

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2270 OF 2021

Khilari Rajendra Eknath and Others**Petitioners** V/s. The State
of Maharashtra and Others**Respondents**

Mr. Vishal Kanade i/by. Mr. Sagar A. Rane, Advocate for the petitioners. Mr. Himanshu Takke, AGP for State-respondent no.1. Dr. Milind Sathe, Senior Advocate a/w. Mr. Rahul Nerlekar, Advocate for respondent no.2-BHC.

CORAM : S.V.GANGAPURWALA, ACTING CJ & SANDEEP V. MARNE, J.**RESERVED ON : 24th APRIL, 2023. PRONOUNCED ON : 28th APRIL, 2023****JUDGMENT: (Per - ACTING CHIEF JUSTICE)**

1. Rule. Rule made returnable forthwith and with the consent of counsels for parties, the petition is called out for final hearing.

2. Petition is filed by 56 Clerks working on the establishment of the High Court of Bombay, Appellate Side seeking a declaration that they are governed by the provisions of the Old Pension Scheme in vogue prior to 01.11.2005 and the General Provident Fund Scheme. Petitioners seek directions not to apply the Defined Contributory Pension Scheme (DCPS)/National Pension Scheme (NPS) introduced vide Government Resolution (G.R.) dated 31.10.2005. To that extent, a declaration is sought that the Notification issued by the High Court on 21.04.2008 making applicable provisions of G.R. dated 01.11.2005 to the staff of the High Court and the Courts subordinate to it would apply prospectively from 21.04.2008 and that the same would not apply to petitioners.

3. On 20.6.2005 an advertisement was issued by the Registrar General of the High Court for filling up 48 posts of Clerks on the establishment of the Bombay High Court, Appellate Side in the pay scale of 3050-4590. The last date for submission of applications was 11.07.2005. Petitioners applied in pursuance of the advertisement. A Written Test was conducted on 09.08.2005 which was cleared by petitioners. They were then subjected to Typing Test on 29.10.2005 and interviews on 26.11.2005. A Select list/Wait List of the candidates was published on 07.12.2005. Appointment orders were issued to the Petitioners on 28.12.2005. This is how the Petitioners came to be appointed on the post of Clerk on the establishment of the High Court of Bombay, Appellate Side.

4. The High Court, by its Notification dated

20.02.1995 directed that various Rules formulated by the Government of Maharashtra relating to conditions of service of its employees would apply to the officers and members of the staff attached to the High Court. Thus, the provisions of Maharashtra Civil Services (Pension) Rules, 1982 came to be adopted by the High Court for its officers and members of staff. By another Notification dated 29.03.1999, the High Court directed that the provisions of the Maharashtra General Provident Fund Rules would apply to the officers and members of the staff of High Court. By those Notifications, it was also directed that any amendments effected to the Rules by the State Government from time to time shall automatically apply to the officers and members of the staff attached to the High Court, unless otherwise directed by the Chief Justice.

5. The employees and officers of the Central Government are governed by the provisions of Central Civil Services (Pension) Rules, 1972, under which the employees and officers were being paid pension, gratuity and other benefits as provided under the Rules. The Government of India introduced the New Defined Contributory Pension Scheme by issuing Notifications dated 22.12.2003 and 30.12.2003 and made the provisions of DCPS applicable to Government Servants appointed to the Government of India service after 31.12.2003. Under the DCPS, both employees as well as Government are required to contribute specified amount every month to the Provident Fund. The pension is to be paid to the employees out of the corpus so generated from the contributions.

6. The Government of Maharashtra adopted the provisions of DCPS introduced by the Government of India by issuing G.R. dated

Now turning to the merits of the petition, the issue involved in the present petition is about applicability of provisions of Old Pension Scheme to employees whose selection process was initiated prior to introduction of the DCPS, which came into effect on 01.11.2005.

(See Para 16 of the Judgment dated 28th April 2023)

**The phraseology “Recruitment” and “Appointment” are not synonymous. There is a marked distinction between “Recruitment” and “Appointment”.
Recruitment is a stage prior to appointment.**

(See Para 27 of the Judgment dated 28th April 2023)

31.10.2005. By that G.R., a New Defined Contributory Pension Scheme on lines of Government of India was introduced by replacing the then existing pension scheme. The Scheme came into effect w.e.f. 1.11.2005 and became mandatorily applicable to all government servants recruited on/or before 1.11.2005 in State Government service. The provisions of the DCPS of the State Government are on par with those introduced by the Government of India.

7. On account of issuance of the G.R. dated 31.10.2005, the provisions of Maharashtra Civil Services (Pension) Rules, 1982 were amended providing that the Rules shall not apply to government servants recruited on/or after 1.11.2005.

8. The High Court issued Notification dated 21.04.2008 under the provisions of Article 229 of the Constitution of India directing that the G.R. dated 31.10.2005 regarding introduction of New Contributory Pension Scheme shall apply to the staff of the High Court and the Courts Subordinate to it. It was further directed that, any amendment to the Pension Scheme would automatically apply to the High Court staff and the Courts Subordinate to it, unless otherwise directed by the Chief Justice.

9. As Petitioners were actually appointed in service of the High Court after 1.11.2005, the provisions of the DCPS have been applied to them. A representation came to be addressed by the Petitioners on 24.10.2017 for application of provisions of Old Pension Scheme on the ground that their selection process was initiated before 1.11.2005. Another representation dated 23.08.2018 was made by the High Court Non-Gazetted Ministerial Staff Association to the Chief Minister for application of Old Pension Scheme. Few representations came to be addressed on 10.08.2021 and 9.09.2021 for application of the provisions of Old Pension Scheme. Having not received any response to their representations, Petitioners have knocked the doors of this Court by filing the present petition seeking application of the provisions of Old Pension Scheme.

10. Appearing for Petitioners, Mr. Kanade learned Counsel would submit that the vacancies against which Petitioners are recruited pertain to the period prior to 01.11.2005. He would submit that the selection process was also initiated before 01.11.2005. That most of the process of selection was completed before 01.11.2005 as Written Test and Typing Test were conducted prior to the said date. Merely because there was some delay in conducting the interviews and issuing the appointment orders, petitioners cannot be made to

suffer. Mr. Kanade would rely upon the judgment of the Delhi High Court in **Pawan Kumar and Others V/s. Union of India and others¹** (1 (2023) SCC Online DEL 112), in support of his contention that the provisions of Old Pension Scheme are required to be applied in cases where selection process is initiated in respect of vacancies which arose prior to 01.11.2005. He would also place reliance on the Office Memorandum issued by the Government of India on 03.03.2023 giving one-time option to employees of the Central Government appointed against a post or vacancy which was advertised/notified for recruitment/appointment prior to the date of notification of National Pension Scheme. He would submit that similar benefit is required to be extended to the Petitioners as well.

11. The petition is resisted by the High Court. Dr. Sathe the learned senior advocate appearing for the High Court, would raise the preliminary issue of delay and laches on the part of Petitioners in filing the present petition. He would submit that Petitioners became the members of the New Pension Scheme in December 2005 and their contributions to the pension fund have been deducted since then. That Petitioners therefore cannot now be permitted to raise the stale issue of application of Old Pension Scheme. Dr. Sathe would further submit that the service conditions of High Court staff are determined by the Chief Justice in exercise of the powers under Article 229 of the Constitution of India. Under various Notifications issued from time to time, the provisions of the Rules made applicable to the government servants in State Government service have been made applicable to the Officers and members of the staff of the High Court. That therefore the provisions of the G.R. dated 31.10.2005 have rightly been made applicable to the officers and members of the staff of the High Court by issuance of the Notification dated 21.04.2008.

12. Dr. Sathe would contend that mere initiation of recruitment process or participation by Petitioners therein does not create any vested right in favour of an employee. That rights in respect of the Government Servant, if any, get crystallized only upon his actual appointment. That therefore various stages in selection process prior to appointment are wholly irrelevant for the purpose of determining entitlement of a Government Servant to service benefits which accrue only upon his actual appointment. That it is settled law that, mere selection for appointment does not create any right in favour of a selected candidate. That there is distinction between legitimate expectation and vested/accrued rights. That application of Old Pension Scheme is a not a vested/accrued right of

Recruitment is the process which entails selection of candidates.

(See Para 27 of the Judgment dated 28th April 2023)

Selection is a process of picking the candidates from the short listed candidates.

(See Para 27 of the Judgment dated 28th April 2023)

petitioners. In support of his contention, Dr. Sathe would rely upon the following judgments:

(i) **Chairman, Railway Board and Others Vs. C.R. Rangadhamaiah and Others**² (2 (1997) 6 SCC 623)

(ii) **Punjab State Co-operative Agricultural Development Bank Limited V/s. Registrar, Co-operative Societies**³ (3 (2002) 4 SCC 363)

(iii) **Shivaji Nagnath Lokare and Others V/s. State of Maharashtra and Others**⁴ (4 (2017) 5 Mh.L.J.854)

13. The petition is also opposed by the State Government. Mr. Himanshu Takke, the learned AGP would submit that the DCPS has been made applicable by the State of Maharashtra on lines with the similar scheme introduced by the Government of India. That provisions of Rule 2 of the Maharashtra Civil Services (Pension) Rules, 1982 have been amended providing that the Rules shall not apply to government servants who are recruited on/or after 1.11.2005. That the date of actual appointment in government service is the crucial factor for applying the provisions of a particular pension scheme and that therefore the date of commencement of the selection process is wholly inconsequential. The petition is also opposed by the State Government on the grounds of delay and latches.

14. Rival contentions of the parties now fall for our consideration.

15. Before advertng to the merits of the petition, we first deal with the issue of delay and latches in filing the present petition. No doubt, the Petitioners are appointed in the service of the High Court in December 2005 and raised the issue about applicability of DCPS for the first time by making representation dated 24.10.2017. The present petition has been filed on 30.09.2021. Both High Court, as well as, the State Government have raised the issue on delay and latches contending that the petition has been filed sixteen years after applicability of provisions of DCPS to Petitioners. Petitioners continue to be in service on the date of filing of the petition. Pension would accrue to them only after they retire from service, either on attaining the age of superannuation or after opting for voluntary retirement. The Petitioners' entitlement draw pension is not under dispute. What Petitioners seek is applicability of a particular pension scheme. The manner of payment of pension under the two schemes differ. It is not that the Petitioners have started drawing pension under DCPS. In that view of the matter, cause of action for Petitioners would be continuous one. **There is yet another reason why the petition would not suffer from delay or latches.** The DCPS of the Central Government (which is adopted by the State Government) has recently undergone changes on 17-02-2020 and 03-03-2023, details of which have been discussed in later portion the judgment. The

petition therefore cannot be defeated on the grounds of delay and latches. **We therefore repel the objection raised by the High Court administration and the State Government in this regard.**

16. Now turning to the merits of the petition, the issue involved in the present petition is about applicability of provisions of Old Pension Scheme to employees whose selection process was initiated prior to introduction of the DCPS, which came into effect on 01.11.2005. The High Court has adopted the provisions of Maharashtra Civil Services (Pension) Rules, 1982 to its officers and members of staff. Until 31.10.2005 pension payable to the government servants was governed by the provisions of the Maharashtra Civil Services (Pension) Rules 1982. The Pension Scheme under the Rules did not involve making of any contributions by the government servants for earning pension upon their retirement. The quantum of pension under the Rules is to be determined by taking into consideration pensionable pay (ten months' average pay prior to retirement) coupled with the number of years of service put in by them.

17. There was a similar pension scheme for the Central Government Servants under the provisions of Central Civil Services (Pension) Rules, 1972. The Government of India introduced the DCPS by issuing Office Memorandum dated 22.12.2003 and 30.12.2003 and made the provisions of DCPS applicable to the Central Government servants recruited on/or after 01.01.2004. The State Government has adopted the DCPS introduced by the Central Government and has made the same applicable to its employees by issuing the GR dated 31.10.2005. Thus, what is done by the State Government is essentially to adopt the provisions of DCPS introduced by the Government of India. **This is clear from para Nos. 1 and 2 of the GR dated 31.10.2005 which reads thus:-**

INTRODUCTION

Government of India vide Notification, Ministry of Finance, Department of Economic Affairs dated 22nd December 2003 introduced a new Contribution Pension Scheme i.e. "Defined Contribution Pension System" for the employees who are recruited on or after 1st January, 2004 in Central Government Service. Government of India has also declared that the option of joining the aforesaid new Contribution Pension Scheme would also be available to the State Governments. Besides, under this scheme Government of India have Constituted an independent "Pension Fund Regulatory and Development Authority (PFRDA)" for the management and regulation of the pension fund.

The question of introduction of New Contribution Pension Scheme, on the lines of Government of India, for new recruits in State Government Service was under consideration of this Government.

RESOLUTIONS

(a) Government has now decided that a new "Defined Contribution

An appointment means an actual act of posting a person to a particular office.

(See Para 27 of the Judgment dated 28th April 2023)

Pension Scheme" on the lines of Government of India, replacing the existing pension scheme, as detailed below, would be made applicable to the Government servants who are recruited on or after 1st November 2005 in State Government Service.

