

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD  
WRIT PETITION NO. 5042 OF 2016**

Association of College and University Superannuated Teachers, (Maharashtra) A society registered at No. MAH-853/2009 Under the provisions of the Societies Registration Act, having its Head office at 20, Sawarkarnagar, N-5 (South) CIDCO, Aurangabad, through its President and Convener, Principal Dr. M.A. Wahul .. **Petitioner VERSUS (1)** Union of India Through its Under Secretary Department of Education, New Delhi (Copy to be served on Assistant Solicitor General of Union of India, High Court of Judicature of Bombay Bench at Aurangabad) **(2)** The State of Maharashtra Through its Secretary, Department of Higher and Technical Education, Mantralaya, Mumbai – 32. **(3)** The Director Higher Education, Maharashtra State, Pune **(4)** The University Grants Commission, Bahadurshah Jafar Marg, New Delhi – 110 001 **(5)** The State of Maharashtra Through its Finance Department, Mantralaya, Mumbai – 32... **Respondents AND WRIT PETITION NO. 4554 OF 2016** Association of College and University Superannuated Teachers, (Maharashtra) A society registered at No. MAH-853/2009 Under the provisions of the Societies Registration Act, having its Head office at 20, Sawarkarnagar, N-5 (South) CIDCO, Aurangabad, through its President and Convener, Principal Dr. M.A. Wahul .. **Petitioner VERSUS (1)** Union of India Through its Under Secretary Department of Education, New Delhi (Copy to be served on Assistant Solicitor General of Union of India, High Court of Judicature of Bombay Bench at Aurangabad) **(2)** The State of Maharashtra Through its Secretary, Department of Higher and Technical Education, Mantralaya, Mumbai – 32. **(3)** The Director Higher Education, Maharashtra State, Pune **(4)** The University Grants Commission, Bahadurshah Jafar Marg, New Delhi – 110 001 **(5)** The Under Secretary, Department of Higher & Technical Education Mantralaya, Mumbai – 32. **(6)** The State of Maharashtra Through its Finance Department, Mantralaya, Mumbai – 32. .. **Respondents**...Advocate for petitioner in both WPs : Mr. S.V. Adwant Addl. GP for the respondent – State : Mr. S.B. Yawalkar Standing Counsel for respondents no. 1 and 4 in both WPs : Mr. S.W. Munde

**CORAM : MANGESH S. PATIL & NEERAJ P. DHOTE, JJ.**

**RESERVED ON : 8 NOVEMBER 2023 PRONOUNCED ON : 2 FEBRUARY 2024**

**JUDGMENT (MANGESH S. PATIL, J.) :**

Heard. Rule. Rule is made returnable forthwith. Learned Additional GP and learned advocate for respondents no. 1 and 4 in both writ petitions waive service. At the joint request of the parties, the matters are heard finally at the stage of admission.

**2.** By way of these writ petitions, the teachers who are governed by the Maharashtra Civil Services (Pension) Rules, 1982 (Pension Rules) are alleging about discrimination between them who all stood

retired between 01-01-1996 and 31-12-2005 on the one hand and teachers who retired prior to 01-01-1996 and who would retire after 01-01-2006.

**3.** It is being the stand that in order to implement the sixth central pay commission recommendations, the State Government appointed a three member State Pay Revision Committee styled as 'Hakim Committee' which inter alia recommended modification of the pension

**He would submit that in respect of the employees who retired prior to 01-01-1996 even their pension was fixed at 50% of the revised pay scale introduced by fourth pay commission. He would thus submit that the pension that was made payable to the employees who retired prior to 01-01-1996 according to the revised pay scale under the fourth pay commission and the employees who stood retired after 01-01-2006 during sixth pay commission revision, their pension has been fixed @ 50% of the revised pay scale under the respective pay commission.**

*( See para 4 of the High Court Judgment dated 2nd February 2024 )*

**The petitioners who retired during the fifth pay commission between 01-01-1996 and 01-01-2006 have been discriminated and their pension has been fixed @ 40% increase on the basic pay.**

*( See para 4 of the High Court Judgment dated 2nd February 2024 )*

and the family pension. **Pursuant to such report of the committee by issuing a government resolution dated 27-02-2009, the State decided to revise the pension and introduced the modification of Pension Rules as applicable to the state government employees and other employees governed by the Pension Rules.** Accordingly, rule 110(1) was modified and it provides that it is only applicable to the retirees after 01-01-2006 and holding them to be entitled to 50% of the basic pay or average basic pay received during the last 10 months, whichever is more, as the minimum pension payable.

**4.** Learned advocate Mr. Adwant would submit that conspicuously this amendment in the Pension Rules though effected in the year 2016 was brought into effect with effect from 01-01-2016. However, by issuing government resolution dated 05-05-2009, the government pegged down pension receivable by the persons like the petitioners who retired between 01-01-1996 and 01-01-2006, to 40% increase on basic pay. **He would submit that in respect of the employees who retired prior to 01-01-1996 even their pension was fixed at 50% of the revised pay scale introduced by fourth pay commission. He would thus submit that the pension that was made payable to the employees who retired prior to 01-01-1996 according to the revised pay scale under the fourth pay commission and the employees who stood retired after 01-01-2006 during sixth pay commission revision, their pension has been fixed @ 50% of the revised pay scale under the respective pay commission. As against it, it is only the petitioners who retired during the fifth pay commission between 01-01-1996 and 01-01-2006 have been discriminated and their pension has been fixed @ 40% increase on the basic pay.**

**5.** Mr. Adwant would submit that the government resolution dated 05-05-2009, is, therefore, violative of Article 14 and 16 of the Constitution of India. He

seek reliance on the decision of the Supreme Court in the matter of **All Manipur Pensioners Association by its Secretary V. State of Manipur; (2020) 14 SCC 625 and D.S. Nakara V. Union of India; (1983) 1 SCC 305.**

**6.** Per contra, learned AGP Mr. Yawalkar would submit that there is no discrimination. The employees retiring during different time span would form distinct classes. Merely because all of them are government servants, no such parity can be claimed. If some benefits have been extended pursuant to the Hakim committee recommendations to the employees retiring after 01-01-2006, it would be a matter of setting a cut off date for accepting the recommendations. The petitioners who retired prior thereto would form a different class and cannot seek to derive the benefit similar to the one conferred upon the employees retiring after 01-01-2006. He would place reliance on the following judgments :

