frame: Within next 15 days. This may be done simultaneously with Activity No. 2 and 3 above

S.No.: 5. : **Activity:** Fixing of Dates of the Selection Committee meetings

Description : Fixing of dates of the Selection Committee and confirmation from Members for attending the selection process.

Time frame: Within next 15 days

S.No.: 6. : **Activity:** Scrutiny of Applications

Description : Scrutiny of applications and issue of interview letters to shortlisted candidates and uploading on HEI website.

Time frame : Within next 30 days

S.No.: 7. : **Activity:** Conduct of interviews

Description : Conduct of interview and selection of candidates by the Selection Committee.

Time frame: Within next 30 days

S.No.: 8. : **Activity :** Approval of the Competent authority

Description : Approval of statutory authority of the HEI and issue of appointment letter and uploading on HEI website and online portal

Time frame: Within next 30 days

The selection process should be strictly in accordance with the University Grants Commission (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulations, 2018 and as amended from time to time.

Violations of the aforesaid Guidelines may lead to appropriate action by the UGC against the institutions including withholding the grants.

Secretary

University Grants Commission

Parliament is exclusively authorised under Article 246(1) to make laws with respect to various educational institutions specified under Entries 63 to 66^{26} (both inclusive) of List I.

- **42.** Original Entry 25 of the List III indicated the concurrent field of legislative authority (of the Parliament as well as the State Legislature) with reference to certain aspects of the education came to be substituted²⁷.
- 43. By the 42nd amendment of the Constitution, Entry 11 of List II²⁸ was omitted and Entry 25 of List III was substituted. Entire field of legislation with regard to education became the subject matter of Concurrent List. Entry 25 now reads:

Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour."

भारतीय संविधानाच्या सातव्या परिशिष्टामध्ये क्रमांक ६६ वर नमूद असलेल्या विषयावर फक्त केंद्रशासनाचाच अधिकार चालतो असे नमूद करून २६व्या तळटीपेमध्ये मा.सर्वोच्च न्यायालयाने तो विषय जसाच्या तसा नमूद केलेला आहे. शब्दशः पृढीलप्रमाणे:-

- "66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions."
- २३. मा.सर्वोच्च न्यायालयाच्या निर्णयामध्ये जी उपरोक्त माहिती नमूद आहे तो निर्णय २०१७ या वर्षीचा आहे. सन २०१० मध्ये रेग्युलेशन्स विद्यापीठ अनुदान आयोगाने निर्गमित केले त्यावेळी त्याची सुरूवातच मुळात कोणत्या अधिकारान्वये हे रेग्युलेशन्स तयार करण्यात येत आहेत याच्या उल्लेखाने होते. तो उल्लेख शब्दशः पृढीलप्रमाणे :-

"No. F.3-1/2009: 30 June, 2010: In exercise of the powers conferred under clause (e) and (g) of subsection (1) of Section 26 of University Grants Commission Act, 1956 (3 of 1956), and in pursuance of the MHRD O.M.No. F.23-7/2008-IFD dated 23rd October, 2008, read with Ministry of Finance (Department of Expenditure) O.M.No.F.1-1/2008-IC dated 30th August, 2008, and in terms of the MHRD Notification No.1-32/ 2006-U.II/U.I(1) issued on 31 st December, 2008 and in supersession of the University Grants Commission (minimum qualifications required for the appointment and career advancement of teachers in Universities and Institutions affiliated to it) Regulations, 2000 issued by University Grants Commission vide Regulation No. F.3-1/ 2000 (PS) dated 4th April, 2000 together with all amendments made therein from time to time, the University Grants Commission hereby frames the following Regulations, namely:-"

२४. सन २०१० च्या रेग्युलेशन्सच्या सुरूवातीलाच "विद्यापीठ अनुदान आयोग अधिनियम १९५६" या कायद्याच्या कलम २६ अन्वये आपणास प्राप्त झालेल्या अधिकारांचा वापर करून आपण हे रेग्युलेशन्स करीत आहोत असे आयोगाने म्हटलेले आहे. तर भारताच्या मा.राष्ट्रपतींनी दिनांक ३ मार्च १९५६

रोजी संमती दिलेला "विद्यापीठ अनुदान आयोग अधिनियम १९५६" हा अधिनियम "भारताची ही संसद भारतीय संविधानाच्या सातव्या परिशिष्टातील पहिल्या सूचीमध्ये ६६ व्या क्रमांकावर नमूद असलेल्या विषयाचे नियमन करण्यासाठी (सन १९५६ चा अधिनियम क्रमांक तीन) अधिनियमित (enacted) करीत आहे." असे संसदेने त्या कायद्याच्या सुरुवातीलाच नमूद करून ठेवले आहे. ते पुढील शब्दात :-

"THE UNIVERSITY GRANTS COMMISSION: ACT, 1956: (3 of 1956) [3rd March, 1956]:

"An Act to make provision for the co-ordination and determination of standards in Universities and for that purpose, to establish a University Grants Commission.

BE it enacted by Parliament in the Seventh Year of the Republic of India as follows:-"

- २५. सन २०१० चे रेग्युलेशन्स निर्गमित करतांना त्या रेग्युलेशन्सच्या परिच्छेद ७.४ मध्ये असे स्पष्टपणे नमूद करण्यात आले आहे की, राज्य सरकारने राज्यस्तरावरील कायदे किंवा विद्यापीठांनी आपले परिनियम यामध्ये सहा महिन्यांच्या आत सुधारणा कराव्यात व सन २०१० च्या रेग्युलेशन्सशी काही विसंगत असेल तर त्या विसंगती निरसित कराव्या. शब्दशः तो परिच्छेद पुढीलप्रमाणे :- "7.4.0 The Universities/State Governments shall modify or amend the relevant acts/statutes of the Universities concerned within six months of adoption of these regulations."
- २६. विद्यापीठ अनुदान आयोगाच्या सन २०१० च्या रेग्युलेशन्सच्या वंधनकारकतेविषयी त्याकाळातही काहींनी शंका (Query) उपस्थित केल्या होत्या. या सर्व शंकांचे निरसन करणारी विद्यापीठ अनुदान आयोगाने "Clarifications on Frequently Asked Questions on UGC Regulations on Minimum Qualifications for Appointment of Teachers and other Academic staff in Universities and Colleges and measures for the maintenance of standards in Higher Education, 2010" या मथळ्याची एक स्पष्टीकरणात्मक अधिसूचना सप्टेंबर २०१५ मध्ये (No. F.17-6/2013(PS/Misc) निर्गमित केली होती. विद्यापीठ अनुदान आयोगाच्या त्या अधिसूचनेतील सहावा मुद्दा पुढीलप्रमाणे होता:-
- "6. Are the State Governments empowered **not to accede** to the regulation under local circumstances, on the condition of bearing entire establishment cost?"

व त्याबाबतीत विद्यापीठ अनुदान आयोगाने केलेले स्पष्टीकरण पुढीलप्रमाणे होते :-

- "The UGC Regulations are mandatory in nature and are required to be followed in their letter and spirit without any deviation therefrom."
- २७. सन २०१० च्या रेग्युलेशन्सच्या वावतीत सर्वोच्च आणि उच्च न्यायालयाने अनेक निर्णय दिलेले असून त्यामध्ये यावावतीत कायदे करण्याचा अधिकार हा पुर्णपणे केंद्र शासनाचा अधिकार आहे व ते रेग्युलेशन्स वंधनकारक आहेत ही कायदेशीर स्थिती वारंवार स्पष्ट केलेली आहे.
- २८. "विद्यापीठ अनुदान आयोगाच्या ३० जून २०१० च्या अधिसूचनेतील रेग्युलेशन्स राज्यातील अकृषी विद्यापीठे व संलग्नित महाविद्यालयातील शिक्षक व समकक्ष पदांना लागू करण्याचा शासनिर्णय" या मथळ्याचा एक शासनिर्णय त्यावेळेला राज्यशासनाच्या उच्च व तंत्र शिक्षण विभागाने दिनांक १५ फेब्रुवारी २०११ रोजी काढलेला आहे. विद्यापीठ अनुदान आयोगाच्या रेग्युलेशन्स मधील निरनिराळे परिच्छेद नमूद करून २६ मुद्यांमध्ये (२३ + ३) ३० जून २०१०

एक म्हणजे सातव्या वेतन पूर्निवलोकन समितीचा (7th PRC) अहवाल, दुसरे म्हणजे त्यावर विद्यापीठ अनुदान आयोगाच्या शिफारशी व तिसरे म्हणजे त्यावरील केंद्रशासनाचे निर्णय यातून तयार झालेली समग्र योजना कचऱ्याच्या टोपलीत टाकून या तीनही शीर्षस्थ संस्थांच्या ऐवजी मंत्रालयातील अवर सचिव, उपसचिव व सचिव यांच्या चमूने वारंवार अर्थपूर्ण हस्तक्षेप करण्यासाठी भरपूर वाव राहावा या नोकरशाहीच्या पारंपरिक आवडीनुसार मंत्रिमंडळाचा निर्णय डावलून आपली घरगुती अशी एक नवीनच ''लोकल समग्र योजना'' जन्माला घातली असे दिसून येते.