(b) Government is also pleased to decide that for the purpose of implementation of the above new Defined Contribution Pension Scheme, **this State Government would join the aforesaid new defined contribution pension system introduced by Government of India.**

(c) The Government is also pleased to decide that the provisions of,

(i) the existing pension scheme (i.e. Maharashtra Civil Services (Pension) Rules, 1982 and Maharashtra Civil Services (Commutation of Pension) Rules, 1984 and

(ii) the existing General Provident Fund Scheme (GPF) would not be applicable to the Government servants who are recruited on or after 1st November 2005 in State Government service.

There can thus be no matter of doubt that the State Government has adopted the DCPS of the Central Government, albeit from a different date (01-01-2004 for Central Government and 01-11-2005 for State Government).

18. Application of Old Pension Scheme to Government Servants appointed on or after 01.01.2004 in the Central Government gave rise to numerous litigation across the country. The challenge to the validity of the provisions of DCPS came to be rejected in various judicial pronouncements. Later, litigation were initiated by employees whose selection process was completed

prior to introduction of DCPS but appointment orders were delayed and effected after 1.11.2004. **Various High Courts/Tribunals directed that such employees, whose selection process was completed prior to 1.01.2004, would be governed by the provisions of the Old Pension Scheme.** To give benefit of such judicial pronouncements to all similarly placed government employees, **the Government of India, Ministry of Personnel, Public Grievances and Pension issued Office Memorandum dated 17.02.2020** providing one-time option to Central Government employees who were declared successful for recruitment in the results declared on 31.12.2003 against vacancies which occurred before 01.01.2004. The relevant portion of the Office Memorandum dated 17.02.2020 reads thus :

No. 57/04/2019-P&PW(B)

Government of India: Department of Pension and PW
Lok Nayak Bhawan, Khan Market, New Delhi,
the 17th February, 2020.

OFFICE MEMORANDUM

Subject : Coverage under Central Civil Services (Pension) Rules, 1972, in place of National Pension System, of those Central Government employees whose selection for appointment was finalized before 01.01.2004 but who joined Government service on or after 01.01.2004.

4. The matter has been examined in consultation with the Department of Personnel & Training, Department of Expenditure and Department of Legal Affairs in the light of the various representations/references and decisions of the Courts in this regard. It has been decided that in all cases where the results for recruitment were declared before 01.01.2004 against vacancies occurring on or before 31.12.2003, the candidates declared successful for recruitment shall be eligible for coverage under the CCS (Pension) Rules, 1972. Accordingly, such Government servants who were declared successful for recruitment in the results declared on or before 31.12.2003 against vacancies occurring before 01.01.2004 and are covered under the National Pension System on joining service on or after 01.01.2004, may be given a one-time option to be covered under the CCS (Pension) Rules, 1972. This option may be exercised by the concerned Government servants latest by 31.05.2020."

(Ruchir Mittal)
Deputy Secretary to the
Government of India.

19. Thus, the Office Memorandum dated 17.02.2020 provided a solace to those Central Government Servants whose selections were finalized in all respects prior to introduction of the DCPS. This Court, by its judgments in (i) **Chitralekha Ratnakarrao Vaidya vs. State of Maharashtra and Others** delivered in Writ Petition No.9199 of 2021 dated 13.12.2021 (ii) **Balasaheb Subrao Kale and Others vs. State of Maharashtra and Others** delivered in Writ Petition No.4115 of 2016 dated 30.11.2018 (iii) **Nandkishor Vinayak Garje and Others vs. The State of Maharashtra and Others** delivered in Writ Petition No.242 of 2019 along with connected Writ Petitions dated 03.03.2020 (to which one of us Acting Chief Justice was a party) and (iv) **Gangu Murlidhar Zade Vs. State of Maharashtra and Ors.** delivered in Writ Petition No. 13702 of 2021 dated 6.09.2022 (v) **Sonali Sanjay Patil & Ors. V/s. State of Maharashtra and Ors.** delivered in Writ Petition No.12009 of 2021 dated 6.10.2022; and (vi) **Bharat s/o. Manchakrao Gurle & Ors. V/s. State of Maharashtra and Ors.** delivered in Writ Petition No. 14731/2021 dated **06.10.2022(to which one of us Sandeep V. Marne J. was a party)** directed that the provisions of Old Pension Scheme would be applicable to the Petitioners therein whose results were declared on or before coming into force of the DCPS.

20. This is how employees whose selection process was over before introduction of DCPS came to be governed by the Old Pension Scheme. However

राज्य शासकीय व इतर पात्र कर्मचाऱ्यांना अनुज्ञेय महागाई भत्त्याच्या दरात दिनांक १ जानेवारी, २०२३ पासून सुधारणा करण्याबाबत.

महाराष्ट्र शासन : वित्त विभाग

शासन निर्णय क्रमांक : मभवा-१३२३/प्र.क्र.६/सेवा-९

मंत्रालय, मादाम कामा रोड, हुतात्मा राजगुरु चौक, मुंबई ४०० ०३२

दिनांक : ३० जून, २०२३

वाचा : (१) भारत सरकार, वित्त मंत्रालय, व्यय विभाग कार्यालयीन जापन क्रमांक : १/१/२०२३-इ.॥ (बी), दिनांक ०३ एप्रिल, २०२३

शासननिर्णय

राज्य शासकीय कर्मचारी व इतर पात्र पूर्णकालिक कर्मचाऱ्यांना अनुज्ञेय महागाई भत्त्याच्या दरात सुधारणा करण्याचा प्रश्न शासनाच्या विचाराधीन होता.

२. शासन असे आदेश देत आहे की, दिनांक १ जानेवारी, २०२३ पासून ७ व्या वेतन आयोगानुसार सुधारित वेतनसंरचनेतील मूळ वेतनावरिल अनुज्ञेय महागाई भत्त्याचा दर ३८% वरून ४२% करण्यात यावा. सदर महागाई भत्ता वाढ दिनांक १ जानेवारी, २०२३ ते दिनांक ३१ मे, २०२३ या कालावधीतील थकवाकीसह माहे जून, २०२३ च्या वेतनासोबत रोखीने देण्यात यावी.

३. महागाई भत्त्याची रक्कम प्रदान करण्यासंदर्भातील विद्यमान तरतुदी व कार्यपद्धती आहे त्याचप्रकारे यापुढे लागू राहिल.

४. यावर होणारा खर्च संबंधित शासकीय कर्मचाऱ्यांचे वेतन व भत्ते ज्या लेखाशीर्षाखाली खर्ची टाकण्यात येतात, त्या लेखाशीर्षाखाली खर्ची टाकून त्याखालील मंजूर अनुदानातून भागविण्यात यावा. अनुदानप्राप्त संस्था व जिल्हा परिषद कर्मचाऱ्यांच्या बाबतीत, संबंधित प्रमुख लेखाशीर्षाखालील ज्या उप लेखाशीर्षाखाली त्यांच्या सहाय्यक अनुदानाबाबतचा खर्च खर्ची टाकण्यात येतो, त्या उप लेखाशीर्षाखाली हा खर्च खर्ची टाकण्यात यावा.

सदर शासननिर्णय महाराष्ट्र शासनाच्या www.maharashtra.gov.in या संकेतस्थळावर उपलब्ध करण्यात आला असून त्याचा संकेतांक २०२३०६३०९८३२९४२२०५ असा आहे. हा आदेश डिजिटल स्वाक्षरीने साक्षात्कृत करून काढण्यात येत आहे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने

(वि.अ.धोत्रे)

उप सचिव, महाराष्ट्र शासन

PR : (1) P 16 NB 2019 (2) P 140 NB 2019 (3) P 12 NB 2020 (4) P 279 NB
2021 (5) P 100 NB 2022 (6) P 165 NB 2022 (6) P 28 NB 2023
(7) P 116 NB 2023

there were several employees of the Central Government, whose selection process was pending as on the date of introduction of DCPS. They formed another category where the advertisement/recruitment notification was issued prior to introduction of DCPS but some stages of selection process remained pending when the DCPS was introduced in the Central Government w.e.f. 01-01-2004. They were actually appointed in the government service after 01-01-2004. Amongst decision by the tribunals, the Delhi High Court in **Pawan Kumar** (*supra*) dealt with the case of recruits in Central Armed Police Force, who had applied in pursuance of advertisement issued prior to 01.01.2004 but were appointed after 01.01.2004. In the petition before the Delhi High Court, advertisement was issued in June 2002 by the Special Selection Board for filling up Group-A posts of Assistant Commandants in the Border Security Force, Central Reserve Police Force, Indo-Tibetan Border Police force and special Security Bureau (now "Sashtra Seema Bal"). The last date of filing up the application was 30.06.2002. The written examination was conducted on 2.3.2003 and the successful candidates were subjected to physical test, interview and medical examination between October 2003 to February, 2004. The final results were declared in July, 2004. In the meantime, DCPS was implemented w.e.f. 01.01.2004. Though in **Naveen Kumar Jha v. Union of India**⁵ (5 (2012) SCC Online Del 5606), **Avinash Singh vs. Union of India**⁶ (6 (2011) SCC Online Del 2432) and **Parmanand Yadav V/s. Union of India**⁷ (7 (2015) SCC Online Del 7274), the Delhi High Court had directed extension of Old Pension Scheme, **the respondents therein issued Office Order dated 11.12.2018 extending the benefit of Old Pension Scheme only to those personnel whose recruitment process was completed by 31.12.2003 and who joined the Force after 1.1.2004.** Thus, petitioners in **Pawan Kumar** (*supra*) were not granted the benefit of Old Pension Scheme. The Delhi High Court dealt with the case of the Petitioners and held in paras-46 and 47 as under :

"46. On this aspect we find that the appointment letters have been issued to the petitioners in the year 2004-2005 after conclusion of the selection process, which took extra inordinate long time as the advertisement / notification for appointment was released in the year

2002 & 2003 for different posts in the Forces. It is not misplaced to mention here that the advertisement [in W.P.(C) No. 12712/2021 i.e. the lead matter] inviting applications for recruitment of Assistant Commandant in BSF/CRPF/ITBP/SSB noted that "on joining an organization a candidate shall be governed by the Act and Rules as applicable to that organization and as amended from time to time".

47. It is the settled position that appointments have to be strictly made in terms stipulated in the advertisement and any breach would tantamount to vitiation of the selection process."

21. The Delhi High Court thus held that the Rules as applicable as on the date of issuance of the advertisement would apply. After holding as above, the Delhi High Court thereafter went into slightly different issue of applicability of Old Pension Scheme to Central Armed Police Forces and held that the provisions of Old Pension Scheme would apply to them.

22. The Central Government took note of various judicial pronouncements as well as representations received from the affected employees whose appointments were made against posts/vacancies advertised/notified for recruitment prior to notification of the DCPS. **The GOI, Ministry of Personnel, Public Grievances and Pensions issued Office Memorandum dated 03.03.2023 directing as under :**

"4. The matter has been examined in consultation with the Department of Financial Services, Department of Personnel & Training, Department of Expenditure and Department of Legal Affairs in the light of the various representations/references and decisions of the Courts in this regard. It has now been decided that, in all cases where the Central Government civil employee has been appointed against a post or vacancy which was advertised/notified for recruitment/appointment, prior to the date of notification for National Pension System i.e. 22.12.2003 and is covered under the National Pension System on joining service on or after 01.01.2004, may be given a one-time option to be covered under the CCS (Pension) Rules, 1972 (now 2021). This option may be exercised by the concerned Government servants latest by 31.08.2023.

5. Those Government servants who are eligible to exercise option in accordance with para-4 above, but who do not exercise this option by the stipulated date, shall continue to be covered by the National Pension System.

6. The option once exercised shall be final.

7. The matter regarding coverage under the CCS (Pension) Rules,

प्रश्न जुनी पेन्शन योजना लागू होण्याचा

१ नोव्हेंबर २००५ नंतर नेमणूक झालेल्या पण भरती प्रक्रिया त्या तारखेपूर्वी सुरू झालेल्या शिक्षक - कर्मचाऱ्यांची बैठक

जुनी पेन्शन योजना लागू करण्याच्या संदर्भात मा.उच्च न्यायालयाच्या मुंबई खंडपीठाने दिनांक २८ एप्रिल २०२३ रोजी एक महत्त्वपूर्ण निर्णय W.P.No. 2270 of 2021 या प्रकरणात दिलेला आहे. ज्या शिक्षक / कर्मचाऱ्यांची प्रत्यक्ष नेमणूक ही १ नोव्हेंबर २००५ नंतर झालेली असेल परंतु त्यांची भरती प्रक्रिया ही १ नोव्हेंबर २००५ पूर्वी सुरू झालेली असेल त्यांना जुनी पेन्शन योजना लागू करावी लागेल असे या निर्णयात नमूद आहे. या निर्णयावर आधारित तसाच दुसरा एक निर्णय मा.नागपूर खंडपीठाने दिनांक २८ जून २०२३ रोजी तत्सम प्रकरणी दिलेला आहे. 'भरती प्रक्रिया' आणि 'नेमणूक' या दोनमध्ये फरक आहे असे मा.उच्च न्यायालयाने आपल्या निर्णयात स्पष्टपणे नमूद केलेले आहे. उपरोक्त न्यायनिर्णयांनी कायद्याचा ठरवून दिलेला अर्थ लक्षात घेता संघटनेने करावयाच्या उपाययोजना निश्चित करण्याच्या प्रयोजनार्थ दिनांक १ नोव्हेंबर २००५ पूर्वी ज्यांची भरती प्रक्रिया सुरू झालेली आहे परंतु प्रत्यक्ष नेमणूक मात्र १ नोव्हेंबर २००५ नंतर झालेली आहे अशा सर्व शिक्षक - कर्मचाऱ्यांची बैठक बोलाविण्यात आलेली असून बैठकीचे तपशील सोबतच्या तक्त्यात नमूद केलेले आहेत. सर्व संबंधितांनी उपस्थित रहावे ही विनंती. - डॉ.नितिन कोंगरे, सचिव, 'नुटा'

तक्ता

सभेचे ठिकाण : शिक्षक भवन, सं.गा.बा. अमरावती विद्यापीठ परिसर, अमरावती

सभेचा दिवस व दिनांक : रविवार, दिनांक १० सप्टेंबर, २०२३

सभेची वेळ : दुपारी २.०० वाजता

1972 (now 2021), based on the option exercised by the Government servant, shall be placed before the Appointing Authority of the posts for which such option is being exercised for consideration, in accordance with these instructions. In case the Government servant fulfills the conditions for coverage under the CCS (Pension) Rules, 1972 (now 2021), in accordance with these instructions, necessary order in this regard shall be issued latest by 31st October, 2021. The NPS account of such Government servants, shall, consequently, be closed w.e.f. 31st December, 2023.