(1) *Kirshena Kuma Vs. Union of India; AIR 1990 SC 1782*

(2) *Indian Ex-Services League and others Vs. Union of India; AIR 1991 SC 1182*

(3) *Union of India Vs. P.N. Menon and others; AIR 1994 SC 2221*

(4) *State of Rajasthan & Another Vs. Prem Raj; AIR 1997 SC 1081*

(5) *Commander Head Quarter, Calcutta and others Vs. Capt. Biplabendra Chand; AIR 1997 SC 2607*

(6) *State of Rajasthan and another Vs. Amrit Lal Gandhi and others; AIR 1997 SC 782*

(7) *T.N. Electricity Board Vs. R. Veerasamy and others; AIR 1999 SC 1768*

(8) *State of W.B. & Another Vs. W.B. Govt. Pensioners Associations & others; AIR 2002 SC 538*

(9) *State of Bihar & Ors. Vs. Bihar Pensioners Samaj; AIR 2006 SC 2100*

**The government resolution dated 05-05-2009, is, therefore, violative of Article 14 and 16 of the Constitution of India.**

*( See para 5 of the High Court Judgment dated 2nd February 2024 )*

**This court had appreciated the argument and had observed that there was a substance in the contention of the petitioner that Hakeem committee recommendations were not applicable to category of teaching staff.**

( See para 8 of the High Court Judgment dated 2nd February 2024 )

(9-A) *K.I. Rathee Vs. Union of India*; AIR 1997 SC 2763

(10) *State of Punjab & Ors. Vs. Amar Nath Goyal & Ors.*; AIR 2006 SC 171

(11) *S.C. Chandra & Ors. Vs. State of Jharkhand & Ors.*; AIR 2007 SC 3021

(12) *T.M. Sampath & Ors. Vs. Secretary, Ministry of Water Resources and Ors.*; AIR 2015 SC (Supp) 367

(13) *Suchet Singh Yadav & Ors. Vs. Union of India & Ors.*; AIR 2018 SC 1319

(14) *State of Maharashtra & Anr. Vs. Bhagwan & Ors.*; AIR Online 2022 SC 20

(15) *BALCO Employees Union (Regd.) Vs. Union of India & Ors.*; AIR 2002 SC 350

(16) *Anand Swarup Singh Vs. State of Punjab*; AIR 1972 SC 2638

(17) *Arjun Krishna Golatkar & Ors. Vs. State of Maharashtra Ors. (Writ Petition No. 1797 of 2014)*

(18) *Bhaskar Anandrao Pende Vs. State of Maharashtra & Ors. (Petition for Special Leave to Appeal (C) No. 15786 of 2018)*

7. Mr. Yawalkar would also refer to the division bench judgment of this Court in the matter of **Arjun Krishna Golatkar and others Vs. State of Maharashtra and others** (writ petition no. 1797 of 2014) decided on 13-12-2017. He would also point out that similar argument was repelled by the division bench. The decision was challenged by the petitioner in Special Leave to Appeal no. 15786 of 2018 but the Supreme Court did not interfere.

8. To begin with, similar arguments were advanced by the petitioner in the earlier round of litigation before the Division bench of this court in WP 4292/2013. **This court had appreciated the argument and had observed that there was a substance in**

**the contention of the petitioner that Hakeem committee recommendations were not applicable to category of teaching staff** and the state was further directed to consider the entire issue afresh. Paragraphs nos. 26 and 27 of the order dated 09/06/2015 read as under:

26. *The State Government shall also consider the contention of the petitioner that, recommendation of Hakeem Committee are not applicable for deciding the pensionary benefits for the category of teaching staff working in universities and colleges in Maharashtra in general and the Government Resolution dated 5th may, 2009 and Government Resolution dated 12th August, 2009. The Respondent - State is directed to hear the petitioner on the aspect that, the superannuated teachers retired between 1/1/1996 to 31/12/2005 are entitled for minimum 50% pension of the revised pay scales introduced w.e.f. 1/1/2006 as a result of implementation of 6th pay commission and to take decision within four months from today.*

27. *In the light of discussion in foregoing paragraphs, we direct the Respondent State Government to reconsider the entire issue/controversy keeping in view observations made in foregoing paragraphs, office memorandums issued by the Union of India on the recommendation of the U.G.C., orders issued by other State Governments, judgments of the various High Courts and the Supreme Court, and take the fresh decision within four months from today and communicate the same to the petitioner.*

**9. Even respondent no. 4 - UGC has also maintained the stand that petitioners are denied the benefits and have been discriminated. It has taken a stand that the full pension should not be less than 50% of the minimum of the revised pay scale introduced by the Pay Commission for the post last held by the employee at the time of retirement.** The government has issued an Office Memorandum directing all heads of departments to revise the pension/family pension as per the provisions mentioned, with effect from

**Even respondent no. 4 - UGC has also maintained the stand that petitioners are denied the benefits and have been discriminated. It has taken a stand that the full pension should not be less than 50% of the minimum of the revised pay scale introduced by the Pay Commission for the post last held by the employee at the time of retirement.**

( See para 9 of the High Court Judgment dated 2nd February 2024 )

**In the present case, the classification in question has no reasonable nexus to the objective sought to be achieved while revising the pension.**

( See para 11 of the High Court Judgment dated 2nd February 2024 )

01.01.2006 and further stated that point no.8 (g) of MDHR letter dated 31/12/2008 is mandatory in nature.

**10.** Even Constitutional Bench of the apex court in the matter of **D. S. Nakara** (*supra*) has specifically held that pensioners form a class as a whole and cannot be micro-classified by an arbitrary, unprincipled and unreasonable eligibility criterion for the purpose of grant of revised pension. In paragraph no. 42 following observation have been made:

*42. If it appears to be undisputable, as it does to us that the pensioners for the purpose of pension benefits form a class, would its upward revision permit a homogeneous class to be divided by arbitrarily fixing an eligibility criteria unrelated to purpose of revision, and would such classification be founded on some rational principle? The classification has to be based, as is well settled, on some rational principle and the rational principle must have nexus to the objects sought to be achieved. We have set out the objects underlying the payment of pension. If the State considered it necessary to liberalise the pension scheme, we find no rational principle behind it for granting these benefits only to those who retired subsequent to that date simultaneously denying the same to those who retired prior to that date. If the liberalisation was considered necessary for augmenting social security in old age to government servants then those who, retired earlier cannot be worst off than those who retire later. Therefore, this division which classified pensioners into two classes is not based on any rational principle and if the rational principle is the one of dividing pensioners with a view to giving something more to persons otherwise equally placed, it would be discriminatory. To illustrate, take two persons, one retired just a day prior and another a day just succeeding the specified date. Both were in the same pay bracket, the average emolument was the same and both had put in equal number of years of service. How does a fortuitous circumstance of retiring a day earlier or a day later will permit totally unequal treatment in the matter of pension? One retiring a day earlier will have to be subject to ceiling of Rs 8100 p.a. and average emolument to be worked out on 36 months' salary while the other will have a ceiling of Rs 12,000 p.a. and average emolument will be computed on the basis of last 10 months' average. The artificial division stares into face and is unrelated to any principle and whatever principle, if there be any, has absolutely no nexus to the objects sought to be achieved by liberalising the pension scheme. In fact this arbitrary division has not only no*