(ठरावाचा परिच्छेद ४४ पहा.)

च्या अधिसूचनेतील परिच्छेद क्रमांक नमूद केले होते. दोन-तीन मुद्दे सोडले तर सर्व वावतीत ह्या तरतुदी "जशाच्या तशा लागू करण्यात आलेल्या आहेत" असे त्या शासननिर्णयात नमूद आहे. एखाद दुसऱ्या वावतीत जी भिन्नता होती ती भिन्नता महाराष्ट्र प्राध्यापक महासंघाशी चर्चा करून एकमत झालेल्या वावींवर होती

- २९. विद्यापीठ अनुदान आयोगाच्या रेग्युलेशन्समधील तरतुदींशी विसंगत अशा तरतुदी महाराष्ट्राच्या विद्यापीठ कायद्यात असतील तर तेथे दुरूस्ती करावी लागेल. विद्यापीठांच्या परिनियमात काही विसंगती असतील तर त्यातही सुधारणा करावी लागेल व त्या तरतुदी विद्यापीठ अनुदान आयोगाच्या रेग्युलेशन्सशी सुसंगत कराच्या लागतील याची स्पष्ट जाणीव मंत्रालयाच्या उच्च शिक्षण विभागात काम करणाऱ्या भारत प्रशासन सेवेतील अधिकाऱ्यांना त्यावेळी होती. रेग्युलेशन्स करण्याचा अधिकार या देशाच्या घटनेने व विद्यापीठ अनुदान आयोग कायद्याने, विद्यापीठ अनुदान आयोगाला दिलेला असून ते रेग्युलेशन्स बंधनकारक आहेत याची माहिती सन २०१० मध्ये मंत्रालयातील उच्च शिक्षण विभागामध्ये काम करणाऱ्या भारत प्रशासन सेवेतील अधिकाऱ्यांना असल्यामुळेच मंत्रिमंडळात तसा निर्णय करून घेऊन दिनांक १५ फेब्रवारी २०११ च्या शासनिर्णयाच्या परिच्छेद ८ मध्ये पुढीलप्रमाणे स्पष्ट तरतूद करण्यात आली होती:-
- "८. विद्यापीठ अनुदान आयोगाच्या दिनांक ३० जून २०१० च्या विनिमयातील (Regulations) परिच्छेद क्रमांक ७.४.० मध्ये दिलेल्या निदेशानुसार अकृषी विद्यापीठांनी यासंदर्भात त्यांच्या परिनियमांमध्ये आवश्यक त्या सुधारणा विहीत मुदतीत कराच्यात तसेच सदरहू विनियमांच्या अनुषंगाने विद्यापीठ अधिनियमांमध्ये करावयाच्या सुधारणांचा प्रस्ताव अकृषी विद्यापीठांनी संचालक, उच्च शिक्षण, महाराष्ट्र राज्य, पुणे यांच्या मार्फत सादर करावा."

३०. त्यावेळीची व आताची कायदेशीर व घटनात्मक स्थिती सारखीच

महाराष्ट्र शासन : उच्च शिक्षण संचालनालय

मध्यवर्ती इमारत, महाराष्ट्र राज्य, पुणे - ४११ ००१. www.dhepune.gov.in E-mail : vishi.dhepune@nic.in. फोन नं. ०२०/२६१२२१९९, २६१२४६३९, २६०५१५१२ फॅक्स ०२०/२६१९१९५५३ क्रमांक - युएनआय/(९५/१९)/अधी.३/विशि-१/८४८७ दिनांक :- २८ जून २०१९ : परिपत्रक

या परिपत्रकाद्वारे सर्व विभागीय सहसंचालक, उच्च शिक्षण यांना कळविण्यात येते की, शासन शुद्धीपत्रक उच्च व तंत्र शिक्षण विभाग क्रमांक Misc-2018/C.R. 56/18/UNI-1 दिनांक १० मे २०१९ राज्यातील अशासकीय अनुदानित महाविद्यालयातील सहाय्यक प्राध्यापक यांच्या निवड समितीमध्ये आपला शासन प्रतिनिधी / सदस्य म्हणून समावेश करण्यात आलेला आहे. आपल्या विभागातील ज्या महाविद्यालयामध्ये सहा. प्राध्यापक पदाच्या निवड समितीच्या मुलाखती किंवा करिअर ॲडव्हान्समेंट योजनेंतर्गत पदोन्नतीसाठी बैठका आयोजित करण्यात येतात. अशा बैठकांसाठी आपणास निमंत्रित करण्यात येते. अशा वेळी आपण स्वतः सदर बैठकीस उपस्थित रहावे अथवा आपले प्रतिनिधी म्हणून सक्षम अधिकाऱ्यास सदर बैठकीस उपस्थित रहावे अथवा आपले प्रतिनिधी म्हणून सक्षम अधिकाऱ्यास सदर बैठकीस उपस्थित राहण्यावावत कळविण्यात यावे. शासन प्रतिनिधीशिवाय निवड समितीची बैठक किंवा करिअर ॲडव्हान्समेंट योजनेंतर्गतची बैठक होणार नाही याची दक्षता ध्यावी.

तसेच राज्यातील अकृषी विद्यापीठे तसेच संलग्नित महाविद्यालयातील शिक्षकीय कर्मचाऱ्यांना शासनाने शासनिर्णय दिनांक ८ मार्च २०१९ अन्वये सातवा वेतन आयोग लागू केलेला आहे. या शासनिर्णयानुसार वेतनिश्चितीची कार्यवाही सुरू आहे. सदरची कार्यवाही करतांना संवंधित अध्यापकांची पाचव्या, सहाव्या वेतन आयोगातील वेतनिश्चितीची सुद्धा तपासणी करण्यात येते, तसेच काही अध्यापकांच्या वावतीत यापूर्वी झालेल्या चुकीच्या वेतनिनिश्चितीमध्ये वसुली करावी असा शेरा आपणाकडून तसेच लेखाधिकारी उच्च शिक्षण अनुदाने यांचेकडून देण्यात येतो.

या संदर्भात जर अशाप्रकारे संबंधित अध्यापकांची वसुली निघत असेल तर प्रथम संबंधित अध्यापकास त्याची लेखी सूचना देण्यात यावी. तसेच संबंधित अध्यापकांना त्यांचे म्हणणे मांडण्याची संधी द्यावी, तोपर्यंत कोणत्याही प्रकारची वसुली करू नये. तसेच वसुली असल्यास देय फरकातून सदर रक्कम समायोजित करण्यात यावी. याबावतच्या सूचना आपल्या विभागाच्या लेखाधिकारी, उच्च शिक्षण अनुदाने यांना सुद्धा आपल्या स्तरावरून देण्यात याव्यात.

(डॉ. धनराज माने) शिक्षण संचालक (उच्च शिक्षण) महाराष्ट्र राज्य, पुणे-१.

प्रत माहिती व कार्यवाहीसाठी. : (१) सर्व विभागीय सहसंचालक, उच्च शिक्षण, महाराष्ट्र राज्य. (२) लेखाअधिकारी, उच्च शिक्षण अनुदाने, महाराष्ट्र राज्य. असल्याने सन २०१० च्या रेग्युलेशन्स बाबतीत राज्याच्या मंत्रिमंडळाने त्यावेळी घेतलेल्या भुमिकेसारखीच भूमिका आज सन २०१९ मध्ये राज्य मंत्रिमंडळाने घेतलेली असतांना उच्च शिक्षण विभागावर असे कोणते आभाळ कोसळलेले आहे की, त्या विभागाने सन २०१८ चे विद्यापीठ अनुदान आयोगाचे रेग्युलेशन्स खुंटीला टांगून ठेवण्याचा निर्णय तर घेतलाच पण त्याचबरोबर भारतीय घटनेच्या तरतुर्दीच्या विरोधात व विद्यापीठ अनुदान आयोग कायद्याशी संपूर्णपणे विसंगत असे शासनिर्णय एकामागुन एक निर्गमित करण्याचा सपाटा लावलेला आहे.