8. The Government servants who exercise option to switch over to the pension scheme under CCS (Pension) Rules, 1972 (now 2021), shall be required to subscribe to the General Provident Fund (GPF). Regarding account of the corpus in the NPS account of the Government servant, Controller General of Accounts (CGA) has furnished the following clarification vide letter No.1(7)(2)/2010/cla./TA III/390 dated 14.11.2019 & I.D. Note No.TA-3-6/3/2020-TA-III/cs-4308/450 dated 23.12.2022;

i. Adjustment of Employees' contribution in Accounts : Amount may be credited to individual's GPF account and the account may be recasted permitted up-to-date interest (Authority-FR-16 & Rule 11 of GPF Rules).

ii. Adjustment of Government contribution under NPS in Accounts : To be accounted for as (-)Dr. to object head 70-Deduct Recoveries under Major Head 2071- Pension and other Retirement benefit-Minor Heard 911-Deduct Recoveries of over payment (GAR 35 and para 3.10 of List of Major and Minor Heads of Accounts).

iii. Adjustment of increased value of subscription on account of appreciation of investments – May be accounted for by crediting the amount to Govt. account under M.H. 0071 – Contribution towards Pension and Other Retirement Benefits 800-Other Receipts (Note under the above Heard in LMMHA)."

23. Thus, so far as employees of the Central Government are concerned, they have been given an option to opt for Old Pension Scheme in case they have been appointed against a post or vacancy advertised for recruitment prior to the date of Notification of DCPS. We have already

Registered Under Trade Union Act 1926 No.
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**MAHARASHTRA FEDERATION OF UNIVERSITY
& COLLEGE TEACHERS ORGANIZATION
(MFUCTO)**

University Club House, B-Road, Charchgate,
Mumbai-400 020

PRESIDENT
Prof. Dr. S. P. Lawande

GENERAL SECRETARY
Prof. Dr. P. B. Raghunashi

Date : 18.04.2023

प्रति,

मा.प्रधान सचिव,

उच्च व तंत्र शिक्षण विभाग, महाराष्ट्र राज्य, मंत्रालय, मुंबई.

विषय : दि. १४.६.२००६ पूर्वी नियुक्त एम.फील. अर्हता धारक अध्यापकांना कॅसचे लाभ लागू करणेबाबत.

महोदय,

महाराष्ट्र राज्य प्राध्यापक महासंघ (एमफुक्टो) प्राध्यापकांचे प्रश्न सोडविण्यासाठी सन १९७५ पासून कार्यरत आहे. उपरोक्त विषयाच्या संदर्भात उच्च व तंत्र शिक्षण विभागाने खालील परिपत्रके निर्गमित केली आहेत.

(१) पत्र क्र. संकीर्ण-२२०४/प्र.ल.९१/विशि-१, दि. १६.११.२०२२

(२) पत्र क्र. संकीर्ण-२२०४/प्र.ल.९१/विशि-१, दि. १६.०२.२०२३

वरील पत्रांच्या संदर्भात चर्चा करण्यासाठी व त्याची अंमलबजावणी संचालक व सहसंचालक कार्यालय स्तरावर करण्याकरीता महासंघाच्या शिष्टमंडळास वेळ द्यावा, ही विनंती.

कळावे,

आपला विश्वासू,
डॉ.पी.बी.रघुवंशी
सरचिटणीस, एमफुक्टो

observed above that, the State Government has adopted the DCPS formulated by the Central Government vide Notifications dated 22.12.2003 and 30.12.2003 by way of issuance of the G.R. dated 31.10.2005. The recitals to the G.R. make it amply clear that the State Government has essentially followed the Scheme formulated by the Government of India. **Therefore, we see no reason why the State Government should not follow the provisions of Office Memorandum dated 03.03.2023 as well.** If the State Government adopts the provisions of the Office Memorandum dated 03.03.2023, petitioners who are appointed against the posts advertised before 01.11.2005 would be governed by the provisions of the Old Pension Scheme. We are therefore of the considered view that since the State Government has adopted the Scheme formulated by the Central Government for Defined Contributory Pension Scheme, the changes effected to the Scheme by the Central Government (based on judicial pronouncements) should also be made applicable to the Officers and employees of the State Government inter alia would consequently apply to the Officers and members of the staff of the High Court as well.

24. It appears that the Delhi High Court has adopted the provisions of OM dated 03.03.2023 to officers and staff on its establishment by issuing the following Circular:

**HIGH COURT OF DELHI:NEW DELHI,
(Establishment-I Branch)
CIRCULAR**

No.523/Estt.I/DHC Date: 28.03.2023

It is circulated for information of all concerned that pursuant to Office Memorandum No.57/05/2021-P&PW(B) dated 03.03.2023 issued by Department of Pension and Pensioners Welfare, Ministry of Personnel, Public Grievances and Pensions, Government of India, New Delhi, eligible officers/officials of this Court, who were initially appointed against the posts/ vacancies which were advertised/notified for recruitment/appointment, prior to the date of notification for National Pension System i.e. 22.12.2003 and are presently covered under the National Pension System on joining service on or after 01.01.2004, may exercise one-time option for coverage under Central Civil Services (Pension) Rules, 1972 (now 2021), in place of National Pension System, latest by 31.08.2023. The Government Servants who exercise the option to switch over to pension scheme under CCS (Pension) rules 1972 shall be required to subscribe to the General Provident Fund (GPF).

The aforesaid OM for coverage under CCS (Pension) Rules, 1972, is also applicable to those officials, who were initially appointed in this Court on various posts viz. Junior Judicial Assistant, Restorer, Personal Assistant, Judicial Translator, Court Attendants etc., on or after 01.01.2004, against a post or vacancy which was advertised/notified for recruitment/appointment, prior to the date of notification for National Pension System i.e. 22.12.2003 and subsequently technically resigned from the service of this Court to join other Government departments through proper channel. Ex-officials of this Court may also exercise their one-time option to switch over from National Pension System to Central Civil Services (Pension) Rules, 1972 (now 2021), latest by 31.08.2023.

It is clarified that the option once exercised shall be final and those Officers/officials who are eligible to exercise option in accordance with the conditions mentioned in the aforesaid O.M. and have not exercised this option by the stipulated date, shall continue to be covered by the National Pension System and option exercised after 31.08.2023 shall not be entertained in any case. A copy of the said Notification dated 03.03.2023 is attached to this circular for ready reference.

Sd/
(J.Tripathi) Registrar(Estt.-I)

Thus it appears that the Delhi High Court has already adopted the provisions of OM dated 03-03-2023 to its officers and members of staff.

25. The State Government has placed strong reliance on sub-rule (2) of rule 2 of the Maharashtra Civil Services (Pension) Rules, 1982 which reads

thus :

"2. These Rules shall not apply to the Government Servants, who are recruited on or after 1st November 2005."

However, it must be noted that similar amendment came to be effected in Rule 2 of the Central Civil Services (Pension) Rules, 1972. The amended provision reads thus:

"Application.- Save as otherwise provided in these rules, **these rules shall apply to Government servant appointed on or before the 31st day of December, 2003 including civilian Government servants in the Defence Services, appointed substantively to civil services and posts in connection with the affairs of the Union which are borne on pensionable establishments, but shall not apply to,-**

- a) Railways servants;
- b) Person in casual and daily rated employment;
- c) Persons paid from contingencies;
- d) Persons entitled to the benefit of a Contributory Provident Fund;
- e) Members of the All India Services;
- f) Persons locally recruited for service in diplomatic, Consular or other Indian establishments in foreign countries;
- g) Persons employed on contract except when the contract provides otherwise; and
- h) Persons whose terms and conditions of service are regulated by or under the provisions of the Constitution or any other law for the time being in force."

Despite similar provision in the CCS (Pension) Rules 1972 (now 2021), the Central Government has made departure at least on two occasions by issuing OM dated 17-02-2020 and 03-03-2023 by making

applicable the Pension Scheme under the Rules to employees actually appointed after 01-01-2004. Therefore, on this count alone, the provisions of sub-Rule (2) of Rule (2) of the M.C.S. (Pension) Rules, 1982 would not come in the way of Petitioners being granted the relief of application of Old Pension Scheme.

26. The matter can be viewed from other facet even by considering the amended rules.

27. Sub-Rule (2) of Rule 2 of the M.C.S. (Pension) Rules, 1982 states that these rules would not apply to the Government Servants who are recruited on or after 01.11.2005. Rules 1982 are the beneficial piece of legislation governing the post retiral benefits to a government employee. It has been held time and again that pension is not a bounty. Rules 1982 are not made applicable to the government servants who are recruited on or after 01.11.2005. Though the amendment to the Rules 1982 by the State Government are based upon the amendment carried out in the Central Civil Services (Pension) Rules, 1972 there is a subtle difference between the two. The Central Civil Services (Pension) Rules, 1972 apply to the Government Servants appointed on or before 31.12.2003, meaning thereby that it would not apply to the government servants appointed on or after 1st day of January, 2004. Whereas under the said M.C.S. (Pension) Rules, 1982, the wordings are 'the Rules shall not apply to government servants who are recruited on or after 01.11.2005'. **The phraseology "Recruitment" and "Appointment" are not synonymous. There is a marked distinction between "Recruitment" and "Appointment". Recruitment is a stage prior to**

GOVERNMENT OF BIHAR : EDUCATION DEPARTMENT

Vikas Bhawan, Patna - 800 015 : Tel. : 0612 - 2217016(O) Fax - 0612 - 2235108

K.K.Pathak, I.A.S., Add. Chief Secretary

DO Letter No. 147/ Patna, Dated 15.06.2023

Subject: Regarding B.A/B.SC /B.Com (Honours) Four-Year Programme

This is in reference to the Letter No.- BSU(UGC)-02/2023-687, dated-15.05.2023 issued by the office of the Chancellor. It appears that vide the said letter, the Hon'ble Chancellor has been pleased to approve the Ordinance and Regulations for the Bachelor of Arts/ Science/Commerce (Honours) 4-Year Programme under Choice Based Credit System (CBCS) as per UGC Regulation (Curriculum and Credit Framework for Undergraduate Programmes) for its introduction in the Universities of Bihar under relevant provisions of the Bihar State Universities Act, 1976, Patna Universities Act, 1976, Nalanda Open Universities Act, 1995 and Aryabhata Knowledge University Act, 2008 as amended up-to-date.

It may be worth mentioning that the capacity of the Universities to conduct a new programme has to be seen in totality, particularly in terms of their ability to conduct and successfully complete the existing on-going programmes. The State Government is of the view that the Universities of the Bihar, presently, do not have the capacity in terms of faculty, support staff and necessary classroom infrastructure to take up any new programme, given that their existing regular courses are running behind schedule. The delay with respect to the existing 3-Year graduate programmes extends from few months to more than a year. The post-graduate programmes are even more delayed.

In other words, most of the Universities are behind in terms of the academic calendar.

The State Government is taking every step to ensure that the Universities become up to date with respect to their academic calendar within next few months. And for that purpose, it proposes to issue an

examination schedule, vide an official Gazette, for all the Universities under Section 30 of the Bihar State University Act, 1976. It may further be added that the Universities have to adhere to the said Gazette notification and the timelines mentioned therein. The Gazette notification shall contain all existing on-going graduate programmes, post-graduate programmes, vocational courses and other programmes being conducted by the Universities. *Thus, the State Government expects the Universities to strictly adhere to the Gazette notification likely to be issued shortly and not to conduct any examination not duly notified by the State Government.*

Given the circumstances, the State Government is of the view that the Universities should first complete the on-going courses, particularly the delayed ones. Thus, the State Government does not support the afore-mentioned four-year programme.

In the light of the above, the State Government hereby requests the Hon'ble Chancellor's office to reconsider their letter no. 687 dated 15.05.2023.