*nexus to the liberalised pension scheme but it is counter-productive and runs counter to the whole gamut of pension scheme. The equal treatment guaranteed in Article 14 is wholly violated inasmuch as the pension rules being statutory in character, since the specified date, the rules accord differential and discriminatory treatment to equals in the matter of commutation of pension. A 48 hours' difference in matter of retirement would have a traumatic effect. Division is thus both arbitrary and unprincipled. Therefore, the classification does not stand the test of Article 14.*

**11.** Pertinently, **D.S. Nakara** (*supra*) has been followed in **All Manipur Pensioners Association** (*supra*). Relevant paragraphs in the case of **All Manipur Pensioners Association** are as follows:

*2. The facts leading to the present appeal in a nutshell are as under : that the State of Manipur adopted the Central Civil Services (Pension) Rules, 1972, as amended from time to time. As per Rule 49 of the Central Civil Services Rules, 1972, a case of a government employee retired in accordance with the provisions of the Rules after completing qualifying service of not less than 30 years, the amount of pension shall be calculated at 50% of the average emoluments subject to a maximum of Rs 4500 per month. It appears that considering the increase in the cost of living, the Government of Manipur decided to increase the quantum of pension as well as the pay of the employees. That the Government of Manipur issued an office memorandum dated 21-4-1999 revising the quantum of pension. However, provided that those Manipur Government employees who retired on or after 1-1-1996 shall be entitled to the revised pension at a higher percentage and those who retired before 1-1-1996 shall be entitled at a lower percentage.*

*2.1. Feeling aggrieved by office memorandum dated 21-4-1999 providing two different revised pensions viz. the higher percentage of revised pension to the government employees who retired on or after 1-1-1996 and the lower percentage of revised pension to those who retired on or before 1-1-1996, the appellant herein - All Manipur Pensioners Association approached the learned Single Judge of the High Court of Manipur by way of Writ Petition (C) No. 1455 of 2000. It was the case on behalf of the original writ petitioners that all the pensioners who retired on or after 1-1-1996 and those who retired before 1-1-1996 form only one class as a whole and therefore the classification between those who retired on or after 1-1-1996 and those who retired on or before 1-1-1996 for the purpose of granting the benefit of revised pension is arbitrary, unreasonable and*

**We are of the considered view that these observations are squarely applicable to the matters in hand.**

( See para 11 of the High Court Judgment dated 2nd February 2024 )

**Obviously since this provision had come into being with effect from 01-01-2006, the government servant retiring on superannuation etc. thereafter is entitled to pension to be calculated @ 50% of the pensionable pay.**

( See para 13 of the High Court Judgment dated 2nd February 2024 )

violative of Article 14 of the Constitution of India. It was submitted that the date of retirement cannot form the very criterion for classification. Before the learned Single Judge, reliance was placed heavily on the decision of this Court in *D.S. Nakara v. Union of India*. The writ petition before the learned Single Judge was opposed by the State Government and the aforesaid classification was sought to be justified solely on the ground that considering the financial constraints of the State, the State was justified in granting revised pension differently to those who retired after 1-1-1996 and those who retired before 1-1-1996. It was the case on behalf of the State that considering the financial constraints of the State, the State was not in a position to extend the benefit of pension making the percentage given by the Government of India in its memorandum dated 17-12-1998 to the pre-1996 pensioners and accordingly a decision was taken to extend the benefit of revised pension at certain percentage for the pre-1996 pensioners and higher percentage for the post 1996 pensioners. Relying upon the decision of this Court in *D.S. Nakara* case, by the judgment and order dated 24-3-2005, the learned Single Judge allowed the writ petition and held the classification between those pensioners who retired prior to 1996 and those who retired after 1996 as arbitrary and violative of Article 14 of the Constitution of India and consequently directed the State Government to pay the revised pension uniformly to all the pensioners irrespective of any cut-off date i.e. those who retired pre-1996 or those who retired post-1996.

8. Even otherwise on merits also, we are of the firm opinion that there is no valid justification to create two classes viz. one who retired pre-1996 and another who retired post-1996, for the purpose of grant of revised pension. In our view, such a classification has no nexus with the object and purpose of grant of benefit of revised pension. All the pensioners form one class who are entitled to pension as per the pension rules. Article 14 of the Constitution of India ensures to all equality before law and equal protection of laws. At this juncture it is also necessary to examine the concept of valid classification. A valid classification is truly a valid discrimination. It is true that Article 16 of the Constitution of India permits a valid classification. However, a valid classification must be based on a just

objective. The result to be achieved by the just objective presupposes the choice of some for differential consideration/treatment over others. A classification to be valid must necessarily satisfy two tests. Firstly, the distinguishing rationale has to be based on a just objective and secondly, the choice of differentiating one set of persons from another, must have a reasonable nexus to the objective sought to be achieved. The test for a valid classification may be summarised as a distinction based on a classification founded on an intelligible differentia, which has a rational relationship with the object sought to be achieved. Therefore, whenever a cut-off date (as in the present controversy) is fixed to categorise one set of pensioners for favourable consideration over others, the twin test for valid classification or valid discrimination therefore must necessarily be satisfied.