- **३**9. सन २०१० ते २०१८ या काळामध्ये भारताच्या घटनेमध्ये किंवा या संदर्भातील कायद्यामध्ये काही बदल झाले असतील तर उच्च शिक्षण विभागाने ते बदल जाहीर केले पाहिजेत.
- (१) भारतीय संविधानात दुरुस्ती करून "उच्च शिक्षणाचा दर्जा ठरविणे व असा दर्जा कायम ठेवण्याच्या बाबतीत निरनिराळ्या राज्यांमध्ये समन्वय राखणे" हा केंद्र शासनाचा व विद्यापीठ अनुदान आयोगाचा अधिकार काढून घेऊन तो अधिकार महाराष्ट्र राज्याच्या उच्च शिक्षण विभागातील अधिकाऱ्यांकडे सोपविणारी घटनादुरुस्ती भारताच्या घटनेमध्ये करण्यात आलेली आहे काय?
- (२) भारतीय संविधानाच्या सातव्या परिशिष्टातील केंद्रसूचीमध्ये क्रमांक ६६ वर नमूद असलेल्या विषयावरील अधिकार वापरून करण्यात आलेल्या विद्यापीठ अनुदान आयोग अधिनियमाच्या कलम २६ अन्वये विद्यापीठ अनुदान आयोगाला रेग्युलेशन्स करण्याचा जो अधिकार त्या कायद्याने दिलेला आहे त्यामध्ये सुधारणा करून फक्त महाराष्ट्र राज्यापुरते त्यामध्ये अनेक बदल करणारे शासननिर्णय काढण्याचा अधिकार महाराष्ट्र राज्याच्या उच्च व तंत्र शिक्षण विभागाला देणारी दुरुस्ती विद्यापीठ अनुदान आयोग कायदा १९५६ यामध्ये करण्यात आलेली आहे काय?
- (३) केंद्रीय मंत्रिमंडळाने मान्यता दिल्यानंतर विद्यापीठ अनुदान आयोगाने भारत शासन राजपत्रामध्ये प्रकाशित केलेल्या रेग्युलेशन्समध्ये शासनिर्णय काढून वदल करण्याचा अधिकार हा महाराष्ट्र शासनाच्या उच्च शिक्षण विभागाला राहिल अशाप्रकारचा एखादा नवीन कायदा केंद्र शासनाने केलेला आहे काय?
- (४) "सातवा वेतन आयोग लागू केल्यामुळे अकृषि विद्यापीठे व संलग्नित अशासकीय अनुदानित महाविद्यालयातील सुमारे २६ हजार ७४१ शिक्षक व शिक्षक समकक्ष पदावरील कर्मचाऱ्यांना याचा लाभ होणार आहे. वेतन आयोगातील तरतुदी १ जानेवारी २०१६ पासून लागू केल्याने ३१ मार्च २०१९ पर्यंत २५८४ कोटी ४७ लाख एवढा वाढीव खर्च येणार असून त्यामध्ये राज्य शासनाचा ५० टक्के हिस्सा व केंद्र शासनाचा ५० टक्के हिस्सा आहे. या खर्चास मान्यता देण्यात आली असून १ एप्रिल २०१९ नंतर येणाऱ्या ८०० कोटी रुपयांच्या वाढीव खर्चासही मान्यता देण्यात आली आहे." असा निर्णय राज्याच्या मंत्रिमंडळाने घेतलेला आहे असे खुद राज्याच्या मा.मुख्यमंत्र्यांच्या सचिवालयाने जाहीर केल्यानंतर शासननिर्णय काढतांना तेवढीच तरतूद वेगळी लपवून ठेवण्याचा किंवा त्या तरतुदीचा समावेश शासनिर्णयामध्ये न करण्याचा अधिकार उच्च शिक्षण विभागातील नोकरशाहीस भारतीय घटनेच्या कोणत्या कलमान्वये बहाल केलेला आहे?
- **३२.** आजही सन २०१८ चे रेग्युलेशन्स आपण काळजीपूर्वक पाहिले तर आपल्याला असे दिसून येईल की, त्याच्या सुरुवातीलाच हे रेग्युलेशन्स करण्याचा अधिकार आपल्याला कोणत्या कायद्याने दिलेला आहे याविषयीचा स्पष्ट उल्लेख त्या रेग्युलेशन्सच्या सुरुवातीलाच नमूद आहे. तो पुढील शब्दात :-

"No. F.1-2/2017(EC/PS).In exercise of the powers conferred under clause (e) and (g) of sub-section(I) of Section 26 read with Section 14 of the University Grants Commission Act, 1956 (3 of 1956), and in supersession of the "UGC Regulations on Minimum qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education 2010" (Regulation No.F.3-1/2009 dated 30th June, 2010) together with all amendments made therein from time to time, the University Grants Commission, hereby, frames the following Regulations, namely:-"

कोणत्याही सुसंस्कृत व सभ्य समाजामध्ये विधीविधान करण्याची शक्ती ज्या सत्ताधारकांना प्रदान केलेली असते ते सत्ताधारक विधीविधानाच्या सुरुवातीलाच ही शक्ती आपल्याला घटनेतील किंवा कायद्यातील कोणत्या कलमान्चये प्राप्त झालेली आहे याचा उल्लेख अपरिहार्यपणे करीत असतात. विद्यापीठ अनुदान आयोगाचे (सन २०१० चे काय किंवा सन २०१८ चे काय?) रेग्युलेशन्स आपण पाहिले तर त्याच्या सुरुवातीलाच ही शक्ती आपणाला कोठून मिळालेली

The selection process should be strictly in accordance with the University Grants Commission (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulations, 2018 and as amended from time to time.

(See UGC Notification dated 4th June 2019 on page 111 of 2019 NUTA Bulletin)

आहे याचा स्पष्ट उल्लेख त्यामध्ये वरीलप्रमाणे दिसून येतो.

३३. विधीविधानाची सुरुवात शक्तीप्रदानाच्या उगमस्थानाच्या उल्लेखानेच करावी लागते याची महाराष्ट्र शासनाच्या अनेक विभागांना आजही जाणीव असलेली दिसून येते. शासकीय कर्मचाऱ्यांना सातवा वेतन आयोग लागू करणारी अधिसूचना महाराष्ट्र राज्याच्या वित्त विभागाने दिनांक ३० जानेवारी २०१९ रोजी महाराष्ट्र शासन राजपत्राच्या भाग चार अ (असाधारण) मध्ये प्रकाशित केली. त्या अधिसूचनेची सुरुवातच पुढीलप्रमाणे आहे:-

"NOTIFICATION: CONSTITUTION OF INDIA.: No. RPS 2019/CR-1/SER-9.- In exercise of the powers conferred by the proviso to article 309 of the Constitution of India, the Governor of Maharashtra is hereby pleased to make the following rules, namely:"

- ३४. विद्यापीठ अनुदान आयोगाने शिफारस केलेल्या, केंद्र शासनाने मान्य केलेल्या व भारत शासन राजपत्रामध्ये प्रसिद्ध झालेल्या रेग्युलेशन्समध्ये सुधारणा करण्याचा अधिकार घटनेच्या कोणत्या कलमान्वये किंवा विद्यापीठ अनुदान आयोग अधिनियम १९५६ च्या कोणत्या खंडान्वये उच्च शिक्षण विभागातील नोकरशाहीला प्राप्त झालेला आहे याचा लहानसा जरी उल्लेख ८ मार्च २०१९ च्या शासननिर्णयामध्ये असता तरी उच्च शिक्षण विभागाच्या प्रतिष्ठेमध्ये फार मोठी भर पडली असती.
- ३५. शासनिर्मणयाने केलेली नियमांची मांडवली ही उपविधानाच्या (Delegated Legislation) स्वरूपाची असते. असे उपविधान दोन कारणांवरून रह करण्याच्या लायकीचे ठरते. एक म्हणजे त्यामध्ये घटनेच्या तरतुर्दीच्या विरोधात काही वावी असतील तर व दुसरे म्हणजे घटनेतील तरतुर्दीच्या केलेल्या ज्या कायद्याने उपविधानाचे अधिकार वहाल केलेले आहेत त्या कायद्यातील तरतुर्दीचा उपविधानाने भंग केला असेल तर, ८ मार्च २०१९ चा शासनिर्णय काय किंवा १० मे २०१९ रोजीचा शासनिर्णय काय? या दोनही शासनिर्णयातील २०१८ च्या रेग्युलेशन्सच्या विरोधात असलेल्या किंवा रेग्युलेशन्सशी विसंगत असलेल्या सर्व तरतुदी उपरोक्त दोन कसोट्यांवर भुईसपाट व नेस्तनावूत होण्याच्या लायकीच्या ठरतात. उपरोक्त दोन कसोट्या या सर्वोच्च न्यायालयाच्या अनेक निर्णयांनी ठरवून दिलेल्या आहेत. उदाहरण म्हणून मा.सर्वोच्च न्यायालयाच्या "State of M.P. & Anr. Vs. Bhola Alias Bhairon Prasad Raghuvanshi, (2003) 3 SCC 1" या निर्णयातील पुढील पिरचरेट पहा:-
- "20. A delegated legislation can be declared invalid by the court mainly on two grounds: **firstly**, that it violates any provision of the Constitution and **secondly**, it is violative of the enabling Act. If the delegate which has been given a rule-making authority exceeds its authority and makes any provision inconsistent with the Act and thus overrides it, it can be held to be a case of violating the provisions of the enabling Act but where the enabling Act itself permits ancillary and subsidiary functions of the legislature to be performed by the executive as its

delegate, the delegated legislation cannot be held to be in violation of the enabling Act."

- **३६.** विद्यापीठ अनुदान आयोगाचे जे रेग्युलेशन्स १८ जुलै २०१८ च्या भारत शासन राजपत्राच्या भाग ३, सेक्शन ४ मध्ये प्रकाशित करण्यात आलेले आहे त्या रेग्युलेशन्सचे लघूशिर्षक पुढीलप्रमाणे आहे :-
- "1.1 These Regulations may be called the University Grants Commission (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulations, 2018."