Yours Sincerely
SD/-
(K.K. Pathak)

To,
Shri Balendra Shukla,
OSD (Judicial), Governor's Secretariat, Bihar Raj
Bhawan, Patna-800022.
Memo No. 147/ Patna, Dated 15.06.2023.

Copy to:- The Vice-Chancellors, all the Universities of Bihar (except BAU/BASU) for information and necessary action.

(K.K. Pathak)

appointment. Recruitment is the process which entails selection of candidates. Selection is a process of picking the candidates from the short listed candidates. An appointment means an actual act of posting a person to a particular office.

28. The Apex Court in the case of **Shivaji Nagnath Lokare and Others (Supra)** has observed that the appointment cannot be read to include the word 'selection, recruitment or recruitment process'. **The Apex Court in case of Prafulla Kumar Swain Etc. vs. Prakash Chandra Misra And Ors.⁸ (8 1993 SCC Supl. (3) 181) observed that recruitment cannot tantamount to appointment.**

29. In the present case, the advertisement was issued on **20.06.2005** and the last date for submission of Application was 11.07.2005. The written test was also conducted on 09.08.2005 which was cleared by the Petitioner. **They also cleared typing test prior to 01.11.2005. The appointment order is issued subsequently. The legislature in its wisdom has not used the term "appointment on or after 01.11.2005"** in Sub-Rule (2) of Rule 2 of the M.C.S. (Pension) Rules, 1982. The M.C.S. (Pension) Rules, 1982 would not apply to the persons who are recruited on or after 01.11.2005 meaning thereby that the said Rule would not apply to the persons whose recruitment process had commenced after 01.11.2005. The M.C.S. (Pension) Rules, 1982 shall apply to persons recruited in government services prior to 01.11.2005 though appointment orders are issued subsequent to 01.11.2005.

30. Resultantly, the Writ Petition succeeds. It is declared that Petitioners shall be governed by the provisions of the Old Pension Scheme in vogue prior to 1.11.2005, as well as General Provident Fund Scheme. Petitioners shall not be governed by the provisions of the Defined Contributory Pension Scheme introduced vide G.R. dated 31.10.2005. The Petitioners' contribution to DCPS be credited to their GPF Accounts. The modalities as suggested in para 8 of the Office Memorandum dated 03.03.2023 issued by the Government of India be adopted while switching over Petitioners from DCPS to Old Pension Scheme.

31. We hope and trust that the State of Maharashtra would issue Office Memorandum similar to Office Memorandum dated 03.03.2023 issued by the Central Government clarifying that in all cases where State Government employee has been appointed against a post or vacancy which was advertised/notified for recruitment/appointment prior to the date of notification for Defined Contributory Pension Scheme i.e. 31.10.2005 and is covered under the Defined Contributory Pension Scheme on joining service on after 01.11.2005, may be given one time option to be covered under the The M.C.S. (Pension) Rules, 1982. Such an office memorandum would avoid further litigation.

32. Writ Petition is accordingly allowed.

33. Rule is made absolute in the above terms.
(SANDEEP V. MARNE, J) (ACTING CHIEF JUSTICE)

ALL INDIA FEDERATION OF UNIVERSITY & COLLEGE TEACHERS' ORGANISATIONS

(Regd. Under Act XXI of 1860) 404, Devkunj Apartment, Road No :- 06, North Patel Nagar (Near Baba Chowk), P.O. :- Keshri Nagar, Patna-800024 : Mobile : + 91 - 9431617320 /+91 - 9525622524, E-mail : akancphy@gmail.com/aifucto.generalsecretary@gmail.com; Website : www.aifucto.org

Press Release : 30th July, 2023 : Patna/New Delhi WITHDRAW NEP

PROTEST ON 1ST AUGUST, 2023 IN STATES,
MASSIVE DEMONSTRATION ON 13TH SEPTEMBER IN DELHI.

All India Federation of University & College Teachers' Organisations (AIFUCTO) and Joint Forum for Movement on Education (JFME) have called up on the teaching fraternity across the country to organise protest at state level on 1st August, 2023 demanding withdrawal of NEP, Implementation of OPS and to end the adhocism in the entire system of education.

In a press statement issued today General Secretary, AIFUCTO Prof. Arun Kumar said that NEP - 2020 has been imposed upon the collective wisdom of the nation without consulting the stakeholders. Neither the parliament nor the state governments have been taken into confidence. AIFUCTO along with JFME manifested through many programs of action to attract attention of the central government from 2020 but did not find democratic response. AIFUCTO and all the contingents of JFME have firm view that the NEP-2020 is an attempt to Centralize, Corporatize, Commercialize and Communalize the system of Education. In NEP-2020 constitutional ethos, democratic values, secularism, federalism and social justice have been seriously and intensionally ignored. NEP2020 is undemocratic, un-scientific, retrograde and exclusionary in nature. This NEP is against the poor, girls, minorities and marginalized section of societies because the whole system has been shifted from grant to loan. Education System of the nation is in deep crisis.

Being failed in all our previous attempts to arouse the democratic conscience of the Government of India, **AIFUCTO with JFME decided to organise protests**

at state levels on 1st August, 2023 and Massive Demonstration on 13th September, 2023 in Delhi. Our charter of demands include Withdraw NEP, Restore OPS, 10% GDP for Education. Absorb/regularise the services adhoc/part-Time/guest teachers/contractual/block grant employees and provide them dignified salary and security of service like pension, gratuity etc. Along these issues, state level demands must be included.

AIFUCTO called upon the teaching fraternity across the country to come forward to lodge our intense protest to save our public system of education and its democratic, secular, scientific and federal character.

AIFUCTO & JFME appeals the Government of India not to impose common syllabus, cuet, virtual university, BoG, budget cut and blended mode of learning which is complete against the common mass of the entire nation, diversities of our nation and exclusionary for the poor and marginalised section of the society. AIFUCTO hopes that good sense will prevail to the Central Education Minister Sri Dharmendra Pradhan for discussion with all stakeholders including AIFUCTO to save campus, save education, save nation.

Request for publication. With regards,

Prof. Dr. Arun Kunmr
General Secretary AIFUCTO
aifucto.generalsecretary@gmail.com
Mobile No. 8210642139

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD
WRIT PETITION NO. 5363 OF 2021**

(1) Meghraj s/o Annasaheb Pandit Age : 51 years, Occu. Senior Clerk R/o. Balbhim College, Beed Dist. Beed and Others. **VERSUS** (1) The State of Maharashtra, Through its Secretary, Higher and Technical Education Department, Mantralaya, Mumbai-32. (2) The Director of Higher Education, Maharashtra State, Central Building, Pune. (3) The Joint Director, Higher Education, Nanded Region, Nanded (4) The Principal, Madhavrao Patil Arts, Commerce and Science College, Palam, Dist. Parbhani ...Respondents.

Mr. C. K. Shinde, Advocate for the Petitioner. Mr. S. G. Karlekar, A.G.P. for Respondent Nos. 1 to 3. Mr. N. N. Bhagwat, Advocate for Respondent No. 4.

CORAM : S.V.GANGAPURWALA & R.N.LADDHA, JJ.

Date on which reserved for judgment : 20th October, 2021. Writ Petition No. 7518 of 2021 reserved for judgment on 16th November, 2021 and Writ Petition No. 8154 of 2021 reserved for judgment on 01st December 2021.

Date on which judgment pronounced : 20th January, 2022.

JUDGMENT

(Per S. V. Gangapurwala, J.)

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. The petitioners in all these matters are similarly situated. They **assail the Government Resolutions dated 07.12.2018 and 16.02.2019 thereby withdrawing the benefits of the Sudharit Sevantargat Ashwasit Pragati Yojana** [hereinafter referred to as **"Pragati Yojana"/Assured Career Progress Scheme (ACPS)**] extended to them under the Government Resolution dated 15.02.2011.

3. The petitioners are the non teaching employees serving in various colleges affiliated to the non agricultural Universities. Under the Government Resolution dated 01.04.2010 the Pragati Yojana is made applicable to the Government employees. Thereafter under the Government Resolution dated 05.07.2010 the benefit of the said scheme was also extended to isolated post. Under the Government Resolution dated 28.12.2010 the benefits accorded under the Government Resolution dated 05.07.2010 were extended to the non teaching employees of the non agricultural Universities and the affiliated colleges to the non agricultural Universities. **Under the Government Resolution dated 15.02.2011 the department of Higher and Technical Education under its Government Resolution of the even date made applicable all the provisions of the Government Resolution dated 01.04.2010.**

4. Pursuant to the Government Resolution dated 15.02.2011 all the benefits of the Pragati Yojana/ACPS as was made applicable to the Government employees under the Government Resolution dated 01.04.2010 were made applicable and extended to all the non teaching employees of the colleges affiliated to non agricultural Universities and the non teaching employees of non agricultural Universities. In tune with the Government Resolution dated 15.02.2011 the petitioners viz. the non teaching employees of the affiliated colleges to the non agricultural Universities and non teaching employees of the non agricultural Universities were actually extended the benefit after about seven years. **The State Government under the Government Resolution dated 07.12.2018 revoked the Government Resolution dated 15.02.2011 with retrospective effect meaning thereby that the benefits accorded to these petitioners under the Government Resolution dated 15.02.2011 of the Pragati Yojana were withdrawn with retrospective effect.** Thereafter under the Government Resolution dated 16.02.2019 the benefit accorded of the Pragati Yojana/ACPS to the isolated post of the employees of the affiliated colleges to the non agricultural Universities and that of the non agricultural Universities was also withdrawn. **The petitioners in all these writ petitions assail the Government Resolutions dated 07.12.2018 and 16.02.2019.**

5. We have heard Mr. Jadhav, Mr. Gholap and Ms. Pansambal, learned counsel for the petitioners and Mr. Karlekar, learned A.G.P. for the respondents/State.

6. The substratum of the arguments of the learned counsel for the petitioners is that the benefits of the Pragati Yojana/ACPS were made applicable to the Government employees under the Government Resolutions dated 01.04.2010 and 05.07.2010. However, the said benefits were not extended to the non teaching employees of the affiliated colleges to the non agricultural Universities and the non teaching employees of non agricultural Universities. **To eradicate the discrimination the Government Resolution dated 15.02.2011** was issued thereby extending the benefits of the said scheme to these employees. It is further submitted that it is the legitimate expectation that the employees of the affiliated colleges to the non agricultural Universities and the non agricultural Universities are given the same benefit as extended to the Government employees. After extending the benefits the respondents are estopped by principle of promissory estoppel to withdraw the said benefit. **The benefit of the said scheme is extended to remove the stagnation. The benefit of the promotional avenues are not open.** The consequences of the stagnation either of a Government employee and/or the employees of non agricultural Universities and the affiliated colleges to it would be the same. The learned counsel further submit that under any circumstances, the benefits under the impugned Government Resolutions could not have been withdrawn with retrospective effect. The learned counsel further submit that the recovery cannot be made of the benefits extended. **The petitioners are not at fault, nor the petitioners have misrepresented at any point of time.** The respondents cannot make artificial distinction between a Government employee and the employee of the affiliated colleges to the non agricultural Universities and of the non agricultural Universities.

7. The learned counsel rely on the judgment of the Division Bench of this Court in Writ Petition No. 2358 of 2013 with other connected writ petitions dated 21.09.2013 to contend that though no Government Resolution was specifically issued to provide the benefit of Assured Career Progress Scheme (hereinafter referred to as 'the ACP Scheme') the Division Bench of this Court made applicable the benefits given to the employees of the private aided schools to Class III and Class IV employees of the Ashram Schools. The Court held that denial of the benefit of the ACP scheme to the employees of Ashram schools is discriminative and violative of rights guaranteed under Articles 14 and 16 of the Constitution of India. **The learned counsel rely on the judgment of the Apex Court in a case of Chairman, Railway Board Vs. C. R. Rangadhamaiah reported in 1997 (6) SCC 623.**

8. Mr. Karlekar, learned A.G.P. for respondents/State countered the arguments of the learned counsel for the petitioners and submits that the benefits of the Pragati Yojana/ACPS are applicable to the employees of the State Government and Zilla Parishad only. If the benefits of the Pragati Yojana/ACPS are extended to the employees of non agricultural Universities and affiliated colleges to the non agricultural Universities, it will create new financial burden on the State Government. In that case, as per the provisions prescribed in Rule 11 (1) (a) of the Maharashtra Government Rules of Business and Instructions Issued thereunder (hereinafter referred to as 'Rules of Business'), the said proposal required concurrence of the Finance Department. **However, in the present matter the department of Higher and Technical Education did not send the proposal for approval/concurrence of the Finance Department before issuing the Government Resolutions dated 28.12.2010 and 15.02.2011 for making applicable the benefits of the Pragati Yojana.** When the aforesaid aspect was noticed, directions were given to cancel both the Government Resolutions dated 28.12.2010 and 15.02.2011 retrospectively. The Government Resolutions dated 01.04.2010 and 05.07.2010 clearly mentions that the scheme is applicable only to the State Government and Zilla Parishad employees. The learned A.G.P. further submits that the Rules of Business were **introduced with effect from 01.07.1975 in exercise of powers conferred by Clauses (2) and (3) of Article 166 of the Constitution of India and in supersession of all previous rules.** It is mandatory to follow the said rules. In the rules special provisions relating to finance and money matters are provided. **Rule 11 of the Rules of Business specifically provides that no department shall without previous consultation with the Finance Department authorise any order other than orders pursuant to any general delegation made by the Finance Department which either immediately or by their repercussion, will affect the finance of the State, or in any way involve any relinquishment of revenue.** Sub-rule 2 of Rule 11 of the Rules of Business further lays down that no proposal which requires previous consultation of the Finance Department under sub-rule 1, but in which the Finance Department has not concurred, may be proceeded with unless a decision to that effect has been taken by the Council. **The learned A.G.P. submits that the Government Resolutions dated 15.02.2011 and 28.12.2010 were issued without concurrence of the Finance Department,** so also without decision of the Council. In view of that, the same could not have been effective. The learned A.G.P. relies on the judgment of the Division Bench of this Court in a case of ***Bal Kalyani and others Vs. State of Maharashtra and others*** reported in **(1993) AIR (Bombay) 10.** It has been held by the Division Bench of this Court that Rule 11 of the Rules of Business is mandatorily to be observed and it is not a mere procedural rule that can be overlooked. **It is breach of a fundamental obligation on the part of the functionaries of the State.** The learned A.G.P. submits that the Finance Department had issued circulars dated 07.09.1992 and 02.09.2015 informing all the departments that wherever the financial consequences would arise, the Finance Department shall be consulted. According to the learned A.G.P., as earlier Government Resolutions were issued without consultation of the Finance Department and without concurrence of the Council of Ministers the same have been rightly revoked under the impugned Government Resolutions.