**8.1. In the present case, the classification in question has no reasonable nexus to the objective sought to be achieved while revising the pension. As observed hereinabove, the object and purpose for revising the pension is due to the increase in the cost of living. All the pensioners form a single class and therefore such a classification for the purpose of grant of revised pension is unreasonable, arbitrary, discriminatory and violative of Article 14 of the Constitution of India. The State cannot arbitrarily pick and choose from amongst similarly situated persons, a cut-off date for extension of benefits especially pensionary benefits. There has to be a classification founded on some rational principle when similarly situated class is differentiated for grant of any benefit.**

**We are of the considered view that these observations are squarely applicable to the matters in hand.**

12. Since it is a matter of payment of pension, one need to revert to the specific provisions contained in Chapter IX of the Pension Rules and particularly, rule 110. The rule as it stands now, post amendment dated 18-01-2016 whereby sub-rule 2 was substituted with effect from 01-01-2006, reads as under :

**Even sub-rule 2 of rule 110 as it stood prior to 01-01-2006 provided that the pension should be 50% of the pensionable pay. There is no dispute about the fact that the employees who retired during 4th pay commission prior to 01-01-1996 obviously were paid minimum of 50% of the revised pay scale introduced by the pay commission.**

( See para 15 of the High Court Judgment dated 2nd February 2024 )

**Similarly, even the employees who would retire post 01-01-2006 under the sixth pay commission would also be entitled to pension to be fixed at 50% of the revised pay scale. As against this, the employees who retired during these two dates, between 01-01-1996 and 01-01-2006 under the fifth pay commission, in our considered view, were also governed by sub-rule 2 of rule 110 as it stood then, meaning thereby they should get pension @ 50% of the basic pay and not 40%.**

*( See para 15 of the High Court Judgment dated 2nd February 2024 )*

**110. Amount of pension.**

*(1) In the case of a Government Servants retiring on Superannuation, Retiring, Invalid servant retiring or Compensation Pension before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's pay for every completed six monthly period of qualifying service.*

*(2) (a) In case of Government Servant retiring on Superannuation, Retiring, Invalid or Compensation Pension in accordance with the provisions of these rules after completing qualifying service of not less than twenty years, the amount of pension shall be calculated at fifty per cent of the 'Pensionable Pay' subject to maximum of rupees two lakhs twenty thousand.*

*(b) In the case of a Government Servant retiring on Superannuation, Retiring, Invalid or Compensation Pension in accordance with the provisions of these rules before completing qualifying service of twenty years but after completing qualifying service of ten years, the amount of pension shall be calculated at fifty per cent of the 'Pensionable Pay' subject to maximum of rupees two lakhs twenty thousand and in no case the amount of pension shall not be less than rupees seven thousand five hundred per month.*

*(3) In calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed one-half year and reckoned as qualifying service.*

*(4) The amount of pension finally determined under clause (a) or clause (b) of sub-rule (2), shall be expressed in whole rupees and where the pension contains a fraction of a rupee it shall be rounded off to the next higher*

*rupee.*

**13. Obviously since this provision had come into being with effect from 01-01-2006, the government servant retiring on superannuation etc. thereafter is entitled to pension to be calculated @ 50% of the pensionable pay subject to maximum of Rs.2,20,000/-.**

**14. Previously, this rule read as under:**

**110. Amount of pension-**

*(1) In the case of a Government servant retiring on Superannuation, Retiring, Invalid or Compensation Pension before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's pay for every completed six monthly period of qualifying service.*

*(2) (a) In the case of a Government servant retiring on Super-annuation, Retiring, Invalid or Compensation Pension in accordance with the provisions of these rules after completing qualifying service of not less than thirty-three years, the amount of pension shall be calculated at fifty per cent of the "Pensionable Pay", subject to a maximum of Rs. 4.000 per month.*

*(b) In the case of a Government servant retiring on Superannuation, Retiring. Invalid or Compensation Pension in accordance with the provisions of these rules before completing qualifying service of thirty-three years but after completing qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension admissible under clause*

*(a) and in no case the amount of pension shall be less*

**However, the impugned resolution dated 05-05-2009 apparently was merely a half hearted attempt to reduce the pension without effecting any modification in the rules. One need not emphasize the fact that since the pension rules are framed under Article 309 of the Constitution of India, the impugned government resolution dated 05-05-2009 purportedly passed under Article 162 of the Constitution of India could not have superseded rule 110(2).**

*(See para 16 of the High Court Judgment dated 2nd February 2024 )*

**This precisely seems to have happened in the matter in hand. If the state government was intending to peg down the pension @ 40% of basic of the revised pay, it should have modified the rules framed under Article 309. Instead, it proceeded to implement the government resolution, which action would not be sustainable in law.**

*( See para 16 of the High Court Judgment dated 2nd February 2024 )*

*than rupees three hundred and seventy-five per mensem.*

*(3) In calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed one-half year and reckoned as qualifying service.*

*(4) The amount of pension finally determined under clause (a) or clause (b) of sub-rule (2), shall be expressed in whole rupee and where the pension contains a fraction of a rupee it shall be rounded off to the next higher rupee.*

**15.** As can be noticed, as far as the quantum of pension is concerned, **even sub-rule 2 of rule 110 as it stood prior to 01-01-2006 provided that the pension should be 50% of the pensionable pay. There is no dispute about the fact that the employees who retired during 4th pay commission prior to 01-01-1996 obviously were paid minimum of 50% of the revised pay scale introduced by the pay commission. Similarly, even the employees who would retire post 01-01-2006 under the sixth pay commission would also be entitled to pension to be fixed at 50% of the revised pay scale. As against this, the employees who retired during these two dates, between 01-01-1996 and 01-01-2006 under the fifth pay commission, in our considered view, were also governed by sub-rule 2 of rule 110 as it stood then, meaning thereby they should get pension @ 50% of the basic pay and not 40%.** It appears that without actually modifying or amending sub-rule 2 of rule 110 of the Pension Rules, by government resolution dated 05-05-2009, the government simply decided to peg down the pension of the teachers who retired after 01-01-1996 to 40% of the revised pay.

**16.** Conspicuously, while accepting State pay revision committee report (Hakim Committee), recommendations in respect of revision of pension and family pension,

the State government ensured that corresponding modification / amendment is made in rule 110 of the Pension Rules and the commutation of Pension Rules. **However, the impugned resolution dated 05-05-2009 apparently was merely a half hearted attempt to reduce the pension without effecting any modification in the rules. One need not emphasize the fact that since the pension rules are framed under Article 309 of the Constitution of India, the impugned government resolution dated 05-05-2009 purportedly passed under Article 162 of the Constitution of India could not have superseded rule 110(2). This precisely seems to have happened in the matter in hand. If the state government was intending to peg down the pension @ 40% of basic of the revised pay, it should have modified the rules framed under Article 309. Instead, it proceeded to implement the government resolution, which action would not be sustainable in law.**

**17.** In substance what transpires is that the Pension Rules and particularly rule 110 has been consistently maintaining that the pension is to be fixed @ 50% of the basic pay and at no point it read 40% of basic of the revised pay. The impugned government resolution dated 05-05-2009 requires this to happen. **The government resolution cannot, therefore, be not only violative of Article 14 since it discriminates between employees who retired between 01-01-1996 and 01-01-2006 as against ones who retired prior to 01-01-1996 and who would retire after 01.01.2006, it would also be illegal being contrary to rule 110(2).**

