
Association of Maharashtra Education Service Class II Officers Vs State of Maharashtra and others

Writ Petition No. 788 of 1980

Court: Bombay High Court

Date of Decision: July 24, 1989

Acts Referred:

Bombay Civil Services Rules, 1959 " Rule 161, 161(C1)#Bombay Village Police Act, 1867 " Section 5#Constitution of India, 1950 " Article 12, 14, 16, 226, 256#Maharashtra Civil Services (Pension) Rules, 1982 " Rule 10

Citation: (1991) 2 LLJ 14

Hon'ble Judges: M.S. Deshpande, J; D.J. Moharir, J

Bench: Division Bench

Judgement

Deshpande, J.

By this petition under Art. 226 of the Constitution, the petitioners seek - (i) a declaration that the petitioners belong to

Maharashtra Education Class-I (Collegiate Branch) designated as Professors, (ii) their equation with Lecturers (Junior Scale) under the

Government Resolution, dated 25th October 1977, and their superannuation before completing the age of 60 years, be quashed, (iii) to equate the

pay scales of the petitioners with those of Readers in the Universities and Principals in the affiliated colleges and give consequential benefits to the

petitioners as stipulated by the Government Resolution dated 27th February 1989, (iv) to superannuate the petitioners at the age of 60 years

without subjecting them to a review at the age of 50 and 55 years as required by Rule 161(C-a) of the Bombay Civil Services Rules ("BCSR" for

short), by Clause 26 of the Government Resolution dated 27th February 1989, and (v) to quash Rule 161 of the BCSR as ultra vires Articles 14

and 16 of the Constitution, so far as it relates to the teachers in Government Colleges such as the petitioners and to direct that the age of

superannuation of the teachers in Government Colleges shall be 60 years.

2. Petitioner No. 1 is an Association of Maharashtra Educational Service Class-II Officers (Collegiate Branch) which represents the members of

the said service in the employment of the State Government and was recognised by the Government of Maharashtra by its Resolution, dated 29th

April 1969. Petitioner Nos. 2 to 10 are the members of the Maharashtra Educational Service Class-II Officers (Collegiate Branch) and also the

members of petitioner No. 1. The petitioner purports to be filed in a representative capacity on behalf of the members of the Maharashtra

Educational Service Class-II (Collegiate Branch).

3. In pursuance of the report of the University Grants Commission ("UGC" for short), for the year 1966-67, recommending revision of pay scales

to cover all categories and grades of teachers employed in the Universities and affiliated Colleges, the teachers came to be divided into two groups

- one of the University Teachers and the second of the Teachers in the affiliated Government and non-Government Arts, Science and Commerce

and Secondary Training Colleges. The University teachers were put in three categories, the revised pay scales recommended for them being

respectively -

(1) Professor : Rs. 1100 - 1600

(2) Reader : Rs. 700 - 1250

(3) Lecturer : Rs. 400 - 950.

For the second group, five categories were

provided as below :-

(1) Principal : Revised Scale

(i) Rs. 700 - 1000

(ii) Rs. 800 - 1250

(2) Senior Lecturers : Rs. 700 - 1100

(3) Lecturer Senior Scale : Rs. 400 - 800

(4) Lecturer Junior Scale : Rs. 300 - 600

(5) Demonstrator and : Rs. 250 - 400

Tutors

Under the recommendations of the UGC these pay scales were to be effective from 1st April 1966. The Government of Maharashtra by

Resolution No. UGC - 1116 - U, dated 6th November 1967, made these scales applicable to the different categories of teachers in the

Universities and affiliated colleges and under the Resolution, all Professors, Heads of Departments and Lecturers in different pay scales in affiliated

Colleges were to be given in the first instance, junior scale of Rs. 300 - 600.25 percent of the posts being in the senior scale of Rs 400 - 800, and

out of total number of lecturers, not more than 25 percent, were to be given scale of Rs. 700 - 1100. On 10th December, 1968, the State

Government issued a Resolution No. MES-1168-(I)-(D) towards the implementation of its earlier resolution dated 6th November, 1967, directing

the distribution of the existing Maharashtra Educational Service Class-I and Class-2 posts (Collegiate Branch) in Government Arts, Commerce

and Science Colleges, to be made subjectwise, providing further that the grade of Rs. 700 - 1100 should be classified as belonging to Maharashtra

Educational Service Class I ("MES Class I" for short) and should be designated as Professors, and those in the grades of Rs. 400 - 800 and Rs.