9. We have considered the submissions canvassed by the learned counsel for respective parties.

10. All these petitioners have been accorded the benefits of Pragati Yojana/ACPS relying upon the Government Resolution dated 15.02.2011. The Government Resolution dated 15.02.2011 was implemented and benefits extended to all the non teaching employees of the affiliated colleges to the non agricultural Universities and also to the non teaching employees of non agricultural Universities. After slumber of seven years, the Government Resolutions dated 15.02.2011 and 28.12.2010 are revoked under the impugned Government Resolutions dated 07.12.2018 and 16.02.2019.

11. The prelude to the Government Resolution dated 15.02.2011 states that the Finance Department has made applicable the ACP scheme under the Government Resolution dated 01.04.2010 and it was under the contemplation of the Government to make the said scheme applicable to the non teaching employees of the affiliated colleges to the non agricultural Universities and the non agricultural Universities. The State Government has taken decision to accord the benefits to the employees of the non agricultural Universities and its affiliated colleges as it is made applicable to the Government employees under the Government Resolution dated 01.04.2010. The said Government Resolution is issued by the Higher and Technical Education Department.

12. The impugned Government Resolutions dated 07.12.2018 and 16.02.2019 revoked the Government Resolutions dated 28.12.2010 and 15.02.2011. The reason given in the impugned Government Resolutions for revoking the Government Resolutions dated 28.12.2010 and 15.02.2011 is that while issuing earlier Government Resolutions dated 15.02.2011 and 28.12.2010 **the concurrence of the Finance Department was not obtained. That appears to be the sole reason for revoking earlier Government Resolutions extending the benefits of Pragati Yojana/ACPS to the non teaching employees of the non agricultural Universities and the affiliated colleges to the non agricultural Universities.**

13. There cannot be any dispute with the proposition that the Government Resolutions dated 15.02.2011 and 28.12.2010 would implicate financial burden. It has been stated on oath that the Government Resolutions dated 15.02.2011 and 28.12.2010 were issued without concurrence of the Finance Department, nor with the concurrence of the Council. **The said Government Resolutions are not issued by the Finance Department, but are issued by the Higher and Technical Education Department.** The Government Resolutions nowhere says that the concurrence of the Finance Department has been obtained or the consent of the Council has been obtained. The Division Bench of this Court in a case of ***Bal Kalyani and others*** (supra) held that the decision without prior consultation with the Finance Department involving the State revenue amounts to breach of fundamental obligation on the part of the functionaries of the State and would amount to flagrant violation of the Rules of Business which cannot be cured or got over by the subsequent acquiescence by the Finance Department. It has also been held that under Rule 11 (2) of the Rules of Business a proposal which requires the previous consultation with the Finance Department in sub-rule (i), but where the Finance Department has not concurred, cannot be proceeded with unless decision to that effect has been taken by the Council of Ministers. **Such Government Resolution without consultation of the Finance Department and without decision of the Council of Ministers would be lifeless and the same would be invalid.**

14. The Government Resolutions are issued in exercise of the executive power of the State. Under Article 154 of the Constitution of India, the Governor is vested with the executive power of the State and he shall exercise them either directly or through officers subordinate to him in accordance with the provisions of the Constitution.

15. Article 166 (1) of the Constitution of India requires that all executive actions of the State Government shall be expressed to be taken in the name of the Governor. Article 166 (2) of the Constitution of India prescribes that orders and other instruments made and executed under Article 166 (1) shall be authenticated in the manner prescribed. Article 166 (3) of the Constitution of India empowers the Government to make rules for more convenient transaction of the business of the Government of the State and for allocation among the Ministers the said business in so far as it is not business with respect to which the Governor is by or under the Constitution require to act in his discretion.

16. Reading Article 166 of the Constitution of India it is manifest that, clause (1) refers to the mode of expression, clause (2) of Article 166 prescribes the

manner in which the order is to be authenticated and clause (3) relates to the making of the rules by the Governor for more convenient transaction of the business of the Government. The Government Resolutions dated 15.02.2011 and 28.12.2010 are issued in the name of the Governor. Clause (1) of Article 166 of the Constitution of India as such appears to be complied with. The said Government Resolutions nowhere states that the same are issued with the sanction or the concurrence of the Finance Department. The Business Rules framed by the Government mandate that wherever decision would involve the financial implications and/or financial burden upon the State, the concurrence of the Finance Department has to be obtained. Rule 11 (1) and (2) of the Rules of Business framed under Article 166 of the Constitution of India governing the functioning of the State of Maharashtra require obtaining the concurrence and/or sanction of the Finance Department in matters involving fiscal burden on the State. **The issue whether the Rules of Business as applicable are directory and/or mandatory is no longer res-integra.** The Apex Court in a case of *Narmada Bachao Andolan Vs. State of Madhya Pradesh* reported in (2011) 12 SCC 333 and the judgment of the Full Bench of this Court in a case of *Chandrakant Sakharan Karkhanis Vs. State of Maharashtra* reported in AIR 1977 Bom. 193 have held that the Rules of Business so far as it does not involve financial implications are to be construed directory, but wherever the executive action would involve financial implications, obtaining the sanction or concurrence of the Finance Department in accordance with the Rules of Business is to be construed mandatory.

17. The Government Resolutions dated 28.12.2010 and 15.02.2011 thereby according the benefits of Pragati Yojana/ACPS to the non teaching employees of the non agricultural Universities and the affiliated colleges to the non agricultural Universities would involve financial burden upon the State and before issuance of the said Government Resolutions obtaining the sanction of the Finance Department was mandatory. Failure to obtain the concurrence of the Finance Department would render the executive action illegal and a fundamental flaw on the part of the State functionaries. **In the light of that, the impugned Government Resolutions dated 07.12.2018 and 16.02.2019 revoking the Government Resolutions dated 28.12.2010 and 15.02.2011 cannot be faulted with and challenge to the said Government Resolutions cannot be sustained.** The impugned Government Resolutions as such do not deserve to be struck down.

18. The next question would be the benefits accorded to all these employees pursuant to the Government Resolutions dated 15.02.2011 and 28.12.2010 could have been withdrawn with retrospective effect under the impugned Government Resolutions.

19. The impugned Government Resolutions prescribed that these Government Resolutions revoking earlier Government Resolutions dated 28.12.2010 and 15.02.2011 shall apply with retrospective effect and normally when the executive instructions prescribes that they will apply from retrospective effect shall be construed as such. These petitioners were already extended the benefits. Relying upon the Government Resolutions dated 28.12.2010 and 15.02.2011 the benefits were extended to the petitioners, their pay was also fixed and the same was continued. The impugned Government Resolutions withdraws the benefit accorded to the petitioners with retrospective effect. The impugned Government Resolutions revoking the Government Resolutions of 28.12.2010 and 15.02.2011 would be justifiable. However, whether the same could be permitted to be done retrospectively would also be the relevant consideration or that whether the impugned Government Resolutions can be read down to hold that the same would be applicable prospectively and not retrospectively.

20. The petitioners and similarly situated persons are advanced the benefit of Pragati Yojana/ACPS pursuant to the Government Resolutions dated 28.12.2010 and 15.02.2011. The said Government Resolutions are also expressed to be issued in the name of the Governor. The said Government Resolutions are

issued by the Department of Higher and Technical Education. The said Government Resolutions were issued making applicable the Pragati Yojana to the non teaching employees of non agricultural Universities and the affiliated colleges to the non agricultural Universities on the premise that the said scheme is already made applicable to the Government employees under the Government Resolutions dated 01.04.2010 and 05.07.2010. **There was no reason for the petitioners to suspect that the Government Resolutions extending the benefit of Pragati Yojana to them is not issued after following due procedure envisaged under the Rules of Business.** More particularly, the said Government Resolutions are expressed in the name of the Governor. The doctrine of indoor management as is applicable to the matters under the private law can be analogously made applicable in the present matter though present matter would be within the realm of a public law.

21. The petitioners are entitled to presume that the procedure prescribed in the Rules of Business have been properly observed and adhered to. The internal requirements of adhering to the Rules of Business have been duly complied with. **There is no reason for the petitioners who have been accorded the benefit under the Government Resolution expressed in the name of the Governor to suspect about non adherence to the Rules of Business and/or that the concurrence of the Finance Department before issuance of the Government Resolution was not obtained.** The petitioners would be alien to the internal working of the department of the Government. **The only exception to the doctrine of indoor management is fraud or the suspicion of irregularity.** The Apex Court in a case of *M.R.F. Ltd. Vs. Manohar Parrikar and Ors.* reported in 2010 (11) SCC 374 has observed that protection of doctrine of indoor management is not available where the circumstances surrounding are suspicious and therefore invite inquiry. **In the present case, the Government Resolution extending the benefit of Pragati Yojana to the petitioners is expressed in the name of the Governor.** The said benefit was already accorded to the Government employees under earlier Government Resolution dated 01.04.2010 and similarly the petitioners were extended the said benefit. The prelude to the Government Resolutions dated 28.12.2010 and 15.02.2011 also affirm that it was under contemplation of the Government to extend the benefit accorded to the Government employees as per the Government Resolution dated 01.04.2010 issued by the Finance Department to the non teaching employees of the non agricultural Universities and affiliated colleges to the non agricultural Universities and pursuant thereto the decision was taken to extend the said benefit "as it is" to the non teaching employees of the non agricultural Universities and affiliated colleges to the non agricultural Universities under the Government Resolutions dated 15.02.2011 and 28.12.2010. **The said benefits were accorded for almost seven years. In view of that, it would be too late in the day now to take away the benefits already accorded to these petitioners by applying the impugned Government Resolutions retrospectively. The same would also be inequitable.**

22. In the light of that, though we uphold the impugned Government Resolutions revoking the earlier Government Resolutions dated 28.12.2010 and 15.02.2011, **we hold that the said impugned Government Resolutions would apply from the date of issuance of the Government Resolutions and not prior to it.** We would read down the the impugned Government Resolutions in a manner that they would apply from the date they are issued viz. from 07.12.2018 and 16.02.2019 respectively and would not apply to those who have already been accorded the benefits as per the Government Resolutions dated 28.12.2010 and 15.02.2011.

23. Rule accordingly made absolute in above terms. No costs.

(R.N. LADDHA)
JUDGE

(S.V.GANGAPURWALA)
JUDGE

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 3715 OF 2022

PETITIONER : (1) Rahul Laxmikant Kontamwar, Age : 39 yrs., Occu. : Asst. Teacher, R/o. Zilla Parishad School Jambhadi, Panchayat Samiti Sadak/Arjuni, Dist. Gondia and (175) Others. **VERSUS RESPONDENTS :** (1) State of Maharashtra, Through its Secretary Department of Finance, Mantralaya, Mumbai-32. (2) State of Maharashtra, Through its Secretary, Department of School Education, Mantralaya, Mumbai-32. (3) Zilla Parishad, Gondia, Through its Chief Executive Officer. (4) The Education Officer Primary, Zilla Parishad, Gondia. (5) The Superintendent, Pay and General Provident Fund Unit Zilla Parishad Gondia. Mr.Pradeep S. Kshirsagar, counsel for the petitioners. Mrs. Kalyani Deshpande, AGP for respondents-State. Mr.Abhijit Parihar, counsel for respondent Nos.3 to 5.