**18.** The decisions cited by the learned AGP Mr. Yawalkar are not applicable to the fact situation of the matter in hand. Those

**In substance what transpires is that the Pension Rules and particularly rule 110 has been consistently maintaining that the pension is to be fixed @ 50% of the basic pay and at no point it read 40% of basic of the revised pay.**

*( See para 17 of the High Court Judgment dated 2nd February 2024 )*

**The government resolution cannot, therefore, be not only violative of Article 14 since it discriminates between employees who retired between 01-01-1996 and 01-01-2006 as against ones who retired prior to 01-01-1996 and who would retire after 01.01.2006, it would also be illegal being contrary to rule 110(2).**

*( See para 17 of the High Court Judgment dated 2nd February 2024 )*

were the cases providing for cut off dates for extending the various pensionary benefits and not pertaining to the calculation of the pension. Even the decision in the matter of Arjun Krishna Golatkar (supra). would not be strictly applicable to the fact situation of the matter in hand. **It was also a matter of making beneficial provision applicable to one set of employees who would retire after 01-01-2006 as against the employees who stood retired prior thereto.**

**19.** The petitioners are seeking a declaration to the effect that the Hakim committee recommendations are not applicable to its members. In this respect, suffice for the purpose to observe that as indicated herein-above while deciding writ petition no. 4292 of 2013, **this Court had already taken a view finding substance in the similar stand to the effect that the Hakim committee recommendations were not applicable to the category of teaching staff and further directed the State government to consider the petitioner's grievance independently.** Since this issue has already been dealt with and has reached finality, a prayer for seeking such a declaration again would be redundant.

**20.** There is one more aspect to be emphasized. Admittedly, pursuant to sixth central pay commission recommendations, the Government of India under Ministry of Human Resources Development (MHRD) issued a communication addressed to the University Grants Commission (UGC) dated 31-12-2008 elaborately laying down the specific heads as also the modalities to be

followed for implementation of revision of pay of teachers and equivalent cadres in universities and colleges. Pursuant to this communication, the UGC also notified all the State governments vide its communication dated 30-06-2010 regarding the directions received from the MHRD, Government of India.

**21.** Pursuant to such directives, the State of Maharashtra by the impugned Government decision dated 15-02-2011 sought to implement some of the recommendations as indicated therein. Pertinently, the MHRD communication to the UGC contained a specific clause 8(p) regarding applicability of the scheme. Sub clause (v) of this paragraph 8(p) expressly provide that the scheme as was being proposed could be extended to the universities, colleges and other higher educational institutions coming under the purview of the State legislature, provided the State governments wish to adopt and implement the scheme, however, subject to certain conditions. This condition stipulated in clause (a) to (g) that 80% of the financial burden would be shouldered by the State government. Conspicuously, it was also stipulated that State governments could modify the scales but on higher scales. **More importantly, sub-clause (g) of clause (v) of clause 8(p) expressly require the State governments if at all they were so intending, to implement the scheme comprehensively. Similar was the stipulation in the communication made by the UGC to the State governments dated 30-06-2010 directing the State governments if at all**

**The Hakim committee recommendations would not be applicable to the teachers like the members of the petitioners who are governed by the UGC regulations.**

*( See para 24 of the High Court Judgment dated 2nd February 2024 )*

**It was also a matter of making beneficial provision applicable to one set of employees who would retire after 01-01-2006 as against the employees who stood retired prior thereto.**

*( See para 18 of the High Court Judgment dated 2nd February 2024 )*

**Consequently, the members of the petitioner and similarly situated persons who stood superannuated between 01-01-1996 and 31-12-2005 would be entitled to fixation of pension on the basis of the revised pay scale to be determined in accordance with the recommendations of the sixth pay commission.**

*( See para 24 of the High Court Judgment dated 2nd February 2024 )*

**they intended, to implement the scheme as a whole.**

**22. It appears that in spite of such a state-of-affair, by the impugned Government decision dated 15-02-2011, the State of Maharashtra sought to implement these directives by carving its own exception particularly in respect of the pensioners like the present petitioners.** Therefore, though not strictly, inasmuch as the State of Maharashtra has its own pension rules and, therefore, the stipulation in the MHRD communications as far as pension is concerned may not be strictly applicable, still, it mandated in clause 8(g) that the recommendations of the sixth pay central pay commissions in respect of pension of the Central government employees including the eligibility of full pension i.e. 50% of the average pay or the last pay drawn, shall be adopted to all the teachers who were already on pension in the central universities, colleges etc. **As we have indicated herein-above, in-fact, rule 110 of the Pension Rules never provided for calculation of pension @ 40% of the last pay drawn. Therefore, the stand of the State government in spite of acceptance of the scheme sponsored by the Central government to make some exception as regards the teachers like the petitioners would be contrary to the stipulation in the scheme and the directions of the UGC, as has been the stand of the UGC in the affidavit in reply.**

**23.** However, since, the Government decision dated 15-02-2011 does not specifically touch the aspect of pension, even though by way of amendment of the writ petition, a reference is made to clause 6.8 of the UGC communication dated 30-06-2010 and when that schedule annexed to the communication does not expressly deal with the aspect of pension, we see no

reason to struck down the government resolution dated 15-02-2011.

**24.** The upshot of the above discussion, **the Hakim committee recommendations would not be applicable to the teachers like the members of the petitioners who are governed by the UGC regulations.** In the absence of any modification in rule 110 of the Pension Rules, the rules having been framed under Article 309 of the Constitution could not be superseded by administrative instructions issued under Article 162 of the Constitution in the form of Government Resolutions dated 05-05-2009 and 12-08-2009, which are liable to struck down. **Consequently, the members of the petitioner and similarly situated persons who stood superannuated between 01-01-1996 and 31-12-2005 would be entitled to fixation of pension on the basis of the revised pay scale to be determined in accordance with the recommendations of the sixth pay commission.** However, the government resolution dated 15-02-2011 which does not have any bearing on the rights being claimed in these petitions, cannot be struck down.