हे रेग्युलेशन्स कोणाला लागू पडतील याविषयी स्पष्ट उल्लेख परिच्छेद १.२ मध्ये नमूद आहे तो पुढील शब्दात :-

- "1.2 These shall apply to every University established or incorporated by or under a Central Act, Provincial Act or a State Act, every Institution including a Constituent or an affiliated College recognized by the Commission, in consultation with the University concerned under Clause (i) of Section 2 of the University Grants Commission Act, 1956 and every Institution deemed to be a University under Section 3 of the said Act."
- ३७. सन २०१० च्या रेग्युलेशन्समध्ये अशी स्पष्ट तरतूद होती की, राज्याच्या कायद्यामध्ये, विद्यापीठाच्या परिनियमामध्ये किंवा यावावतचे नियंत्रण करणाऱ्या इतर कोणत्याही तरतुदींमध्ये सहा महिन्याच्या आत रेग्युलेशन्सशी विसंगत असलेल्या वावतीत सुधारणा करून त्या विसंगती संपुष्टात आणाच्या लागतील. आज सन २०१८ च्या रेग्युलेशन्समध्ये सुद्धा तशीच तरतूद समाविष्ट करण्यात आलेली आहे. रेग्युलेशन्सच्या सहपत्रातील यावावतचा परिच्छेद पुढीलप्रमाणे आहे:
- "1.2 Every university or institution deemed to be University, as the case may be, shall as soon as may be, but not later than within six months of the coming into force of these Regulations, take effective steps for the amendment of the statutes, ordinances or other statutory provisions governing it, so as to bring the same in accordance with these Regulations."

आपल्या कायद्यात, परिनियमात, रेग्युलेशन्सशी विसंगत अशा काही तरतुदी असतील तर त्या सुसंगत करण्यासाठी सुधारणा करण्याचे कायदेशीर कर्तव्य पार पाडण्याचे बाजूला ठेऊन अनेक विसंगत तरतुदी जन्माला घालण्याचा जो कुटीरोद्योग उच्च शिक्षण विभागाने सुरू केलेला आहे तो अचंबित करणारा आहे.

३८. सन २०१८ चे रेग्युलेशन्स निर्गमित केल्यानंतर विद्यापीठ अनुदान आयोगाने रेग्युलेशन्सच्या लहान-सहान बावींवर काटेकोरपणे नियंत्रण ठेवण्याचे ठरविले आहे असे दिसून येते. उच्च शिक्षणाचा दर्जा टिकवून ठेवणे व विविध

The UGC Regulations are mandatory in nature and are required to be followed in their letter and spirit without any deviation therefrom.

(See UGC clarification No. 6 on page 110 of 2019 NUTA Bulletin)

Violations of the aforesaid Guidelines may lead to appropriate action by the UGC against the institutions including withholding the grants.

(See UGC Notification dated 4th June 2019 on page 111 of 2019 NUTA Bulletin)

राज्यांमध्ये याबाबतीत समन्वय राखण्याचा अधिकार भारतीय संविधानाने केंद्र शासनाला व त्या शासनाने केलेल्या कायद्यान्वये विद्यापीठ अनुदान आयोगाला प्रदान केलेला आहे. विद्यापीठे व महाविद्यालये यामधून होणारी शिक्षकांची भरती ही उच्च शिक्षणाचा दर्जा कायम राखण्यासाठी अतिशय महत्त्वाची बाब आहे. दिनांक ४ जून २०१९ रोजी विद्यापीठ अनुदान आयोगाने एक अधिसूचना (क्रमांक D.O.No.F.1-14/20019(CPP-II) देशातील सर्व विद्यापीठांच्या कुलगुरूना पाठविली असून शिक्षकांच्या भरतीबाबतच्या मार्गदर्शक सूचना विद्यापीठ अनुदान आयोगाने त्यासोबत पाठविल्या आहेत. या मार्गदर्शक सूचनांच्या सुरुवातीचा परिच्छेद पूढीलप्रमाणे आहे :-

"The University Grants Commission (UGC) has the mandate to take steps for the promotion and co-ordination of university education and for determination and maintenance of standards of teaching, examination and research in Universities, Colleges and Institutions Deemed to be Universities (i.e. in Higher Educational Institutions or "HEIs"). The University Grants Commission (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulations, 2018 provides for minimum qualifications for appointment and other service conditions of University and College teachers and cadres of Librarians, Directors of Physical Education and Sports for maintenance of standards in higher education and revision of pay-scales."

- ३९. निवड प्रक्रियेच्या संबंधित कायद्यामध्ये, परिनियमामध्ये किंवा तत्सम विधी विधानामध्ये रेग्युलेशन्सच्या विरोधात काही बाबी असतील तर त्यामध्ये सुधारणा करून त्या तरतुदीतील विसंगती सहा महिन्यात दूर करून घ्या असे आदेश विद्यापीठ अनुदान आयोगाने २०१८ च्या रेग्युलेशन्समध्येच दिलेले होते. आता या मार्गदर्शक सूचनांमध्ये २०१८ च्या रेग्युलेशन्सचे काटेकोरपणे पालन झाले पाहिजे असे विद्यापीठ अनुदान आयोगाने पुन्हा कळविले आहे. ते
- "1. HEIs should follow the selection process as per their Acts, Statutes or constituent documents **AND** in accordance with the University Grants Commission (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulations, 2018."
- ४०. विद्यापीठ अनुदान आयोगाने व केंद्र शासनाच्या मानव संसाधन विभागाने, घटनेने तसेच कायद्याने त्यांच्याकडे सोपविलेल्या या सर्व कार्यावर देखरेख करण्याचे काम कधी नव्हे एवढ्या गांभीर्याने घेतले असून सर्व विद्यापीठे व महाविद्यालये यांना असे कळविले आहे की, शिक्षकांच्या ह्या जागा भरत असतांना सारे तपशील हे विद्यापीठ अनुदान आयोगाला ऑनलाईन पोर्टलवर कळविणे बंधनकारक राहिल. शब्दशः पुढीलप्रमाणे:-
- "2. HEIs should, however, ensure that all the vacant posts, along with the reservations details, are uploaded on the online portal https://nherc.in. The monitoring of the filling up of the vacancies would be done by the MHRD and UGC through this portal."

सहा महिन्याच्या आत ह्या सर्व जागा भरण्याची कार्यवाही विद्यापीठ अनुदान आयोगाने बंधनकारक केली असून या प्रक्रियेची अंमलबजावणी कशी करायची याबाबतच्या तपशीलवार मार्गदर्शक सूचना निर्गमित केलेल्या आहेत.

४१. थकबाकी अदा करण्याबाबतच्या निर्णयाला मंत्रिमंडळाने मान्यता

दिल्यानंतरसुद्धा ८ मार्च २०१९ च्या शासननिर्णयामध्ये त्याबाबतचा एका शब्दानेही उल्लेख असू नये, या मागचे कारस्थान महाराष्ट्रातील उच्च शिक्षण क्षेत्राच्या लक्षात येणार नाही असे नोकरशाहीने गृहीत धरलेले आहे." हे या महासंघाचे पहिल्या ठरावात व्यक्त केलेले मत किती बिनचूक होते हे दुसऱ्या शासननिर्णयाने स्पष्ट केलेले आहे. मुळात ८ मार्च २०१९ च्या शासननिर्णयानंतर आता दिनांक १० मे २०१९ रोजी उच्च व तंत्र शिक्षण विभागाने आणखी एक जो दुसरा शासननिर्णय निर्गमित केलेला आहे त्यामुळे या कारस्थानाचे स्वरूप नागडेपणाने उघड झालेले आहे. विद्यापीठ अनुदान आयोगाने शिफारस केलेल्या व केंद्रशासनाने मान्य केलेल्या सातव्या वेतन आयोगाशी समकक्ष वेतनश्रेण्यांबाबतची समग्र योजना राज्याच्या उच्च व तंत्र शिक्षण विभागातील नोकरशाहीने फेटाळून लावली आहे. असे या कारस्थानाचे विदुप व काळेकुट्ट स्वरूप आहे.