WRIT PETITION NO. 3712 OF 2022

PETITIONERS : (1) Ganesh Namdevrao Bhonde, Aged 41 years, Occ. Gram Sevak R/o. Grampanchayat Maundhala, Tal. & Dist. Buldhana and (24) Others. **VERSUS RESPONDENTS :** (1) The State of Maharashtra, Through its Secretary, Department of Rural Development Department, Mantralaya, Mumbai-32. (2) State of Maharashtra, Through its Secretary Department of Finance, Mantralaya, Mumbai-32. (3) Zilla Parishad, Buldhana, Through its Chief Executive Officer. (4) The Superintendent, Pay and General Provident Fund Unit Zilla Parishad Buldhana, District – Buldhana. Mr.Pradeep S. Kshirsagar, counsel for the petitioners. Mrs. Kalyani Deshpande, AGP for respondents-State. Mrs.Vaishali Khadekar, counsel for respondent No.3 and 4.

WRIT PETITION NO. 3729 OF 2018

PETITIONERS : (1) Sandip Murlidhar Kasture, Aged 38 years, Occ. Asst. Teacher C/o. Z.P. Marathi School, Dadham, Panchayat Samiti Khamgaon, District – Buldana and (52) Others. **VERSUS RESPONDENTS :** (1) State of Maharashtra Through its Secretary Department of Finance, Mantralaya, Mumbai-32. (2) State of Maharashtra, Through its Secretary Department of School Education, Mantralaya, Mumbai-32. (3) Zilla Parishad, Buldana, Through its Chief Executive Officer, District Buldana. (4) Zilla Parishad, Akola, Through its Chief Executive Officer, District Akola. (5) The Superintendent, Pay and General Provident Fund Unit Zilla Parishad Buldana, District – Buldana. Mr.Pradeep S. Kshirsagar, counsel for the petitioners. Mrs. Kalyani Deshpande, AGP for respondents-State. Mr.Taria Mohammad Zaheer, counsel for respondent Nos.3 & 5.

CORAM : ROHIT B. DEO AND M.W.CHANDWANI, JJ.

DATE : 28TH JUNE, 2023

JUDGMENT (Per : M. W. Chandwani, J.)

Heard.

2. Rule. Rule made returnable forthwith. Since, the common issue is involved in this batch of petitions, the petitions are heard together finally with the consent of the learned counsel for the parties and are decided by this common order.

3. Whether the petitioners in this batch of petitions are governed by Old Pension Scheme or by the new Defined Contributory Pension Scheme (hereinafter referred to as 'DCPS') under the Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to 'Pension Rules') is the short question arose for consideration.

4. The petitioners in Writ Petition No.3712 of 2022 had applied for the post of Gram Sevak pursuant to advertisement dated 02/08/2005 and accordingly, they were selected. The select list came to be published in the month of September, 2005, but the appointment orders were given to the petitioners after 01/11/2005. The petitioners in Writ Petition No.3715 of 2022, pursuant to advertisement dated 13/04/2005, were selected as Shikshan Sevak. They were appointed by the appointment orders dated 30/11/2005, i.e. after 01/11/2005. Whereas the petitioners in Writ Petition No.3729 of 2018 had applied for the post of Shikshan Sevak pursuant to advertisement dated 18/08/2005 for filling up the post of Shikshan Sevak in Marathi Medium. But they were appointed after 01/11/2005.

Needless to mention here that the State of Maharashtra vide Government Resolution (GR) dated 31/10/2005 took a policy decision to adopt

the provisions of DCPS to be made applicable to all government servants recruited on or after 01/11/2005 in the State Government services. On account of issuance of the said GR dated 31/10/2005, the Old Pension Scheme do not apply to the government servants recruited on or after 01/11/2005. Since, the petitioners in this batch of petitions are appointed after 01/11/2005, the petitioners are being governed by the new DCPS. **The petitioners claim that since their recruitment process is started prior to 01/11/2005, they are entitled to be governed by the Old Pension Scheme.**

5. It is submitted on behalf of the learned counsel for the petitioners that though **the petitioners are appointed after the cutoff date i.e. 01/11/2005 to their respective posts, but the fact remains that the recruitment process was started prior to 01/11/2005.** The learned counsel for the petitioners submitted that in Writ Petition No.3712 of 2022, the advertisement was published on 02/08/2005; in Writ Petition No.3715 of 2022, the advertisement was published on 13/04/2005; and whereas in Writ Petition No.3729 of 2018, the advertisement was published on 18/08/2005.

6. As per Pension Rules and GR dated 31/10/2005 the government employee, who are recruited on or after 01/11/2005, they would be governed by new DCPS. Now the question remains that the petitioners, who are appointed after the cut-off date 01/11/2005, pursuant to the recruitment started by publishing advertisements prior to the cut-off date 01/11/2005 would be governed by the Old Pension Scheme, which were applicable to the other employees.

7. The issue is not res integra. The Principal Bench of this Court in the case of **Khilari Rajendra Eknath and others v. The State of Maharashtra and others in Writ Petition No.2270 of 2021** has already dealt with this issue and it will be advantageous to reproduce paragraphs 27 and 28 of the said judgment, which read thus -

“27. Sub-Rule (2) of Rule 2 of the M.C.S. (Pension) Rules, 1982 states that these rules would not apply to the Government Servants who are recruited on or after 01.11.2005. Rules 1982 are the beneficial piece of legislation governing the post retiral benefits to a government employee. It has been held time and again that pension is not a bounty. Rules 1982 are not made applicable to the government servants who are recruited on or after 01.11.2005. Though the amendment to the Rules 1982 by the State Government are based upon the amendment carried out in the Central Civil Services (Pension) Rules, 1972 there is a subtle difference between the two. The Central Civil Services (Pension) Rules, 1972 apply to the Government Servants appointed on or before 31.12.2003 meaning thereby that it would not apply to the government servants appointed on or after 1st day of January, 2004. Whereas under the said M.C.S. (Pension) Rules, 1982, the wordings are ‘the Rules shall not apply to government servants who are recruited on or after 01.11.2005’. The phraseology “Recruitment” and “Appointment” are not synonymous. There is a marked distinction between “Recruitment” and “Appointment”. Recruitment is a stage prior to appointment. Recruitment is the process which entails selection of candidates. Selection is a process of picking the candidates from the short listed candidates. An appointment means an actual act of posting a person to a particular office.

28. The Apex Court in the case of **Shivaji Nagnath Lokare and others (Supra)** has observed that the appointment cannot be read to include the word ‘selection, recruitment or recruitment process’. The Apex Court in case of **Prafulla Kumar Swain Etc. vs. Prakash Chandra Misra and Ors.** observed that recruitment cannot tantamount to appointment.”

8. Thus, as per Pension Rules, Old Pension Scheme would not apply to the persons whose recruitment process had commenced after 01/11/2005, meaning thereby the Old Pension Scheme shall apply to the persons, who are recruited in the government services prior to 01/11/2005. Appointment does not mean recruitment. Recruitment entails selection process. In the present petitions though the appointments were made after 01/11/2005, the selection process started prior to 01/11/2005 by publishing the advertisement. Admittedly, the advertisements in this batch of petitions were issued prior to 01/11/2005, however, the appointment orders of the petitioners were issued after cut-off date i.e. 01/11/2005 on which date DCPS is made applicable to all government servant as per GR dated 31/10/2005 and Pension Rules. **Therefore, the petitioners shall be entitled to be governed by the Old Pension Scheme and General Provident Fund Scheme which were in vogue prior to 01/11/2005. Resultantly, the petitions succeeded.**

9. It is hereby declared that the petitioners in all the Writ Petitions shall be governed by the provisions of Old Pension Scheme and, General Provident Fund Scheme, which were in vogue prior to 01/11/2005. The petitioners shall not be governed by the provisions of new DCPS introduced by the GR dated 31/10/2005.

10. The petitioners’ contribution to DCPS be credited in their GPF Accounts. The modality adopted by the Government of India while switching over the petitioners from DCPS to Old Pension Rules shall also be adopted by the respondents.

11. Rule is made absolute in the aforesaid terms. No order as to costs.

(M.W.CHANDWANI, J)

(ROHIT B. DEO, J)

UNIVERSITY GRANTS COMMISSION

(Ministry of Education, Govt. of India)

35, Feraz Shah Marg, New Delhi-110001

DR. G. S. CHAUHAN, JOINT SECRETARY

Phone: 011-23604695 e-mail : chauhan.ugc@nic.in |
chauhanugc@gmail.com

F.1-8/2014(SCT) 12th June 2023

The Registrar,

All Central/State/Deemed to be Universities/Law Universities and Grants-in-aid Institutions.

Sub:- Implementation of Reservation Policy of the Government of India in Universities, Deemed to be Universities/Colleges and other Grants-in-aid Institutions and Centres-regarding.

Sir/Madam,

This is in continuation to this office letter of even number dated 25.11.2021 and subsequent reminder dated 01.09.2021 on the subject mentioned above. As you are aware that the University Grants Commission is continuously monitoring the progress of implementation of reservation Policy of Govt. of India for SCs, STs, & OBC (Non Creamy Layer) EWS and Persons with Disabilities in teaching and non-teaching posts as well as admission at all level courses in universities and colleges.

According to UGC Act, 1956, the UGC has to ensure effective implementation of the reservation policy in Universities and institutions receiving aid from the public funds except in Minority Institutions under Article 30(1) of the Constitution as per MHRD (Dept. of Secondary & Higher Education) order No.F.6-30/2005 U-5 dated 6th December, 2005 .

All centrally funded Universities/Colleges/ Institutions are required to ensure strict compliance of Government of India orders/rules on the reservations in their institutions. **State Universities including its affiliated/ constituent colleges and other Institutes functioning within the state should follow the percentage of reservation for SC/ST & OBC as prescribed by the concerned state Government.**

You are also requested to fill up remaining backlog identified reserved vacancies under these categories in teaching and non-teaching posts. The UGC has circulated a letter No. F. 1-5/2006(SCT) dated 19.11.2012 to all universities for compliance of central Educational Institutions (Reservations in Admission) Amendment Act, 2012 and necessary action as per the Gazette Notification 33. UGC had also circulated a copy of the Gazette Notification of the Rights of Persons with Disabilities Act, 2016 to all Universities vide letter No.F. 6-5/2017(SCT) dated 07.04.2017 for Compliance.

You are requested to display the reservation roster on your website which is required to be update at regular intervals as per instructions issued by the Govt. of India, Dept. of Personal & Training, New Delhi vide O.M. No.36012/2/96-Estt.(Res.) dated 2nd July, 1997.

It is mandatory to furnish report along with statistical information in respect of teaching and non-teaching as well as admission to all level courses and hostel accommodation during the 2022-2023 as per the prescribed format on the universities Activity Monitoring Portal (UAMP) of UGC at the link <https://ugc.ac.in/uamp/>

The above instruction should also be circulated to all the constituent and affiliated colleges of your university for follow-up action within 10 days of the issue of this letter please.

Encl: as above.

(Dr.G.S.Chauhan)
Joint Secretary

शाबास ! स्थगनादेशाचे लाभधारक कुलगुरु : शाब्बास ! नामे डॉ. प्रमोद येवले : ३

- प्रा.बी.टी.देशमुख

माजी विधान परिषद सदस्य व महाराष्ट्र प्राध्यापक महासंघाचे माजी अध्यक्ष

“अशोभनीय वर्तनाचा महामेरू : आमचे प्रभारी कुलगुरु नामे डॉ. प्रमोद येवले : २” या मथळ्याचा लेखांक दिनांक १५ मे २०२३ रोजीच्या नुटा बुलेटीनमध्ये प्रकाशित झाल्यानंतर या संदर्भात संघटनेची भूमिका मांडण्यासाठी संघटनेच्या पदाधिकाऱ्यांनी घेतलेल्या पत्रकार परिषदेनंतर काही पत्रकारांनी डॉ.प्रमोद येवले यांच्याशी संपर्क साधला असता त्यांनी दिलेली प्रतिक्रिया शब्दशः पुढीलप्रमाणे :- “नुटाने २० वर्षांपूर्वीचे प्रकरण उकरून काढलेले आहे. उच्च न्यायालयाने उच्च शिक्षण सहसंचालकांच्या त्या निर्णयाला स्थगनादेश दिलेला आहे. आता काही तरी विरोधासाठी विरोध असा हा प्रकार सुरू आहे.”

२. नागपूर विद्यापीठात प्र-कुलगुरु या नात्याने डॉ. प्रमोद येवले यांनी गाजविलेल्या कर्तृत्वाची अनेक प्रकरणे मा.उच्च न्यायालयात पोहचली होती. दिनांक १४.०९.२०१६ रोजी नागपूरच्या उच्च शिक्षण सहसंचालकांनी चौकशी अधिकारी या नात्याने डॉ.प्रमोद येवले यांच्या कर्तृत्वाविषयी पारित केलेल्या आदेशाला सुद्धा वृत्तपत्रांतून त्यावेळी बरीच प्रसिद्धी मिळाली होती. डॉ.प्रमोद येवले यांनी मा.उच्च न्यायालयाच्या नागपूर खंडपीठासमोर सन २०१७ ची याचिका क्रमांक २६१३ दाखल केली होती. दिनांक ८ जुलै २०१९ रोजी या प्रकरणी स्थगनादेश मिळाला होता. ही गोष्ट मुख्यत्वे नागपूर विद्यापीठाच्या क्षेत्रात आणि सर्वसाधारणपणे विदर्भात व उच्च शिक्षण क्षेत्रात सर्वांना ठाऊक होती. त्या स्थगनादेशामुळे डॉ.प्रमोद येवले यांनी टि-या बडवाच्या असे त्यात काहीही नव्हते अशीच त्यावेळी विदर्भात भावना होती व आजही तशीच स्थिती आहे. आता त्यांनीच विषय काढला त्यामुळे सर्व स्थिती नव्याने मांडणे आले.