**25.** **The writ petitions are partly allowed and the rule is made absolute in the above terms.** The respondent shall take appropriate steps in the light of the above observations and conclusions and shall **revise the pension of the members of the petitioners and all similarly situate persons as early as possible and in any case within four (4) months and shall pay the arrears within four (4) months thereafter.**

**(NEERAJ P. DHOTE)**

**JUDGE**

**(MANGESH S. PATIL)**

**JUDGE**

**Revise the pension of the members of the petitioners and all similarly situate persons as early as possible and in any case within four (4) months and shall pay the arrears within four (4) months thereafter.**

*( See para 25 of the High Court Judgment dated 2nd February 2024 )*

महाराष्ट्र प्राध्यापक महासंघाच्या कार्यकारी मंडळाच्या रविवार, दिनांक २१ जानेवारी २०२४ रोजी  
झालेल्या बैठकीत सम्मत झालेल्या ठरावानुसार

नागपूर व अमरावती येथील विद्यापीठीय व महाविद्यालयीन शिक्षकांच्या मेळाव्याचा दिवस, दिनांक वेळ व स्थळ खालील तक्त्यात दिल्या प्रमाणे आहे.  
सर्व प्राध्यापकांनी उपस्थित रहावे अशी विनंती आहे.- डॉ. नितीन कोंगरे, सचिव, नुटा

तक्ता

## नागपूर व अमरावती येथे विद्यापीठीय व महाविद्यालयीन शिक्षकांच्या मेळाव्यांचे आयोजन

रा. तु. म. नागपूर विद्यापीठ, नागपूर व गोंडवाना विद्यापीठ, गडचिरोली	हिस्लॉप कॉलेज, सिव्हील लाईन्स, नागपूर	रविवार, दि. १८ फेब्रुवारी, २०२४	दुपारी १२.०० वाजता
संत गाडगे बाबा अमरावती विद्यापीठ, अमरावती.	केशरबाई लाहोटी महाविद्यालय, अमरावती	मंगळवार, दि. २० फेब्रुवारी, २०२४	दुपारी ४.०० वाजता

महाराष्ट्र प्राध्यापक महासंघाच्या कार्यकारी मंडळाच्या रविवार, दिनांक २१ जानेवारी २०२४  
रोजी झालेल्या बैठकीत सम्मत झालेल्या ठरावानुसार

## जिल्हास्तरीय मेळाव्यांचे आयोजन

महाराष्ट्र प्राध्यापक महासंघाच्या कार्यकारी मंडळाच्या रविवार, दिनांक २१ जानेवारी २०२४ रोजी झालेल्या बैठकीत सम्मत झालेल्या ठरावानुसार  
स्तंभ २ मध्ये दर्शविलेल्या जिल्हातील शिक्षकांचा मेळावा स्तंभ तीनमध्ये दर्शविलेल्या दिवशी व दिनांकाला, स्तंभ ४ मध्ये दर्शविलेल्या वेळी व स्तंभ ५ मध्ये  
दर्शविलेल्या स्थळी होईल. या सर्व जिल्हा मेळाव्यांना विद्यापीठस्तरीय संघटनेचे पदाधिकारी व नेते संबोधित करतील. खालील तक्त्यात दर्शविल्याप्रमाणे  
जिल्हास्तरीय मेळाव्यांचे आयोजन केलेले आहे. सर्व प्राध्यापकांनी उपस्थित रहावे अशी विनंती आहे.- डॉ. नितीन कोंगरे, सचिव, नुटा

तक्ता

अ. नं.	जिल्ह्याचे नांव	मेळाव्याचा दिवस	व दिनांक	मेळाव्याची वेळ	मेळाव्याचे ठिकाण
१	२	३		४	५
१.	भंडारा	गुरुवार,	१५.०२.२०२४	दुपारी १२.०० वा.	विज्ञान महाविद्यालय, पवनी
२.	गोंदिया	रविवार,	११.०२.२०२४	दुपारी ४.०० वा.	जगत कला, वाणिज्य व विज्ञान महाविद्यालय, गोरेगांव
३.	वर्धा	गुरुवार,	१५.०२.२०२४	दुपारी ४.०० वा.	यशवंत महाविद्यालय, वर्धा.
४.	वाशिम	रविवार,	११.०२.२०२४	दुपारी ४.०० वा.	सावित्रीबाई फुले महिला महाविद्यालय, वाशिम
५.	बुलढाणा	रविवार,	११.०२.२०२४	सकाळी १०.०० वा.	जिजामाता महाविद्यालय, बुलढाणा
६.	अकोला	मंगळवार,	१३.०२.२०२४	दुपारी ४.०० वा.	शिवाजी महाविद्यालय, अकोला.
७.	यवतमाळ	शनिवार,	१०.०२.२०२४	दुपारी ४.०० वा.	अणेमहिलामहाविद्यालय, यवतमाळ.
८.	चंद्रपूर व गडचिरोली	रविवार,	११.०२.२०२४	सकाळी ११.०० वा.	आदर्श कला, वाणिज्य व विज्ञान महाविद्यालय, देसाईगंज (वडसा)

## काळ्या फिती लावून महाविद्यालयात काम करणे

सोमवार, दिनांक २६ फेब्रुवारी, २०२४ रोजी

महाराष्ट्रातील सर्व महाविद्यालयीन व विद्यापीठीय शिक्षक

आपआपल्या कार्यस्थळी काळ्या फिती लावून

काम करतील.

**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**

**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.**

*( See para 3 of the High Court Judgment dated 28th June 2023 )*

**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.**

*( See para 4 of the High Court Judgment dated 28th June 2023 )*

**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***

**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.**

*( See para 4 of the High Court Judgment dated 28th June 2023 )*

**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.**

*( See para 4 of the High Court Judgment dated 28th June 2023 )*

**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 -**

*( See para 7 of the High Court Judgment dated 28th June 2023 )*

*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)**

**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.**

*( See para 4 of the High Court Judgment dated 28th June 2023 )*

**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.**

*( See para 4 of the High Court Judgment dated 28th June 2023 )*

MAHARASHTRA FEDERATION OF UNIVERSITY & COLLEGE TEACHERS' ORGANISATIONS (MFUCTO)

Affiliated to the AIFUCTO

Vidyapeeth Vidyarthi Bhavan, B Road, Churchgate, Mumbai - 400 020

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महाराष्ट्र प्राध्यापक महासंघाच्या दि. २९ जानेवारी २०२४ रोजी झालेल्या कार्यकारी मंडळाच्या सभेत  
संमत झालेल्या आंदोलनाच्या ठरावानुसार

मा. सहसंचालक, उच्च शिक्षण विभाग, नागपूर व

मा. सहसंचालक, उच्च शिक्षण विभाग, अमरावती

येथील कार्यालयासमोर

## धरणे आंदोलन

सोमवार, दि. ४ मार्च २०२४

वेळ : दुपारी ४ वाजता

महाराष्ट्र प्राध्यापक महासंघाच्या दि. २९ जानेवारी २०२४ रोजी झालेल्या कार्यकारी मंडळाच्या सभेत  
संमत झालेल्या आंदोलनाच्या ठरावानुसार