300 - 600 should be classified as belonging to the Maharashtra Educational Service Class II ("MES-Class II" for short) and should be designated

as Lecturers (Senior Scale) and Lecturers (Junior Scale) respectively. We may mention at this stage that the grievance that the first category should

be designed as Class-I does not now survive, because during the pendency of this petition, respondent No. 1 State of Maharashtra has granted

Class-I status to the members of the posts in the grade of Rs. 700 - 1100.

4. The Government of Maharashtra, however, declined to place 25 percent of the total number of lecturers in the scale of Rs. 700 - 1100; as that

was the scale admissible to Class-I Service, unless all eligible persons were screened by the State Public Service Commission as required by Art.

320 of the Constitution, Petitioner No. 1 approached this Court by Special Civil Application No. 296 of 1970 for placing the petitioners Nos. 2 to

11 in that position in the pay scale of Rs. 700 - 1100, without their cases being referred to the Public Service Commission, and this court granted

the reliefs sought by the judgment delivered on 23rd July 1970. The State of Maharashtra filed Civil Appeal No. 1281 of 1971 before the

Supreme court, but that appeal was dismissed on 26th April 1974, observing that the scheme formulated by the UGC envisaged no promotion of

lecturers from, one class to another, but concerned itself with the revision of pay scales of the collegiate teachers and its object was to raise the

salary structure as one of the basic essentials for improvement of educational standards.

5. A Committee, popularly known as "Sen Committee", came to be appointed for reporting on the problems relating to the governance of the

University and College Teachers, and its recommendations was accepted by the UGC in its meeting dated 30th April 1973. The recommendations

included, inter alia, that the age of superannuation should be 60 years, and thereafter no further extension in service should be given, and if a

University/College required the services of a teacher after the age of superannuation, he should be appointed on a contract not exceeding 5 years.

The UGC recommended for the University teachers the following pay scales :

(1) Lecturer : Rs. 700-1600

(2) Reader : Rs. 1200-1900.

(3) Professor : Rs. 1500-2500, and

(4) Professor of Eminence : Rs. 3000.

For affiliated college teachers, the lecturer's scale was to be Rs. 700 - 1300, and for Principal (i) Rs. 1200 - 1900 and (ii) Rs. 1500 - 2500, these

being the only categories which were to remain in the affiliated colleges.

6. In follow up, the Government of India sent a communication dated 20th February 1975, to the State of Maharashtra, laying down conditions

relating to qualifications for recruitments to the posts of lecturers at University level as well as at College level, there being no real difference

between the qualifications prescribed, except that a University lecturer is to have a Doctor's Degree whereas a College lecturer should have a

Degree of Master of Philosophy or a recognised Degree beyond the Master's level. The State Government issued a Resolution dated 4th October

1975, for implementing the pay scales with effect from 1st January 1973. Some of the conditions mentioned therein, relating to the qualifications

and workload of teachers and vacation, and examination remuneration, were challenged by a writ petition file in this Court by the Maharashtra

Federation of University Teachers and College Teacher" Organisation ("MSFUCTO" for short), of which none of the present petitioners were

members. As a result of the consensus reached between the Government and MSFUCTO, a Resolution was passed by the Government of

Maharashtra on 25th October 1977 in supersession of the earlier Resolution dated 4th October 1975.

7. The submission of the petitioners in respect of the resolution dated 25th October 1977 (Annexure VII) is that their pay scales as Senior

Lecturers/Readers, which had been previously Rs. 700 - 1100, were on par with the scales of Principals as well as Reader in the Universities

which came to be revised to Rs. 700 - 1600. As against this, the pay scales of Principals were revised to Rs. 1200-1900, but the pay scales of

lecturers, which were previously Rs. 300-600, were revised to Rs. 700-1600, i.e., the same as given to the petitioners who were Senior

Lecturers/Readers, and this was not to their benefit. They claimed that they should have been placed in higher pay scales as their counterparts, i.e.,

Principals and Readers, and their pay-scales came to be reduced to such an extent that they were put on par with the lecturers in the universities

and Colleges in junior scale of Rs. 700-1600.

8. Though the age of Superannuation for all University and College teachers was fixed at 60 years, the age of superannuation for teachers in

Government Colleges, such as the petitioners, was not fixed at 60, but was left to be the subject matter of the relevant rules framed by the

Government which meant that they would have to retire at the age of 58 years under Rule 161 of the BCSR and would be subjected to a review

for determining their fitness first at the age of 50 and next at the age of 55 years for judging whether or not they should be compulsorily retired.