३. डॉ. प्रमोद येवले यांची उपरोक्त याचिका दिनांक १ जुलै २०१९ रोजी सुनावणीला आली. त्या दिवशी मा.उच्च न्यायालयाने पुढीलप्रमाणे आदेश पारित केले. :- “Put up this matter on 08/07/2019. Till then, there shall be stay to the order dated 14/09/2016.” पुन्हा हे प्रकरण दिनांक ८ जुलै २०१९ रोजी मा.खंडपीठासमोर आले असतांना मा. खंडपीठाने पुढीलप्रमाणे आदेश पारित केलेत :- “Shri Rao, the learned Assistant Government Pleader, waives service of notice for the respondent Nos.1 to 3; and Shri Patil, the learned counsel, for the respondent No.4. In the meanwhile, the interim order passed by this Court on 1-7-2019 shall continue to operate.”

४. मा.उच्च न्यायालयाने दिलेला हा स्थगनादेश आजही कायम आहे. हा स्थगनादेश स्वाभाविक न्यायतत्त्वानुसार (Principle of natural justice) देण्यात आलेला आहे, ही गोष्ट कोणाच्याही सहज लक्षात येईल. प्र-कुलगुरु सारख्या महत्त्वाच्या पदावर काम करीत असलेल्या एका विद्यापीठीय पदाधिकाऱ्याच्या विरोधात वेकायदेशीररीत्या पदे मिळविल्याचे तसेच अनुज्ञेय नसलेले लाभ पदरी पाडून घेतल्याचे गंभीर आरोप समाविष्ट असलेल्या आदेशाला स्थगिती दिली नाही तर त्या याचिकेच्या सुनावणीला काही अर्थ उरत नाही. अहवालाचे दुष्परिणाम याचिकाकर्ता भोगत राहिल व इकडे याचिकेची सुनावणी सुरू राहिल, ही गोष्ट स्वाभाविक न्यायतत्त्वाने धरून नसल्यामुळे मा. उच्च न्यायालयाने स्थगनादेश दिला. त्या स्थगनादेशाचा अर्थ ६-७ वर्षांनंतरसुद्धा डॉ. प्रमोद येवले यांना समजू नये हे अत्यंत खेदकारक व दुःखदायक आहे, असे म्हणावे लागेल.

५. स्थगनादेश मिळाला आहे म्हणजे नक्की काय मिळाले आहे? असे डॉ.प्रमोद येवले समजतात हे कळायला काही मार्ग नाही. मात्र स्थगनादेश (Stay) या शब्दाचा कायद्याच्या परिभाषेत अर्थ काय होतो? हे मा.सर्वोच्च

न्यायालयाने अनेक प्रकरणात निश्चित करून दिलेले आहे. “Supreme Court on Words and Phrases” या मथळ्याचे जवळ जवळ ९०९ पृष्ठांचे एक संकलन ग्रंथरूपाने उत्तरप्रदेशच्या न्यायव्यवस्थेतील एक न्यायमूर्ती डॉ.गोकुलेश शर्मा यांनी प्रकाशित केलेले आहे. मा.सर्वोच्च न्यायालयाचे सेवानिवृत्त न्यायमूर्ती श्री.व्ही.आर.कृष्णा अय्यर यांच्या सारख्या प्रथितयश न्यायमूर्तींची प्रस्तावना या ग्रंथाला लाभलेली आहे. निरनिराळ्या शब्दांचे व वाक्संहितेचे सर्वोच्च न्यायालयाने निश्चित करून दिलेले अर्थ या ग्रंथामध्ये नमूद करण्यात आले असून सर्वोच्च न्यायालयाने कोणकोणत्या प्रकरणात हा अर्थ निश्चित करून दिलेला आहे हे सुद्धा त्या ग्रंथात तेथे तेथे नमूद करण्यात आलेले आहे. या ग्रंथाच्या पृष्ठ ७८६ वर स्थगनादेशाचा अर्थ काय होतो? हे सर्वोच्च न्यायालयाने पुढील शब्दात नमूद केलेले आहे. :-

“It only means that the order which has been stayed could not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence.”

एखाद्या आदेशाला स्थगनादेश देण्यात आला असेल तर त्या आदेशातील कोणत्याही भागाची अंमलबजावणी करता येत नाही हे खरे असले तरी मूळ आदेशाचे अस्तित्व संपुष्टात आले असे होत नाही, असे मा.सर्वोच्च न्यायालयाने ठामपणे निश्चित करून दिलेले आहे.

६. स्थगनादेशाचे परिणाम काय होतात? हेही अनेक प्रकरणात सर्वोच्च न्यायालयाने निश्चित करून दिलेले असून “Supreme Court on Words and Phrases” या ग्रंथाच्या पृष्ठ ७८७ वर ते पुढील शब्दात नमूद करण्यात आलेले आहे. :-

“While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence.”

न्यायालयाने शासकीय अधिकाऱ्याच्या आदेशाला स्थगनादेश दिला असेल तर स्थगनादेश (Stay) आणि रद्दबातल ठरविण्याचा आदेश (Quashing of an order) या दोनमधील फरक समजून घेतला पाहिजे. शासकीय आदेश रद्दबातल ठरविला असेल तर असा आदेश काढण्यापूर्वीची स्थिती स्थापित होते. असे स्थगनादेशाच्या बाबतीत होत नाही. शासकीय अधिकाऱ्याच्या त्या आदेशाची अंमलबजावणी थांबविली जाते, मात्र त्या शासकीय अधिकाऱ्याच्या आदेशाचे (येथे सहसंचालकांच्या १४.०९.२०१६ च्या आदेशाचे) अस्तित्व संपुष्टात येत नाही.

७. या प्रकरणी चौकशी अधिकाऱ्यांनी दिनांक १४.०९.२०१६ रोजी जे

सहपत्र एकचे अवलोकन केल्यास चौकशी अधिकाऱ्यांनी ज्या शेऱ्या, ताशेऱ्यांच्या व पुराव्यांच्या आधारावर आपल्या आदेशात डॉ.प्रमोद येवले यांच्या विरोधात निर्णय दिला होता त्याच्या प्रभावकारक भागाची स्थगनादेशापूर्वीच अंमलबजावणी सुरू झालेली होती हे लक्षात येईल. त्या निर्णयातील अंमलात आलेल्या प्रभावकारक भागाला मा.उच्च न्यायालयाने स्थगिती दिलेली नाही. आदेशाचा तो भाग आजही अंमलात आहे.

(परिच्छेद १६ पहा)

आदेश पारित केले त्याला मा.उच्च न्यायालयाने स्थगिती (Stay) दिलेली आहे. तो रद्दबातल (Quashed and set aside) केलेला नाही ही गोष्ट डॉ. प्रमोद येवले यांच्या लक्षात घेऊ नये ही आश्चर्य वाटणारी गोष्ट आहे. ज्या आदेशाला मा.उच्च न्यायालयाने स्थगिती दिल्याचे सन २०२३ मध्ये डॉ.प्रमोद येवले हे मोठ्या आनंदाने सांगत आहेत. त्या आदेशाचा डॉ.प्रमोद येवले यांना प्रतिकूल असलेला प्रभावकारक भाग अगोदरच अंमलात आलेला असल्याने त्याला हा स्थगनादेश लागू नाही. कागदपत्रांच्या छाननीनंतर चौकशी अधिकाऱ्यांनी काढलेल्या त्या आदेशाचे त्यादृष्टीने अवलोकन करणे आवश्यक आहे. चौकशी अधिकाऱ्यांच्या या १४ सप्टेंबर २०१६ च्या आदेशाचे मुख्य दोन भाग आहेत. (१) त्या आदेशाचा प्रभावकारक भाग (Operative part of the Order) आणि (२) कागदोपत्री पुराव्याच्या आधारावर काढलेले निष्कर्ष.

८. दिनांक २९ जून २०१५ रोजी डॉ.प्रमोद येवले यांची नागपूर विद्यापीठामध्ये प्र-कुलगुरू या पदावर नेमणूक झाली. ३७४००-६७००० (अधिक १० हजार ग्रेड-पे) या पे-बँड मध्ये सुरुवातीच्या स्तरावर (३७०००) त्यांना वेतन देणे सहसंचालक कार्यालयाने सुरू केले होते. प्र-कुलगुरूंच्या पे-बँड मध्ये उच्चतम वेतन ६७००० असले तरी मी प्र-कुलगुरू म्हणून विद्यापीठात दाखल झालो त्यावेळेला पूर्वीच्या विनाअनुदानित संस्थेमध्ये माझे वेतन ६९५६० अधिक १० हजार ग्रेड-पे इतके होते आणि त्यामुळे प्र-कुलगुरू म्हणून माझे सुरुवातीचे वेतन हे ७९५६० असावे, अशी डॉ. प्रमोद येवले यांची मागणी होती. त्यांचे सुरुवातीचे वेतन ३७४००-६७००० या पे-बँडमध्ये ३७४०० वर निश्चित करण्यात आले. डॉ.प्रमोद येवले यांनी या निर्णयाच्या विरोधात मुंबई उच्च न्यायालयाच्या मा.नागपूर खंडपीठामध्ये सन २०१५ ची याचिका क्रमांक ६३७६ दाखल केली होती. या याचिकेमध्ये माझे वेतन ३७४००-६७००० या वेतन पट्ट्यातील उच्चतम वेतनाच्यावर रुपये ७९५६० इतके निश्चित करावे अशी विनंती त्यांनी केली होती.

९. खरे म्हणजे मा.उच्च न्यायालयाने दिनांक ७ जून २०१६ रोजीच्या निर्णयात सहसंचालकांनी दोन महिन्यात त्यांच्या कागदपत्रांची छाननी पूर्ण करून ते अटी पूर्ण करित असतील तर त्यांना ते लाभ द्यावेत असे आदेश पारित केले होते. ते शब्दशः पुढीलप्रमाणे :-

“We accordingly direct the said Office to look into that service and treat it as valid for the purpose of fixation if the five norms mentioned in the above mentioned University Grants Commission’s notification or Government Resolution dated 11/2/1994 are satisfied. The respondent no.3 shall complete

scrutiny in this respect within two months from today, if necessary, after extending opportunity of hearing to petitioner.” मा.उच्च न्यायालयाचा हा निर्णय यापूर्वीच (70/2023) प्रसृत केलेला आहे.

आदेशाचा प्रभावकारक भाग

१०. मा.उच्च न्यायालयाच्या उपरोक्त निर्णयाने प्र-कुलगुरू म्हणून रुजू होण्यापूर्वीच्या सेवाकाळाची व वेतनस्थितीची दोन महिन्यात छाननी करण्याचे आदेश सहसंचालकांना दिलेले होते. त्यामुळे या सर्व बाबींची चौकशी करण्याचे काम त्यांना चौकशी अधिकारी म्हणून करावे लागले. यापूर्वीच्या सेवेतील व वेतननिश्चितीमधील ‘साराच हागोडा’ चौकशी अधिकाऱ्यांच्या लक्षात आल्यामुळे त्यांनी आपल्या आदेशात डॉ.प्रमोद येवले यांची मागणी फेटाळून लावली ती पुढील शब्दात :-

“याचिकाकर्ता यांची सदर अवाजवी मागणी शासनाच्या वित्तीय धोरणाशी विसंगत आहे. त्यामुळे त्यांच्या पूर्वीच्या सेवेतील संरक्षण मूळ वेतन रु. ६९५६०/- अधिक ग्रेड पे रु. १०००० हे वेतन मान्य करता येणार नाही..... महामहिम राज्यपाल यांच्या दि. २९.०६.२०१५ च्या आदेशान्वये याचिकाकर्ता यांची प्र-कुलगुरू या पदावर नियुक्ती करण्यात आली असल्याने शासननिर्णय दि. १२.०८.२००९ मधील नियम ३ नुसार प्र-कुलगुरू पदाची वेतनश्रेणी रु.३७४००-६७००० अधिक ग्रेड पे १०००० मान्य करून त्यानुसार याचिकाकर्ता यांना वेतन अदा करण्यात येत आहे.”

११. प्र-कुलगुरू पदासाठी असलेल्या ३७४००-६७००० या पे-बँड मध्ये माझे वेतन उच्चतम वेतनाच्याही वरच्या टप्प्यावर म्हणजे ६९५६० + १०००० असे निश्चित करण्यात यावे ही त्यांची मागणी ते स्थगनादेशासाठी न्यायालयात जाण्यापूर्वीच १४.०९.२०१६ च्या आदेशान्वये फेटाळून लावण्यात आली होती.