- ४२. विद्यापीठ अनुदान आयोगाने दिनांक ३१ जानेवारी २०१८ च्या अधिसूचनेद्वारे, केंद्रशासनाच्या २ नोव्हेंबर २०१७ च्या पत्रान्वये केंद्रशासनाने कळविलेली व मान्य केलेली, ही समग्र योजना राज्याच्या शिक्षण सचिवांकडे त्या पत्रासह पाठविली होती. जवळजवळ १२०० ते १३०० कोटी रूपयांचे (५० टक्के) अर्थसहाय्य महाराष्ट्र राज्याला देण्यात येईल असेही या पत्रानेच कळविले होते. समग्र योजना (Composite Scheme) म्हणून ही व्यवस्था अंमलात आणली तरच हे अर्थसहाय्य मिळेल असेही उच्च शिक्षण सचिवांना कळविण्यात आले होते. त्यामुळेच राज्यमंत्रिमंडळाने केंद्राचे अर्थसहाय्य स्वीकारण्याचा वरीलप्रमाणे निर्णय घेतला असतांना १२०० ते १३०० कोटी रूपयांची केंद्र शासनाची मदत महाराष्ट्राला नाही मिळाली तरी चालेल पण समग्र योजना महाराष्ट्रात अंमलात आणायचीच नाही असे या ऐतिहासिक कारस्थानाचे कुप्रसिद्ध स्वरूप असून या कारस्थानाचा तीव्र धिक्कार करण्यात येत आहे.
- ४३. ऐतिहासिक व कुप्रसिद्ध कारस्थान असे वर्णन करीत असतांना तसे वर्णन कां केले जात आहे याबाबतचे तपशीलसुद्धा नमूद करणे आवश्यक वाटते. यापूर्वी महाराष्ट्रात असे कधीही घडले नव्हते. तिसऱ्या, चौथ्या, पाचव्या व सहाव्या वेतन आयोगाच्या वेळी "विद्यापीठ अनुदान आयोगाने शिफारस केलेली व केंद्रशासनाने मान्य केलेली त्या त्या वेतन आयोगाशी समकक्ष वेतनश्रेण्यांची समग्र योजनाच महाराष्ट्रामध्ये अंमलात आलेली होती. याची तपशीलवार माहिती महासंघाच्या ठरावाच्या परिच्छेद ७ ते १० मध्ये दिलेली आहे. आणखी माहिती घेतल्यावर असे लक्षात आलेले आहे की, पहिल्या व दुसऱ्या वेतन आयोगाच्या वेळीसुब्दा यापेक्षा वेगळे काही घडलेले नव्हते हे नमूद करणे आवश्यक वाटते.
- ४४. या अंमलबजावणीला ऐतिहासिक व कुप्रसिद्ध कारस्थान संबोधण्याचे दुसरे महत्त्वाचे कारण नमूद करणे आवश्यक आहे. घटनेतील व कायद्यातील तरतुदी लक्षात घेऊन विद्यापीठ अनुदान आयोग आपली वेतन पूनर्विलोकन समिती (PRC) नेमते. त्या त्या वेळेचा केंद्रीय वेतन आयोगाचा अहवाल विचारात घेऊन त्या त्या वेळेची वेतन पूनर्विलोकन समिती आपला अहवाल आयोगाला सादर करते. त्यावरील विद्यापीठ अनुदान आयोगाच्या शिफारशी विचारात घेऊन केंद्र सरकार आपली समग्र योजना घोषित करते. त्यानंतर त्या योजनेची राज्यांमध्ये अंमलबजावणी केली जाते. महाराष्ट्रामध्ये निरपवादपणे याच प्रकारे यापूर्वी अंमलबजावणी झाली असाच हा इतिहास आहे. आज सातव्या वेतन आयोगाच्या वेळी मात्र एक म्हणजे सातव्या वेतन पूनर्विलोकन समितीचा (7th PRC) अहवाल, दूसरे म्हणजे त्यावर विद्यापीठ अनुदान आयोगाच्या शिफारशी व तिसरे म्हणजे त्यावरील केंद्रशासनाचे निर्णय यातून तयार झालेली समग्र योजना कचऱ्याच्या टोपलीत टाकून या तीनही शीर्षस्थ संस्थांच्या ऐवजी मंत्रालयातील अवर सचिव, उपसचिव व सचिव यांच्या चमुने वारंवार अर्थपूर्ण हस्तक्षेप करण्यासाठी भरपूर वाव राहावा या नोकरशाहीच्या पारंपरिक आवडीनुसार मंत्रिमंडळाचा निर्णय डावलून आपली घरगृती अशी एक नवीनच "लोकल समग्र योजना" जन्माला घातली असे दिसून येते.

(डॉ. तापती मुखोपाध्याय)

(डॉ. एस. पी. लवांदे)

MAHARASHTRA FEDERATION OF UNIVERSITY & COLLEGE TEACHERS' ORGANISATIONS

(MFUCTO)

नेट-सेटमुक्त शिक्षकांना जुनी पेन्शन योजनाच लागू करावी लागेल : २

- डॉ. प्रवीण रघुवंशी, अध्यक्ष, 'नुटा'

(नेट-सेट मुक्त शिक्षकांना जुनी पेन्शन योजनाच लागू करावी लागेल याविषयी मा.उच्च न्यायालयानी दिलेल्या निर्णयांच्या आधारे पाच परिच्छेदांचे एक लहानसे टिप्पण सन २०१९ च्या नुटा बुलेटीनच्या पृष्ठ २६ वर यापूर्वी प्रसृत करण्यात आले होते. आता त्यापुढील माहिती खालील परिच्छेदातून नमूद करण्यात येत आहे.)

- ६. सन २०१६ च्या याचिका क्रमांक १३०४ मध्ये मा.मुंबई उच्च न्यायालयाच्या औरंगाबाद खंडपीठाने दिनांक १२ डिसेंबर २०१८ रोजी दिलेला निर्णय हा या प्रकरणातील मा.उच्च न्यायालयाने दिलेला तिसरा निर्णय म्हणून सांगता येईल. हा निर्णय यापूर्वीच सन २०१९ च्या नुटा बुलेटीनच्या पृष्ठ २५ वर प्रसृत करण्यात आलेला आहे. शासनाच्या वतीने या प्रकरणी काय म्हणणे मांडण्यात आलेले होते? हे या निर्णयाच्या परिच्छेद २ मध्ये नमूद केलेले आहे ते पृढील शब्दात :- "The learned Counsel for Respondent No.3 submits that the husband of the petitioner was appointed after following due selection process on 05th August, 1996 and his services are approved by the University Grants Commission, though the petitioner does not posses requisite qualification of NET/SET and posses only M.Phil."
- इ.9 यापूर्वी न्यायालयाच्या मा.खंडपीठांनी दिलेल्या निर्णयांचा उल्लेख या निर्णयाच्या परिच्छेद ३ मध्ये असून तो पुढीलप्रमाणे आहे :- ''It has been held by this Court that as per the said Government Resolution, the State Government has exempted the lecturers appointed between 23rd October, 1992 to 03rd April, 2000 from possessing the NET/SET qualification....... The said Government Resolution would apply to the husband of the petitioner. The date of death and/or retirement would not make any difference.''
- ६.२ शेवटी न्यायालयाने याचिकाकर्त्यांच्या बाजूने दिलेला निर्णय परिच्छेद ४ मध्ये नमूद आहे तो पुढील शब्दात :- "In light of the above, the impugned communication is quashed and set aside. The respondents are directed to sanction the family pension to the petitioner as per the rules, after verifying all other aspects of the matter within three months from today. Writ Petition is allowed and disposed of. No costs."
- ७. या संदर्भात मा.मुंबई उच्च न्यायालयाने दिनांक ९ एप्रिल २०१९ रोजी सन २०१९ च्या याचिका क्रमांक ७५५ मध्ये दिलेला निर्णय हा या संदर्भातील चौथा निर्णय म्हणून सांगता येईल. सन २०१९ च्या नुटा बुलेटीनच्या पृष्ठ १०३ वर तो प्रसृत करण्यात आलेला आहे. शासनाचे याबाबतीत काय म्हणणे होते? हे मा.खंडपीठाने आपल्या आदेशात परिच्छेद ७ मध्ये नमूद केलेले आहे:- "7. In response to the notice issued by this Court, the respondent no.3 has stated that since the petitioner was not possessing net/set, he would not be entitled to the pensionery benefits. In the reply it is stated that as per the GR dated 27th June 2013, the petitioner would be governed by the Defined Contributory Pension Scheme."
- ७.९ त्यानंतर मा.खंडपीठाने या प्रकरणी पुढीलप्रमाणे आदेश पारित केलेले आहे :- "ORDER: (i) The Writ Petition stands allowed. (ii) The impugned order dated 14th January 2018 is quashed and set aside. (iii) The Respondents are directed to make the pension applicable to the petitioner on the basis of his last drawn salary. (iv) The pension is to be paid to the Petitioner from the month of May 2018. All the arrears between the date of superannuation till 30th April 2019 shall be paid within a period of three months from today."
- ८. एका मागून एक अनेक खंडपीठांचे निर्णय हे शासनाच्या विरोधात जात असतांना शिक्षकांविषयीच्या द्वेषाने पछाडलेल्या उच्च शिक्षण विभागातील अधिकाऱ्यांनी सर्वोच्च्य न्यायालयात जाण्याचा निर्णय घेतला. सर्वात पहिला

- निकाल दिनांक ३ ऑक्टोबर २०१८ रोजी मुंबई खंडपीठासमोर सन २०१७ च्या याचिका क्रमांक १३१६६ मध्ये "मारूती दत्तात्रय पाटील विरूद्ध महाराष्ट्र राज्य" या प्रकरणी लागलेला होता. त्याबाबतीत राज्यशासनातर्फे मा.सर्वोच्च न्यायालयात विशेष अनुमती याचिका दाखल करण्यात आली. दिनांक १ जुलै २०१९ रोजी मा.सर्वोच्च न्यायालयाने या प्रकरणात निर्णय दिलेला असून राज्यशासनाची याचिका रहबातल (dismissed) ठरवून पुढील शब्दात खारिज केली आहे. :- "In the facts and circumstances of the present case and since the services of the first respondent were duly approved, we see no reason to entertain the Special Leave Petition. The Special Leave Petition is accordingly dismissed." मा.सर्वोच्च न्यायालयाचा हा निर्णय याच अंकात पृष्ठ १९७ वर प्रसृत करण्यात आलेला आहे.
- ९. या संदर्भात आपल्या कोणत्याही नेट-सेटमुक्त सहकाऱ्यावर जुन्या पेन्शन योजनेपासून वंचित राहण्याची पाळी येणार नाही याची काळजी घेण्यात यावी असे सूचिण्यात येत आहे. कोणत्याही विभागाच्या सहसंचालकांनी तसा प्रयत्न केल्यास मा.उच्च न्यायालयाचे उपरोक्त चार निर्णय व मा.सर्वोच्च न्यायालयाचा १ जुलै २०१९ चा निर्णय उधृत करून सेवानिवृत्ती वेतन अदा न करण्याचा सहसंचालकांचा निर्णय हा बेकायदेशीर असून न्यायालयाचा अवमान करणारा आहे अशी कायदेशीर नोटीस उपरोक्त सहसंचालकांना पाठिविण्यात यावी. इतक्या उपर त्यांनी आपले अपकृत्य दुरुस्त न केल्यास मा.उच्च न्यायालयासमोर याचिका दाखल करावी व त्या याचिकच्या माध्यमातून उपरोक्त सर्व निर्णय मा.उच्च न्यायालयाच्या लक्षात आणून द्यावेत.