9. Petitioner No. 2, the President of the petitioner No. 1 - Association, wrote on 14th December 1978 to the respondent No. 1 - State of

Maharashtra, requesting for a change in the age of superannuation to 60 and for higher pay scales on par with those given to the Post Graduate

teachers in the Universities. In spite of the meeting with the Minister of Education on 6th February 1979 and the further efforts on the part of the

Association, by the letter dated 11th May 1979 the State Government informed the Association that its request could not be granted. Aggrieved

by this letter, the petitioners seek the aforesaid reliefs by this petition.

10. By the return filed by the respondent No. 1, State of Maharashtra, in respect of the pay scales, it is contended that the nature of the duties and

responsibilities attached to the posts of the lecturers, including Senior Lecturers in the colleges are quite different from those of the Readers in

Universities, as the latter are expected to concentrate on Post-Graduate Teaching, Research and making original contribution to the fund of

knowledge, while the former are not, and that their qualifications are also different and therefore, the contention that the previous parity which

existed between the teachers in the Universities and the affiliated colleges, including Government Colleges, was intended to be protected and

extended for the future as per the Government Resolution dated 25th October 1977, was baseless. It is also denied that the pay scales of the

Senior Lecturers, who were drawing pay scale of Rs. 700-1100, were reduced, while prescribe in the composite pay scale of Rs. 700-1600.

With regard to the age of superannuation, it is urged that the service conditions of the teachers in Government Colleges are regulated by the

provisions of the BCSR as amended from time to time, and the age of superannuation prescribed for Government employees being 58 years, and

so long as their work is found satisfactory, they will have to retire at the age of 58 years only and it was not possible to entertain their request for

raising the age of superannuation to 60 years as for the teachers in the non-Government Colleges.

11. The Director of Education, Government of Maharashtra, respondent No. 2, did not file a separate return and there was no appearance for

respondents Nos. 3 and 4, the UGC and Union of India, though they were served.

12. An application for intervention (C.A. No. 1816 of 1989) was filed by the Nagpur University Teachers' Association and three others - M/s.

Vazalwar, Damle and Badhe, contending that during the pendency of the petition, most of the petitioners have retired, with the result that they have

no interest in prosecuting this writ petition, and looking to the class of persons affected by the alleged discriminatory action of the respondent No.

1, the interveners are required to approach this court and to prosecute the petition. The intervention was allowed on 26th June 1989. Shri V. C.

Daga, the learned Counsel for the interveners stated before us that he would adopt the same arguments as would be advanced by Shri Aney, the

learned Counsel for the petitioners.

13. As we have already indicated, the grievance, that Class-I status was not conferred on the petitioners, does not survive, because the petitioners

came to be treated as Class-I officers by the respondent No. 1 by its action taken in the year 1985 and Shri Aney for the petitioners stated that

there has been a redressal of that grievance. In fact, three scales were given to the lecturers by the Government of Maharashtra, that of Senior

Lecturers being Rs. 700-1100, Lecturers (Senior Scale) Rs. 400-800 and Lecturers (Junior Scale) Rs. 300-600. The distinction between the

lecturers (Senior Scale) and lecturers (Junior Scale) came to be abolished by the Government Resolution, dated 25th October 1977 (Annexure

VII) and a new scale Rs. 700-1600 came to be prescribed for them with effect from 1st July, 1985. By the Government Resolution, dated 13th

March 1980 (Annexure XIII), the Government sanctioned the revised pay scale for the posts of Directors, Professors and Associate Professors at

the Institute of Science, Bombay, Nagpur and Aurangabad, and they were given the scales - Rs. 1500-2500, 1500-2500 and 1200-1900

respectively - with effect from 1st July 1979. After the learned Counsel for the petitioners was heard on this aspect for some time, and after he

informed us that similar benefits were extended to the staff of Vishwesharyya Regional College of Engineering, which is State within the meaning of

Article 12 of the Constitution, the State of Maharashtra being one of the participants in the management of that institution, we asked the learned

Counsel for the petitioners, whether this would not be a matter of policy to be determined regarding the equivalence of existing pay scale and

whether the matter cannot be represented to the Government, he stated that in view of the changed context, he would be willing to make a fresh

representation to the Government on behalf of the petitioners, within a month, and Shri P G Palshikar, the learned Special Counsel for the

Government, stated before us that if such a representation were made for determining the equivalence of the petitioners, who were in the pay scale

of Rs. 700-1100, and their placement in the revised scale, the Government would consider that representation and render its decision within two

months from the date of the receipt of representation, and that in view of this development, we should not decide the points raised by the parties

about the equivalence of the Senior Lecturers in the new scales and leave it open to be decided, after Government takes a decision upon the

representation of the petitioners, should an occasion arise, by filing a fresh petition. In view of this, we leave the question regarding grant of prayers

(ii) and (iii) undecided and grant liberty to the petitioners to raise these points later, should an occasion arise, after their representation is considered

by the respondent No. 1 - State of Maharashtra.