उच्च शिक्षण संचालक, पुणे यांच्या कार्यालयावर

## राज्यस्तरीय

## धरणे आंदोलन

सोमवार, दि. १५ एप्रिल २०२४

उच्च शिक्षण संचालक कार्यालय, पुणे

वेळ : दुपारी १२ वाजता

## ई-मेल संदेश आंदोलन

एवढ्या उपर सचिव उच्च शिक्षण व संचालक उच्च शिक्षण यांनी मा.उच्च व सर्वोच्च

न्यायालयाच्या निर्णयाचा आदर करण्याचे आदेश पारित केले नाही तर

बुधवार, दिनांक २८ फेब्रुवारी, २०२४ रोजी

या उभय अधिकाऱ्यांचा निषेध करणारे ई-मेल संदेश राज्यभरातून

त्यांना पाठविले जातील.

दि.०१.११.२००५ पूर्वी पदभरती जाहिरात/अधिसूचना निर्गमित झालेल्या प्रकरणी शासन सेवेत दि.०१.११.२००५ रोजी किंवा त्यानंतर रुजू झालेल्या शासकीय अधिकारी/कर्मचारी यांना केंद्रशासनाच्या धर्तीवर जुनी निवृत्ती वेतन योजना लागू करणेबाबत.

### महाराष्ट्र शासन : वित्त विभाग

शासन निर्णय क्रमांक : संकिर्ण-२०२३/प्र.क्र.४६/सेवा-४,  
मंत्रालय, मुंबई - ४०००३२

दिनांक : ०२ फेब्रुवारी, २०२४

संदर्भ : (१) वित्त विभाग, शा.नि.क्र. : अनियो-१००५/१२६/सेवा-४, दि. ३१.१०.२००५. (२) केंद्र शासनाच्या निवृत्ती वेतन व निवृत्ती वेतन धारकांचे कल्याण विभागाचे पत्र क्र. ५७/०५/२०२१-पी व पीडब्ल्यू (बी), दि. ०३.०३.२०२३.

#### प्रस्तावना

संदर्भ क्र. १ येथील दि. ३१.१०.२००५ रोजीच्या शासन निर्णयान्वये राज्यशासनाच्या सेवेत दि. ०१.११.२००५ रोजी किंवा त्यानंतर नियुक्त होणाऱ्या कर्मचाऱ्यांसाठी केंद्र शासनाच्या धर्तीवर नवीन अंशदान निवृत्तीवेतन योजना राज्यात लागू करण्याचा निर्णय घेण्यात आला होता. केंद्रशासनाने संदर्भ क्र. २ येथील दि. ०३.०३.२०२३ रोजीच्या कार्यालयीन ज्ञापनांमध्ये केंद्रशासनाच्या अधिकारी/कर्मचारी यांची नियुक्ती (Appointed) ज्या पदावर किंवा रिक्त जागेवर करण्यात आली आहे, ज्याची जाहिरात/भरतीची/नियुक्तीची अधिसूचना नवीन पेन्शन योजना लागू करण्याच्या अधिसूचनेच्या दिनांकापूर्वी म्हणजेच २२.१२.२००३ पूर्वी निर्गमित झाली आहे व जे दि. ०१.०१.२००४ रोजी किंवा त्यानंतर शासन सेवेत दाखल झाले व ज्यांना नवीन परिभाषित अंशदान निवृत्ती वेतन योजना लागू झाली त्या केंद्रशासनाच्या अधिकारी/कर्मचारी यांना केंद्रीय नागरी सेवा (निवृत्ती) नियम, १९७२/२०२१ लागू करण्याचा एक वेळ पर्याय देणेबाबत (One Time Option) निर्णय घेतला आहे. सदर केंद्रशासनाच्या निर्णयाच्या धर्तीवर दि. ०१.११.२००५ पूर्वी पदभरती जाहिरात/अधिसूचना निर्गमित झालेल्या प्रकरणी राज्यशासनाच्या सेवेत दि. ०१.११.२००५ रोजी किंवा त्यानंतर रुजू झालेल्या शासकीय अधिकारी/कर्मचारी यांना जुनी निवृत्ती वेतन योजना लागू करणेची बाब विचाराधीन होती. याबाबत मा.मंत्रीमंडळाने दि. ०४ जानेवारी, २०२४ रोजीच्या बैठकीत मंजुरी दिली असून त्यानुसार शासननिर्णय निर्गमित करण्याची बाब विचाराधीन होती. याबाबतचा शासननिर्णय खालीलप्रमाणे आहे.

#### शासननिर्णय

दि. ०१.११.२००५ पूर्वी पदभरती जाहिरात/अधिसूचना निर्गमित झालेल्या

प्रकरणी शासन सेवेत दि. ०१.११.२००५ रोजी किंवा त्यानंतर रुजू झालेल्या शासकीय अधिकारी/कर्मचारी यांना केंद्रशासनाच्या धर्तीवर महाराष्ट्र नागरी सेवा निवृत्तीवेतन नियम, १९८२, महाराष्ट्र नागरी सेवा (निवृत्ती वेतनाचे अंशराशीकरण) १९८४ व सर्वसाधारण भविष्य निर्वाह निधी व अनुपंगिक नियमाच्या तरतुदी लागू करण्यासाठी एक वेळ पर्याय (One Time Option) देण्यात येत आहे.

२. संबंधित राज्यशासकीय अधिकारी/कर्मचारी यांनी जुनी निवृत्ती वेतन व अनुपंगिक नियम लागू करण्याचा सदर पर्याय हा सदर शासन निर्गमित केल्याच्या दिनांकापासून ६ महिन्यांच्या कालावधीत देणे बंधनकारक राहिल. जे राज्यशासकीय अधिकारी/कर्मचारी या ६ महिन्यांच्या कालावधीत जुनी निवृत्ती वेतन योजना लागू करण्याचा पर्याय देणार नाहीत, त्यांना राष्ट्रीय निवृत्ती वेतन प्रणाली (NPS) लागू राहिल. राज्यशासकीय अधिकारी/कर्मचारी यांनी प्रथम दिलेला पर्याय अंतिम राहिल.