मा.उच्च व सर्वोच्च न्यायालयाने नेट-सेट मुक्त शिक्षकांना जुनी पेन्शन योजनाच लागू करावी लागेल अशा आदेशांच्या आतापर्यंत दिलेल्या निर्णयांचे तपशील पुढीलप्रमाणे आहेत

- (1) In the High Court of Judicature at Bombay: Civil Appellate Jurisdiction: Writ Petition No. 13166 of 2017 Shri Maruti Dattatraya Patil..Petitioner Vs. The State of Maharashtra and ors...Respondents. **Date of Judgment:** 03rd October, 2018 (Full Text of the Judgment is printed on page 120 of 2018 NUTA Bulletin.)
- (2) In the High Court of Judicature at Bombay: Civil Appellate Jurisdiction: Writ Petition No.1219 of 2017 Rekha Naresh Pulekar ..Petitioner Versus Shree Shiv Shahu Mahavidyalay, Sharud, Taluka Shahuwadi, District Kolhapur and others ..Respondents. **Date of Judgment:** 19th October, 2018 (Full Text of the Judgment is printed on page 137 of 2018 NUTA Bulletin.)
- (3) In the High Court of Judicature at Bombay: Bench at Aurangabad: Writ Petition No. 1304 of 2016 Sharda Rajendra Aajbe..Petitioner Versus State of Maharashtra and Others..Respondents. **Date of Judgment:12th December, 2018** (Full Text of the Judgment is printed on page 25 of 2019 NUTA Bulletin.)
- (4) In the High Court of Judicature at Bombay: Civil Appellate Jurisdiction: Writ Petition No. 755 of 2019 Ranpise Vijaykumar Baburao...Petitioner V/S. The State of Maharashtra & ors.Respondents. Date of Judgment: 9th April 2019. (Full Text of the Judgment is printed on page 103 of 2019 NUTA Bulletin.)
- (5) **Supreme Court of India:** Record of Proceedings: Special Leave Petition (Civil) Diary No(s).14703/2019 (Arising out of impugned final judgment and order dated 03-10-2018 in WP No. 13166/2017 passed by the High Court of Judicature at Bombay) The State of Maharashtra & Ors. Petitioner(s) Versus Maruti Dattatraya Patil & Ors. Respondent(s) **Date of Judgment:** 01-07-2019 (Full Text of record of proceedings is printed on page 117 of 2019 NUTA Bulletin.)

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18336 of 2010

(1) Shyam Nandan Shahay S/O Late Harnath Shahay H.O.D. Psychology, J.P. College Narayanpur, P.S.- Bhawanipur (Narayanpur), Distt.- Bhagalpur (2) Pramod Kumar Sinha S/O Late Trilokinath P.G., Sociology, P.S.- Bhagalpur University, Distt.- Bhagalpur (3) Rajib Kumar Singh S/O Shri Sushil Kumar Singh Lecturer In Commerce, S.M. College Bhagalpur, P.S.- Adampur, Distt.- Bhagalpur (4) Mukesh Kumar Singh S/O Shri Kuldeep Narayan Singh Lecturer In Commerce, S.M. College Bhagalpur, P.S.- Adampur, Distt.- Bhagalpur... Petitioners VERSUS (1) The State Of Bihar Through Principal Secretary Higher Education, Bihar, Patna (2) The Vice-Chancellor, Tilkamanjhi Bhagalpur University, Bhagalpur (3) Tilkamanjhi Bhagalpur University, Bhagalpur (3) Tilkamanjhi Bhagalpur University, Bhagalpur (5) The Auditor, For State Of Bihar Posted At Tilkamanjhi Bhagalpur (5) The Auditor, For State Of Bihar Posted At Tilkamanjhi Bhagalpur (5) The Auditor, For State Of Bihar Posted At Tilkamanjhi Bhagalpur, P.S.- Adampur, Distt.- Bhagalpur (7) The Principal, S.M. College, Bhagalpur, P.S.- Adampur, Distt.- Bhagalpur (7) The Principal, J.P. College, Narayanpur, P.S.- Bhawanipur (Narayanpur), Distt.- Bhagalpur....Respondents

with Civil Writ Jurisdiction Case No.15276 of 2010

Dr.Binodanand Jha S/O Late Mayanand Jha R/O Vill Ujan(West), P.S.Sakatpur, Distt-Darbhanga, At Present Reader , Department Of Sociology, M.L.S.College, Sarisab-Pahi, Madhubani... Petitioner VERSUS (1) Lalit Narayan Mithila University, Darbhanga Through Its Registrar (2) The Vice Chancellor, Lalit Narayan Mithila University Darbhanga (3) The Registrar, Lalit Narayan Mithila University Darbhanga (4) The Principal , M.L.S.College Sarisab-Pahi, Madhubani (5) The State Of Bihar, Through Its Secretary H.R.D. Old Secretariat, Patna.... Respondents

with Civil Writ Jurisdiction Case No.4986 of 2010

Dr. Udai Prakash Sinha S/O Late Ram Sharan Prasad R/O Mohalla-77, Patel Nagar, Professor Colony, P.O.- T.N.B. College, Bhagalpur, Distt.-Bhagalpur.... Petitioner **VERSUS** (1) The State Of Bihar (2) Principal Secretary, Government Of Bihar Human Resource Development Department, New Secretariat, Beily Road, Patna (3) Tilkamanjhi Bhagalpur University Through Its Vice-Chancellor Bhagalpur-812007 (4) Vice Chancellor Tilkamanjhi Bhagalpur University, Bhagalpur-812007 (5) Registrar, Tilkamanjhi Bhagalpur University, Bhagalpur-812007....Respondents

with Civil Writ Jurisdiction Case No.9807 of 2010

Prof. Dr. Sitaram Sharma S/O Late Jagan Nath Sharma R/O GC. Banarjee Road, Mundichak, P.S.- Tilkamanjhi (Kotwali), Town & Distt.- Bhagalpur Petitioner VERSUS (1) The T.M. Bhagalpur University, Bhagalpur Through Its Registrar (2) The Vice-Chancellor, T.M. Bhagalpur University, Bhagalpur (3) The Financial Advisor, T.M. Bhagalpur University, Bhagalpur (4) The Registrar, T.M. Bhagalpur University, Bhagalpur (5) The Finance Officer, T.M. Bhagalpur University, Bhagalpur (6) The Principal, Bhagalpur National College, Bhagalpur (7) The Principal, Marwari College, Bhagalpur (8) The State Of Bihar Through The Principal Secretary Human Resources Development Department, Government Of Bihar, New Secretariat, Patna (9) The Director, Higher Education Human Resources Development Department, Government Of Bihar, New Secretariat, Patna....Respondents

with Civil Writ Jurisdiction Case No.4991 of 2010

Jaiprakash Singh S/O Late Murlidhar Singh At Present Post At Head Of The Department Of Zoology, G.B. College, Naugachia, Distt.-Bhagalpur....Petitioners **VERSUS** (1) The State Of Bihar Through The Secretary Higher Education, Govt. Of Bihar, Patna (2) Tilka Manjhi Bhagalpur University, Bhagalpur, Through Its Registrar Distt.-Bhagalpur (3) Vice Chancellor Of Tilka Manjhi Bhagalpur University Distt.-Bhagalpur (4) The Registrar Of Tilka Manjhi, Bhagalpur University Bhagalpur, Distt.-Bhagalpur (5) The Principal Of G.B. College Naugachia Within The Tilka Manjhi, Bhagalpur University, Distt.-Bhagalpur....Respondent/s

with Civil Writ Jurisdiction Case No.14633 of 2010

Dr. Raj Kishore Singh S/O Late Ram Raksha Singh R/O Mohalla-Mirganj, P.S.- Begusarai, Distt.- Begusarai, A Superannuated Employee As Reader From Co-Operative College, Begusarai, Distt.- Begusarai.... Petitioner VERSUS (1) The State Of Bihar (2) The Secretary, Higher Education Government Of Bihar, Patna (3) The Vice Chancellor, L.N. Mithila University, Darbhanga (4) The Registrar, Lalit Narayan Mithila University, Darbhanga (5) The Finance Officer, Lalit Narayan Mithila University, Darbhanga (6) The Principal, Co-Operative College, Begusarai, Distt.- Begusarai....Respondents