आदेशातील निष्कर्षाचा भाग

१२. चौकशी अधिकाऱ्यांनी सर्व कागदपत्रांची छाननी करून डॉ.प्रमोद येवले यांचे म्हणणे ऐकून घेऊन दिनांक १४ सप्टेंबर २०१६ रोजी आपला आदेश निर्गमित केला. या आदेशामध्ये व्यक्तीशः डॉ.प्रमोद येवले यांच्या एकूणच पात्रतेविषयी, वर्तनाविषयी अत्यंत गंभीर अशा गैरवर्तनाचे दिग्दर्शन करणारे शरे-ताशरे ओढलेले आहेत व आरोप सिद्ध झाल्याचे नमूद केलेले आहे ते पुढीलप्रमाणे:-

(१) शासन निर्णयानुसार प्राचार्य पदावरील नियुक्तीकरिता एकूण १० वर्षांचा शिक्षकीय अनुभव आवश्यक आहे. परंतु डॉ.प्रमोद येवले यांचा शिक्षकीय अनुभव केवळ ६ वर्ष ४ महिने आहे.

(सहपत्र एक)

(परिच्छेद १३ व १६ पहा)

SALARY SLIP RASHTRASANT TUKADOJI MAHARAJ NAGPUR UNIVERSITY, NAGPUR Salary Bill for (8402) - Dr.P.G.Yeole Month of June - 2019

Employee : Dr. P. G. Yeole
Designation : Pro. Vice Chancellor
P. Category : A - Statutory post [Class I [A, B, C & D]]
E.P.F. A/c : NG/NAG/0061296/000/000057
Bank A/c : 870910310000927, BKID0008709
Department : Office Of Pro. V.C. (Office Of Pro. V. C.)

Emp Code : 8402
Pay Scale : 37400 - 67000
Pay. Comm. : 6th Pay Commission
Pan Card No. : AAGPY3056N
Salary Head : 003 - (K-1)(E)

GROSS INCOME

S.No.	Particulars	Amount
1.	Pay Band	41,810
2.	G.P. / A.G.P.	10,000
3.	D.A.	73,570
4.	H.R.A.	10,362
5.	C.L.A.	240
6.	Special Pay	4,000
Total Gross Income		1,39,982

DEDUCTIONS

S.No.	Particulars	Amount
1.	E.P.F.	15,046
2.	Income Tax	10,000
3.	Profession Tax	200
Total Deductions		25,246

NET SALARY Rs. 1,14,736

[One Lac Fourteen Thousand Seven Hundred Thirty Six Rupees Only]

NOTE: University does not undertake any liability of recovery of Loan.

Assistant Registrar (Accts.),
RTMNU, Nagpur

(२) तसेच सहायक प्राध्यापक पदाचा ५ वर्ष शिक्षकीय अनुभव आवश्यक असतांना सहायक प्राध्यापक पदाचा अनुभव ३ वर्ष ४ महिने आहे. त्यामुळे डॉ.प्रमोद येवले यांची नियुक्ती शासनाच्या व विद्यापीठ अनुदान आयोगाच्या निकषानुसार झालेली नाही.

(३) तसेच डॉ.प्रमोद येवले यांची प्राचार्य पदावरील नियुक्ती असल्याने पीएच.डी. या शैक्षणिक अर्हतेकरिता सदर वेतनवाढी प्राचार्य पदाला देय ठरत नाही. प्राचार्य पदावरील नियुक्तीकरिता पीएच.डी. ही शैक्षणिक अनुभव ही अर्हता आहे."

(४) सेवापुस्तकासारखे दस्तावेज गहाळ झाल्यास त्याबाबतीत नजिकच्या पोलीस स्टेशनमध्ये FIR दाखल करणे अनिवार्य असते. त्यामुळे सुनावणीनंतर नव्याने तयार करून व मा.उच्च न्यायालयाचे आदेश झाल्यानंतर (After thought) आदेशाच्या अनुषंगाने व त्यास पूरक असे सेवापुस्तक डॉ.प्रमोद येवले यांनी सादर केले.

(५) सदर नियुक्ती केवळ शैक्षणिक वर्ष १९९३-९४ करिता असतांना विद्यापीठाने दि. ०५.११.१९९३ च्या मान्यता पत्रान्वये डॉ.प्रमोद येवले यांच्या सदर नियुक्तीस 'सत्र १९९३-९४ व पुढे' अशी मान्यता दिल्याचे दिसून येते.

(६) संबंधित संस्थेने सत्र १९९३-९४ या शैक्षणिक वर्षाकरिता डॉ.प्रमोद येवले यांना तात्पुरत्या नियुक्तीचे आदेश दिलेले असतांना व सदर नियुक्ती नियमित नसतांना देखील विद्यापीठाने सन १९९३-९४ व पुढे अशी मान्यता प्रदान केल्याचे दिसून येते.

(७) डॉ.प्रमोद येवले यांना ५ वर्षांचा अध्यापनाचा अनुभव नसतांना त्यांची सहायक प्राध्यापक पदावर नियुक्ती करण्यात आलेली आहे. त्यावरून याचिकाकर्ता हे सहायक प्राध्यापक पदावरील नियुक्तीकरिता आवश्यक असलेली अर्हता धारण करित नसल्याचे दिसून येते.

(८) डॉ.प्रमोद येवले यांच्या दि. २५.०६.१९९६ च्या नियुक्तीच्या आदेशामध्ये नियुक्तीचा परिविक्षाधीन कालावधी दि. ३०.०४.१९९७ पर्यंत म्हणजे केवळ ८ महिन्यांचा परिविक्षाधीन कालावधी नमूद केला आहे. विद्यापीठ अनुदान आयोगाच्या निकषानुसार परिविक्षाधीन कालावधी १ वर्षांचा असतो.

(९) डॉ.प्रमोद येवले यांच्या सहायक प्राध्यापक पदाच्या निवड समितीमध्ये शासन प्रतिनिधी नसतांना व ५ वर्षांचा शैक्षणिक अनुभव नसतांना त्यांच्या नियुक्तीस मान्यता दिलेली आहे. सदर नियुक्ती विद्यापीठ अनुदान आयोगाच्या निकषानुसार झालेली नाही.

(१०) सहायक प्राध्यापक पदावर नियुक्ती होत असतांना गठित केलेल्या निवडसमितीमध्ये शासकीय प्रतिनिधी नसतांना व आवश्यक ती पात्रता डॉ.प्रमोद येवले हे धारण करित नसतांना त्यांची निवड झाली.

(११) विद्यापीठाने व मागासवर्ग कक्षाने लागू केलेली विंदूनामावली उपलब्ध नसतांना डॉ.प्रमोद येवले यांची निवड करण्यात आली.

(१२) पदोन्नतीची वेतनश्रेणी देतांना डॉ.प्रमोद येवले यांची पूर्वीची सेवा ग्राह्य धरण्या संदर्भात असलेल्या शासननिर्णय दि. ११.०२.१९९४ मधील पाच अटी नुसार याचिकाकर्ता यांच्या औषधनिर्माण शास्त्र शिक्षण व संशोधन संस्था, बोरगांव (मेवे) वर्धा या विनाअनुदानित महाविद्यालयातील सेवेची पडताळणी केली असता सदर शासननिर्णयातील अटीची पूर्तता डॉ.प्रमोद येवले करित नाही.

(१३) ज्या पे-बॅन्ड मध्ये त्यांची नेमणूक झालेली आहे त्या पे-बॅन्डच्या उच्चतम वेतनश्रेणीच्या वरचे वेतन देण्याची त्यांची मागणी शासननिर्णयाच्या विरोधात असल्यामुळे मान्य करता येत नाही त्यामुळे त्यांना पे-बॅन्डच्या सुरुवातीचे वेतन देण्यात येत आहे,

(१४) "याचिकाकर्ता यांच्या सेवापडताळणीवरून दिसून येते की, याचिकाकर्ता यांना विविध पदावर देण्यात आलेल्या नियुक्त्या विद्यापीठ अनुदान आयोग व AICTE निकषानुसार झालेल्या नाहीत. त्यांना अवाजवी व अनुज्ञेय नसलेले लाभ दिल्याचे दिसून येतात.

१३. एवढे सारे शिरे-ताशेरे ओढल्यानंतर चौकशी अधिकाऱ्यांनी आपल्या आदेशाचा प्रभावकारी भाग (Operative part of the order) शब्दबद्ध केला. तो भाग परिच्छेद १० मध्ये नमूद केला आहे. त्याची पुनरुक्ती करण्याची आवश्यकता नाही. या आदेशाप्रमाणे प्र-कुलगुरुच्या पे-बॅन्ड मध्ये सर्वात खाली रू. ३७००० वर डॉ.येवले यांचे वेतन निश्चित करण्यात आले. प्र-कुलगुरु या नात्याने केलेल्या सेवाकालाच्या वार्षिक वेतनवाढी घेऊन ते नागपूर विद्यापीठातून औरंगाबादला रवाना झाले तेव्हा त्यांचे वेतन ४१८१० होते, हे दर्शविणारी त्यांची नागपूर विद्यापीठातील जून २०१९ ची वेतनचिठ्ठी (Salary Slip) सोबत सहपत्र : एक म्हणून प्रसूत केलेली आहे.

१४. ज्या प्रकरणी (W.P.No. 2613 of 2017) मा. उच्च न्यायालयाने स्थगनादेश दिलेला आहे त्या प्रकरणात डॉ.प्रमोद येवले हे वादी व सचिव उच्च शिक्षण हे प्रतिवादी आहेत. उभय पक्षाला स्थगनादेश सोईचा असेल तर ते प्रकरण ५-१५ वर्षे तसेच पडून राहू शकते. दिनांक ८ जुलै २०१९ रोजी स्वाभाविक न्यायतत्वानुसार स्थगनादेश देण्यात आला होता. म्हणजे गेली ४-५ वर्षे हे प्रकरण पडूनच आहे. माझे मूळ वेतन ६९५६० वर निश्चित करावे हे डॉ.प्रमोद येवले यांचे म्हणणे शासनाने फेटाळून लावले व ३७४००-६७००० च्या पे-बॅन्ड मध्ये तुमचे वेतन ३७४०० वर निश्चित केले जाईल असे आदेश काढले. या आदेशाला धक्का लावण्याचा प्रयत्न जोवर कुणी करत नाही तोवर प्रतिवादीला या प्रकरणात घाई करण्याचे कोणतेही कारण नाही. आपल्यावरील कोणताही आरोप खोडून काढण्याच्या भानगडीत न पडता प्र-कुलगुरु पदावरून कुलगुरु पदावर उड्डाण करण्याची सुविधा उपलब्ध होत असल्यामुळे वादीला सुद्धा स्थगनादेश सोईचाच आहे. त्यामुळे दिनांक ८ जुलै २०१९ रोजी स्थगनादेश कायम झाल्या नंतरच्या तीन-चार वर्षांत माझा दुसरा लेखांक प्रकाशित झाल्याच्या तारखेपर्यंत (१५ मे २०२३) हे प्रकरण एकदाही सुनावणीला आले नाही. असे "Case Details" वरील न्यायालयातील अधिकृत कागदपत्रांतून दिसून येते.

१५. स्थगनादेश हा ८ जुलै २०१९ रोजी दिलेला असतांना हे प्रकरण २० वर्षांपूर्वीचे आहे असे म्हणतांना कालगणनेचे भानसुद्धा डॉ.प्रमोद येवले यांना राहिलेले नाही. एकही आरोप असत्य असल्याचे त्यांना मा.उच्च न्यायालयासमोर सिद्ध करता आले नाही. ही सन २०२३ मध्ये उपलब्ध असलेली सद्यःस्थिती आहे, २० वर्षांपूर्वीची नाही.

१६. सहपत्र एकचे अवलोकन केल्यास चौकशी अधिकाऱ्यांनी ज्या शेऱ्या, ताशेऱ्यांच्या व पुराव्यांच्या आधारावर आपल्या आदेशात डॉ.प्रमोद येवले यांच्या विरोधात निर्णय दिला होता त्याच्या प्रभावकारक भागाची स्थगनादेशपूर्वीच अंमलबजावणी सुरू झालेली होती हे लक्षात येईल. त्या निर्णयातील अंमलात आलेल्या प्रभावकारक भागाला मा.उच्च न्यायालयाने स्थगिती दिलेली नाही. आदेशाचा तो भाग आजही अंमलात आहे, ही गोष्ट डॉ.प्रमोद येवले लोकांपासून लपवून ठेवतात. तो प्रभावकारक निर्णयभाग कायम असून अंमलात असल्यामुळे ज्या शेऱ्या, ताशेऱ्यांच्या व पुराव्यांच्या आधारावर चौकशी अधिकाऱ्यांनी निर्णय दिला होता ते शिरे-ताशेऱेसुद्धा अप्रभावित राहतात, ही गोष्टसुद्धा ते लपवून ठेवतात. मग या स्थगनादेशाचा डॉ.प्रमोद येवले यांना काहीच लाभ झाला नाही काय? झाला ना ! नाही झाला असे म्हणता येणार नाही. प्र-कुलगुरु पदावरून कुलगुरु पदावर जातांना १४.०९.२०१६ च्या चौकशी अधिकाऱ्यांच्या आदेशाचा कोणालाही त्यांच्या विरुद्ध वापर करता आला नाही, यापुढे करता येणार नाही, कारण त्यावर स्थगनादेश आहे. हाच तो लाभ. म्हणून म्हणायचे शाबास ! स्थगनादेशाचे लाभधारक कुलगुरु : शाब्बास !

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