३. जुनी निवृत्तीवेतन व अनुपंगिक नियम लागू करण्याचा पर्याय संबंधित राज्यशासकीय अधिकारी/कर्मचारी यांनी त्यांच्या नियुक्ती प्राधिकार्याकडे सादर करावा. सदर शासननिर्णयातील तरतुदीनुसार संबंधित राज्यशासकीय अधिकारी/कर्मचारी हा जुनी निवृत्ती वेतन व अनुपंगिक नियम लागू होण्यास पात्र झाल्यास तशा पद्धतीचे कार्यालयीन ज्ञापन संबंधित नियुक्ती प्राधिकार्याने पर्याय प्राप्त झाल्याच्या दिनांकापासून दोन महिन्यांच्या आत निर्गमित करावे. तसेच संबंधित राज्यशासकीय अधिकारी/कर्मचारी यांचे राष्ट्रीय निवृत्ती वेतन प्रणाली (NPS) मधील खाते नियुक्ती प्राधिकार्याने तात्काळ बंद करावे.

४. जे राज्यशासकीय अधिकारी/कर्मचारी जुनी निवृत्ती वेतन व अनुपंगिक नियम लागू करण्याचा पर्याय निवडतील त्यांचे भविष्य निर्वाह निधीचे खाते (GPF) उघडण्यात यावे व सदर खात्यात राष्ट्रीय निवृत्ती वेतन प्रणाली (NPS) च्या खात्यातील त्यांच्या हिश्याची रक्कम व्याजासह जमा करण्यात यावी.

५. जे राज्यशासकीय अधिकारी/कर्मचारी जुनी निवृत्ती वेतन व अनुपंगिक नियम लागू करण्याचा पर्याय निवडतील त्यांच्या राष्ट्रीय निवृत्ती वेतन प्रणाली (NPS) मधील राज्यशासनाच्या हिश्याची रक्कम व्याजासह राज्याच्या एकत्रित निधीत वळती करण्याची कार्यवाही करण्यात यावी.

६. सदर शासननिर्णय मा.मंत्रीमंडळाने दि. ०४ जानेवारी, २०२४ रोजीच्या बैठकीत घेतलेल्या निर्णयाच्या अनुषंगाने निर्गमित करण्यात येत आहे.

७. सदर शासननिर्णय महाराष्ट्र शासनाच्या [www.maharashtra.gov.in](http://www.maharashtra.gov.in) या संकेतस्थळावर उपलब्ध करण्यात आला असून त्याचा संगणक सांकेतांक क्रमांक २०२४०२०२१८२९४५८६०५ असा आहे. हा शासननिर्णय डिजिटल स्वाक्षरीने साक्षात्कृत करून निर्गमित करण्यात येत आहे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने,

(मनिषा कामटे)

उप सचिव, महाराष्ट्र शासन

### MAHARASHTRA FEDERATION OF UNIVERSITY & COLLEGE TEACHERS ORGANIZATION (MFUCTO)

PRESIDENT  
Prof. Dr. S. P. Lawande  
Mob. - 09422228174

GENERAL SECRETARY  
Prof. Dr. P. B. Raghuwanshi  
Mob. - 09422155603

Ref. No. : MFUCTO/Press/DHE/01/2024  
Date : 29.01.2024

प्रति,

मा.संचालक,

उच्च शिक्षण, महाराष्ट्र राज्य

४१२, बहिरट पाटील चौक, मॉडेल कॉलनी, शिवाजीनगर पुणे  
- ४११०१६

विषय : एमफुक्टोने दिनांक २१ जानेवारी २०२४ रोजी संमत केलेला ठराव आपणामार्फत मा.उच्च व तंत्र शिक्षणमंत्री, महाराष्ट्र राज्य यांना सादर करणेबाबत.

महोदय,

महाराष्ट्र फेडरेशन ऑफ युनिव्हर्सिटी अँड कॉलेज टीचर्स ऑर्गनायझेशन (एमफुक्टो) कार्यकारी मंडळाने दिनांक २१ जानेवारी २०२४ रोजी संमत करण्यात आलेला ठराव मा.उच्च व तंत्र शिक्षणमंत्री, महाराष्ट्र राज्य यांना सादर करण्यासाठी आपणाकडे सुपूर्द करित आहे. सोबत जोडलेले पत्र व ठराव माननीय मंत्री महोदयांना आपणामार्फत पाठविण्यात यावा ही नम्र विनंती.

कळावे,

आपला

प्रा.एस.पी.लवांडे

अध्यक्ष, एमफुक्टा

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Mob. - 09422155603

Ref. No. : MFUCTO/2024/01  
Date : 29.01.2024

प्रति,

मा. प्रधान सचिव, उच्च शिक्षण,

महाराष्ट्र राज्य, मंत्रालय, मुंबई

मार्फत : सहसंचालक, उच्च शिक्षण, अमरावती विभाग, अमरावती

विषय : "मा.उच्च व सर्वोच्च न्यायालयाच्या निर्णयांची अनेक प्रकरणात सतत अवहेलना करण्याच्या उच्च शिक्षण विभागातील अधिकाऱ्यांकडून घडत असलेल्या अभद्रप्रकारा विरोधात विभागाचा सार्वजनिक निषेध करण्याचा निर्णय" या विषयावरील ११८ परिच्छेदांचा महाराष्ट्र प्राध्यापक महासंघाने संमत केलेला ठराव.

मा. महोदय,

विषयोक्त बाबीवर तपशीलवार माहिती देणारा ११८ परिच्छेदांचा महाराष्ट्र प्राध्यापक महासंघाने संमत केलेला ठराव मी आपणास सादर करित आहे. त्यावर यथोचित विचार होऊन योग्य ती कारवाई व्हावी, अशी विनंती आहे.

आपला विनीत,

दिनांक : २९ जानेवारी, २०२४

डॉ.प्रवीण रघुवंशी,

सचिव, महाराष्ट्र प्राध्यापक महासंघ

**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.**

*( See para 8 of the High Court Judgment dated 28th June 2023 )*

**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.**

*( See para 9 of the High Court Judgment dated 28th June 2023 )*

MAHARASHTRA FEDERATION OF UNIVERSITY & COLLEGE TEACHERS' ORGANISATIONS (MFUCTO)

Affiliated to the AIFUCTO

Vidyapeeth Vidyarthi Bhavan, B Road, Churchgate, Mumbai - 400 020

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महाराष्ट्र प्राध्यापक महासंघाच्या दि. २९ जानेवारी २०२४ रोजी झालेल्या कार्यकारी मंडळाच्या सभेत  
संमत झालेल्या आंदोलनाच्या ठरावानुसार त्या त्या

**विद्यापीठ  
मुख्यालयासमोर  
धारणो आंदोलन  
बुधवार, दि. २७ मार्च २०२४  
दुपारी ४ वाजता**

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