with Civil Writ Jurisdiction Case No.17925 of 2010

(1) Dr.Sarla Malviya W/O Dr. Mithilesh Chandra Dubey At Present Working As University Professor And Head, P.G. Department Of Sociology, L.N.Mithila University, Darbhanga....Petitioners VERSUS (1) The State Of Bihar Through Principal Secretary(Higher Education) Human Resources Development Department Bihar, Patna (2) The Principal Secretary(Higher Education), Human Resources Development Department Government Of Bihar, New Secretariat, Patna (3) Lalit Narayan Mithila University Kameshwarnagar, Darbhanga Through Its Registrar (4) The Vice Chancellor, Lalit Narayan Mithila University Kameshwarnagar, Darbhanga (5) The Registrar, Lalit Narayan Mithila University Kameshwarnagar, Darbhanga (7) The Principal , M.R.M.College Lalbagh, Darbhanga....Respondents

with Civil Writ Jurisdiction Case No.15393 of 2010

(Dr.) Gangadhar Jha S/O Late Narsingh Jha R/O Mohalla- Professor Colony, Dighi West Police Sttion, Darbhanga Town, Distt.-Darbhanga....Petitioner VERSUS (1) The State Of Bihar Through The Chief Secretary, Government Of Bihar, Patna (2) Principal Secretary Human Resources Development Department, Government Of Bihar, Patna (3) Lalit Narayan Mithila University, Kameshwar Nagar, Darbhanga Through Its Registrar (4) Vice Chancellor Lalit Narayan Mithila University, Kameshwar Nagar, Darbhanga (5) Registrar, Lalit Narayan Mithila University, Kameshwar Nagar, Darbhanga (6) Finance Officer Lalit Narayan Mithila University, Kameshwar Nagar, Darbhanga (7) Principal, M.L.S.M. College, Darbhanga....Respondents

Appearance : For the Petitioners : M/s. Ajay Mukherjee, Prabhakar Kumar, Purushottam Kumar Jha, Sharda Nand Mishra, Durga Nand Jha,

ITEM NO.17

COURT NO.10

SECTION IX

SUPREME COURT OF INDIA

RECORD OF PROCEEDINGS: SPECIAL LEAVE PETITION (CIVIL) Diary No(s).14703/2019

(Arising out of impugned final judgment and order dated 03-10-2018 in WP No. 13166/2017

passed by the High Court of Judicature at Bombay)

THE STATE OF MAHARASHTRA & ORS. Petitioner(s) **VERSUS** MARUTI DATTATRAYA PATIL & ORS. Respondent(s) (WITH I.R. and IA No.74749/2019-CONDONATION OF DELAY IN FILING and IA No.74751/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.74750/2019-EXEMPTION FROM FILING O.T.)

Date: 01-07-2019: This petition was called on for hearing today. CORAM

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD HON'BLE MS. JUSTICE INDIRA BANERJEE For Petitioner(s) Mr. Nishant Ramakantrao Katneshwarkar, AOR* Mr. Anoop Kandari, Adv.*

For Respondent(s) M/S Dr. R.R. Deshpande and Associates

UPON hearing the counsel the Court made the following

ORDER

Delay condoned. In the facts and circumstances of the present case and since the services of the first respondent were duly approved, we see no reason to entertain the Special Leave Petition. The Special Leave Petition is accordingly dismissed. Pending application, if any, stands disposed of.

(SANJAY KUMAR-I) AR-CUM-PS

(SAROJ KUMARI GAUR) COURT MASTER

Chandan Jha, Advocates **For the State:** Mr. D.K. Sinha, AAG II Mr. S.K. Mandal, SC 24 Mr. Rajeev Lochan, AC to GA 9 Mr. Rajeev Kumar, AC to SC 7 Mr. Rajeev Kumar Singh, AC to GA 8 Mr. Gopi Jha, AC to GP 25 Mr. Himanshu Kumar, AC to GA 3 **For the Universities:** M/s A.K.Keshari, Anil Kumar Singh, A.B. Sinha, Advocates

CORAM : HONOURABLE DR. JUSTICE RAVI RANJAN C.A.V. ORDER 15 : : 07.05-2013

Heard learned council for the natitionary the State a

Heard learned counsel for the petitioners, the State and respondents-Universities.

In view of the common issue having arisen, all the writ applications filed by the teaching employees of the different Universities, raising a grievance that the arrears of salary including the arrears of difference of salary accrued time to time as per revision of scale by the University Grants Commission (hereinafter to be referred to as "the UGC") and accepted by the State Government, are not paid, have been heard and considered together and are being disposed of by this order.

As stated above, the main issue is with regard to payment of arrears of difference of salary which in some cases have not been paid since July 1982 till 2009 and which had arisen due to various revisions of pay scales by the UGC and its acceptance by the State of Bihar.

In view of the common issue arisen in the writ applications, individual's cases are not required to be dealt with separately as in almost all the cases the respondent-University has taken a stand that arrears have been calculated and have also been pre-audited by the team of the State Auditors posted at the respondent-University for the required purpose. The University has taken a categorical stand that aforesaid amount is required to be paid out of which considerable part is claimed to have been paid also and rest would be paid after release of necessary fund by the State.

The respondent-State in its various affidavits has stated that now the funds are being regularly released. Details thereof have been given in the affidavits, thus, it has been submitted that there would be no difficulty in payment of admitted dues with regard to the arrears accrued due to difference of pay in view of the revision of the pay scales by the UGC.

However, learned counsel appearing on behalf of the respondent-Universities have submitted that the State Government is not releasing necessary fund for payment of difference of salary which has accrued due to revision of scale by the UGC for the period between 01.01.1996 to 31.03.2000. For example, in C.W.J.C. No. 18336 of 2010 learned counsel for the respondentUniversity had submitted that the claim of the petitioners has been admitted and it was orally submitted that the respondentUniversity is taking steps for payment of dues even without waiting for receipt of the fund from the State Government. But, subsequently, I.A. No. 6881 of 2012 was filed on behalf of the respondent-University stating in paragraph 13 thereof that the State Government is not releasing fund for payment of arrears of difference of revised salary under the UGC scale to the petitioners from 01.01.1996 to 31.03.2000, thus, a request has been made for a direction to the State Government for release of necessary fund. It is to be kept

in mind that this affidavit was filed at the stage when the arrear of the petitioner was already approved by the respondent-University and the same had been pre-audited by the State Finance Auditor. This necessitated further direction to the State Government to clarify its stand. The State Government took a stand that vide letter No. F.1-22/ 97-U.I. of the Ministry of Human Resource Development Department of the Government of India dated 27.07.1998, by which the Central Government had decided to continue to provide financial assistance to the State Governments who wish to implement the revised scales which has been recommended by the UGC by providing 80% of the additional expenditure involved in the implementation of such revision for the period commencing from 01.01.1996 to 31.03.2000. Thereafter, from 01.04.2000 onwards, the concerned State Government would have to bear the entire expenses and liabilities. In view thereof, it was submitted that the arrears arising out of difference of salary due to revision of pay scales for the aforesaid period commencing from 01.01.1996 to 31.03.2000 cannot be paid to the various teaching staff as financial assistance of 80% from the Central Government is yet to be received in its entirety. Thereafter, this Court, on 10.12.2012 directed the State to produce the entire communication made with the Central Government giving information regarding non-implementation of the scheme of revision of pay scales for the aforesaid period due to non-receipt of the financial assistance by the Central Government. In response thereof two affidavits have been filed by the respondent-State. In the first affidavit it has been stated that the State Government is releasing the funds in compliance of various directions of this Court, however, so far the period between 01.01.1996 to 31.03.2000 is concerned, the State Government would contribute its share of 20% after receipt of 80% grant from the Central Government. Thus, it has been categorically stated in paragraph 8 of the supplementary counter affidavit filed on 18.12.2012 that for the period between 01.01.1996 to 31.03.2000 the petitioners must have got their salary in the unrevised pay scales, however, after 31.03.2000 the amount for payment of revised scale is being released by the State Government. From the letters as contained in Annexure B, it appears that some amount was already disbursed by the Central Government but more was required and as such, letters were written on 17.08.2009, 22.02.2010, 27.03.2010 and 21.01.2011. It is also admitted position that the teachers were not getting difference of salary even after 31.03.2000 and for that reason this Court was flooded with writ applications filed by the teachers of different Universities. Several writ applications were disposed of with a direction to make payment of the dues and in some cases contempt applications were filed in which strong and strict orders were passed by this Court. Now a stand is being taken by the respondent-University and the State that funds are being released regularly and either the teachers have already got their difference of salary or they would be getting it soon after due verification by the University and the State Finance Auditors. However, from one of the affidavits it appears that a decision has been taken by the State Government, as contained in Annexure D to the counter affidavit filed on behalf of the respondent no. 1, that the dues for the period commencing from 01.01.2006 to 31.03.2010 would also be paid along with the arrears

Several writ applications were disposed of with a direction to make payment of the dues and in some cases contempt applications were filed in which strong and strict orders were passed by this Court.

(See the Judgement of Patna High Court on page 118 of this Bulletin.)

Admittedly the State of Bihar has not come with any separate revision of scale of teachers and has categorically stated that it has accepted the UGC recommendation.

(See the Judgement of Patna High Court on page 119 of this Bulletin.)

for the period commencing from 01.01.1996 to 31.03.2000 after receipt of 80% of the fund from the Central Government.

On appreciation of rival contention the main issue which arises for determination in this case is whether the State Government can take such stand that it will pay the difference of salary accrued due to acceptance of UGC revision of scale for the concerned period only after receipt of the financial assistance to the tune of 80% of the total liability by the Central Government and, till that the amount is received, the State authorities cannot be asked to release the necessary fund for the payment of such arrears?

For better appreciation of this matter it has to be understood as to who is the employer of the teachers of the various colleges under various Universities of the State of Bihar. The compelling answer to the aforesaid would be that the concerned Universities are the employers of the teachers. The various Universities of this State are chiefly governed by two statutes—one is the Bihar State Universities Act, 1976 which governs almost all the Universities of the State except the Patna University and the second is Patna University Act, 1976 which is meant for Patna University and various colleges under it. From the perusal of the aforesaid statutes it unquestionably appears that the petitioners are not the employees of the Central Government and, thus, are not under any contract with the Central Government for payment of their salary or revised salary etc. Section 46 of the Bihar State Universities Act, 1976(section 47 is the equivalent provision under the Patna University Act, 1976) mandates that the State Government shall contribute annually to the University fund a recurring grant out of the Consolidated Fund of the State which shall include all expenses of recurring nature and it shall, in consultation with the Vice Chancellor, calculate such amount. The amount may be revised at the expiry of every five years. The State Government is also obliged to contribute time to time such additional grant to the University funds, as it may deem fit having regard to the need of expansion and development of the University or the Colleges.

When Mr. D.K. Sinha, learned Additional Advocate General No. II, appearing for the State, was confronted with this provision, he could not deny that the State Government is obliged to contribute necessary fund for meeting recurring expenses of the various Universities of the State and the expenditure has to be made from the consolidated fund of the State of Bihar. Further, the recurring expenditure definitely include the expenditure arising out under the head for payment of salaries and

allowances of the teaching and non-teaching staff of different colleges of the Universities. On being asked he categorically stated that the State of Bihar has not come up with any scheme for time to time revision of scales of the teachers of the colleges under various Universities on its own rather it is accepting such time to time revision as recommended by the UGC.

From the aforesaid facts, it appears that the teachers are employees of the Universities and there is statutory obligation upon the State of Bihar to release necessary fund for meeting the recurring expenditure of the Universities which is also to be revised after every five years. State is also obliged to meet additional expenditures also. The aforesaid statute nowhere state that the Central Government is also under obligation for payment of salary or revised salary to a teacher of the University or college under University. However, this Court would not mind if the State Government generates some additional resource or receive some grant-in-aid from the Central Government for payment of such salary or difference of salary on account of revision of pay scale. It is immaterial as to from which source the State generates fund but it is undisputed that the State is under obligation to release necessary fund for payment of such dues or arrears once it has accepted the recommendation of revision of scales. It is also not in dispute that the arrears were not paid even for the period after 31.03.2000 for which hundreds of writ petitions came to be filed before this Court and subsequently some amounts are being released and remaining are now undertaken to be released.

Learned Additional Advocate General No. II is not in a position to produce any agreement with the Central Government showing that, at the first instance, the Central Government would have to provide financial assistance of 80% of total liability for the period concerned and then the State Government would meet the remaining 20% of the same and only, thereafter, the revised scale would be paid to the concerned teachers. It appears from the letter dated 27.07.1998 of the Central Government that the Central Government had agreed to provide financial assistance to the States up to 80% of the total liability for concerned period but it does not necessarily mean that till it provides the same the scheme of revision would not be implemented by the State of Bihar as admittedly the State of Bihar has not come with any separate revision of scale of teachers and has categorically stated that it has accepted the UGC recommendation.

A learned Single Judge of this Court in the order dated

On being asked he categorically stated that the State of Bihar has not come up with any scheme for time to time revision of scales of the teachers of the colleges under various Universities on its own rather it is accepting such time to time revision as recommended by the UGC.

(See the Judgement of Patna High Court on page 119 of this Bulletin.)

15.02.2012 passed in M.J.C. No. 5203 of 2010 has stated that if it was a private employer defaulting payment of wages to its workers, the State would have been the first person to prosecute them but when it comes to the State's own obligation, the State puts on a sleeping cap and takes a long nap not bothering its statutory obligations. The scheme of UGC of revision of scale which was made effective from 01.01.1996 was accepted by the letter of the Higher Education of the State of Bihar bearing letter no. 15/M1-218/98(H.E.) 1300 dated 10.07.2001. It has been stated in clause (ii) of the aforesaid letter that the Human Resource Development Department of the Central Government has agreed to grant financial assistance of 80% for the period commencing from 01.01.1996 to 31.03.2000 subject to the condition that the State Government accepts the pay scale revision as recommended by the UGC excepting all the terms and conditions described therein. However, that notification itself was subject to litigation and the matter came up for a decision before this Court in C.W.J.C. No. 11986 of 2001 and finally in L.P.A. No. 500 of 2002. In view of the orders passed by this Court another notification by the State Government came up vide letter no. 14/C1-224/2001/1118 dated 28.09.2005 by which the benefit of revision of scale was extended to the teachers promoted under time bound promotion scheme also. However, it does not appear that even then immediately any letter was written to the Central Government for release of such financial assistance of 80%. All the letters which have been brought on record have been written either in the year 2009 or thereafter till 2011. Therefore, the State could not demonstrate its bona fide by showing that it was ready to pay the revised scale for the concerned period and was continuously in communication with the Central Government from the beginning itself informing it that unless financial assistance of 80% is received it cannot be implemented.

Learned counsel for the petitioners, at the time of hearing of these matters, produced a copy of the counter affidavit filed on behalf of the Union of India in another case being C.W.J.C. No. 11801 of 2012. Learned counsel has drawn attention towards a statement made in paragraph 11 thereof which discloses the viewof the Central Government that the State of Bihar is required under the Scheme to first pay the arrears to the teachers and then seek reimbursement of Central share amounting to 80% of the additional liability on account of salary revision for implementation of the revised UGC pay scales for University and College Teachers, Librarian personnel and physical education cadre, for the period from 01.01.2006 to 31.03.2010. It is contended that similar step should have been taken by the State Government with regard to the payment of arrears of the period concerned in the present case.

Thus, in my considered opinion, the State Government is under statutory obligation to contribute necessary fund regularly for payment of salary as revised time to time of the teachers of the various Universities and the colleges under the Universities from its own resources once it has accepted the revised pay scale recommended by the UGC. Thereafter, it would be at liberty to seek financial assistance from any other resource or get it reimbursed from the Central Government as per its undertaking. It would not be fair on the part of the State Government to keep the matter pending by not paying the revised scales of the teachers on the ground that the Central Government is yet to release necessary funds as financial assistance.

Accordingly, I direct the State authorities to release the necessary fund within two months from the date of receipt/production of a copy of this order for payment of all the dues/arrears of the teachers which have been approved by different Universities and pre-audited by the State Finance Auditor. Once the State Finance Auditors posted by the State Government at the Universities for the relevant purpose, clear the dues, the State Government should immediately release necessary fund. It is further held that since the admitted dues have not been paid by the respondents to the petitioners they would also be obliged to pay simple interest at the rate of 12% per annum to be calculated from the date such amount became due till such final payment is made or has been made. This would also include the amount accrued due to the difference of salary in view of revised UGC scale time to time including the period from 01.01.1996 to 31.03.2000 or from 01.01.2006 till 31.03.2010.

However, so far as the colleges of 4th phase, if any, are concerned, a Division Bench of this Court in its decision dated 13.07.2012 in L.P.A. No. 32 of 2011 has held that till the appointments of such teachers were confirmed after recommendation of the Justice Aggarwal Commission and its acceptance by the Apex Court, the situation was fluid, thus, such teachers could not have claimed their revised salary. However, the moment the State Government also accepted that recommendation and thereafter the services of the teachers were confirmed, the University was duty bound to pay the dues and the State Government was obliged to release the required fund. Thus, in such cases the respondents would be obliged to pay the arrears immediately and also pay simple interest at the rate of 12% per annum which should be calculated from the date of confirmation/absorption of services of such teachers till the date of its payment.

Before parting with the issue, I must indicate that if the petitioners or some of the petitioners are aggrieved with the manner in which their dues have been calculated either by the University, in that case they would be at liberty to raise such issue before the Vice Chancellor of the concerned University making out their grievances which should be considered and disposed of by the Vice Chancellors concerned by passing speaking orders.

As a result, these writ applications are allowed to the extent as indicated above.

(Dr. Ravi Ranjan, J)

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