14. The main question, that falls for consideration, is regarding the age of superannuation which, under the provisions of Rule 161 of the BCSR, is

58 years for Government servants, and the validity of the exclusion of the teachers, who are in Government service, by Clause 26 of the Resolution

dated 27th February 1989, the effect of which would be to retire the teachers in Government service, at the age of 58 years.

15. The first letter outlining the general policy of the Government of India, Ministry of Education and Social Welfare, was issued on 20th February,

1975 (Annexure-VI), by which Central assistance was to be given for meeting the requirements of the revised pay scales of teachers subject to

certain conditions. That letter referred to the qualification, which were prescribed for recruitment to the posts of Lecturers in the faculties of Arts

and Social Sciences, including Commerce and Science in the Universities and the affiliated Colleges. This was a sequel to the report of Sen

Committee which had been constituted by the UGC. The Committee on Governance of University Colleges considered the question of service

conditions of teachers in Universities and Colleges and had taken into account the suggestions made by various Teachers' Organisations and

individuals in this regard. It dealt with various aspects, including the need to attract the best talent, the need to improve the functions and

professional competence of teachers, pay scales and their rationale and recommended the scales of pay which should be given to the various

categories of teachers. It also emphasises the need for improved qualifications, procedure for assessment of teachers, methods of appointment and

promotion and evaluation of teachers. Para 10 of the report dealt with the need for a national wage policy, as in its view the basic problems facing

the country in education or any other walk of life cannot be solved, unless this was done. It took into account the aspects such as conditions of

service, security of service of teachers, pension, Provident Fund, workload, age of superannuation, medical facilities, examination work and Code

of Conduct. As regards the age of superannuation, it said that the age of superannuation should be 60 years and thereafter no further extension in

service should be given. If a University/College requires the services of a teacher after the age of superannuation, he should be appointed on a

contract not exceeding 5 years, and during the contract period, the teacher should not be given any administrative responsibility. By Item No. 7 of

the Minutes of the Meeting, dated 30th April 1973, the UGC generally accepted the recommendations made by the Committee, including the one

about the age of superannuation by its Resolution dated 2nd November, 1974, Appendix-II to the letter dated 25th February, 1975 (Annexure-

VI), and agreeing in particular with the recommendation that there should be three scales of pay.

16. The Government of Maharashtra, by its resolution dated 25th October, 1977 (Annexure-VII), adopted the pay scales proposed by the

Government of India on the basis of the Sen Committee's report as well as the provisions regarding qualifications, work-load etc., but on the

question of superannuation, while accepting the age of superannuation for teachers of Universities and non-Government affiliated Colleges as 60

years, made an exception in the case of the teachers in Government Colleges, who were to continue to be governed by the relevant rules framed

by the Government. All the instructions issued by this resolution were in line with the instructions of the Government of India on the subject. The

resolution dated 25th October, 1977 also referred to the challenges which were raised to the qualifications, work-load of teachers, vacation and

examination remunerations and observed that during the pendency of the petition, negotiations with the representative of the MFUCTO were

initiated with a view to exploring the possibility of arriving at agreed terms on the matters in dispute and that after the consensus was reached on the

points of dispute, the directions were being issued in the form of Government Resolution dated 25th October 1977. However, an affidavit was

filed on 20th July, 1959, on behalf of the petitioners, stating that the federation, which negotiated the matter with the Government, did not include

either the petitioner No. 1 Association or any of the teachers in Government Colleges, such as the petitioners and that the consensus, therefore, did

not include any of the petitioners and they were no parties to it, nor were they consulted in this regard or invited for any discussion, negotiation or

resolution of the problem settled by the said consensus. This position was not disputed on behalf of the respondents and we see no substance in

the contention that since a consent order had been obtained from this Court earlier, the petitioners would not be in a position to reagitate the points

which were made-subject matter of the Resolution, dated 25th October 1977, by this petition.

17. In fact, on behalf of the petitioners, a representation was made on 14th October 1978 (Annexure-VIII) to the Minister of Education,

Government of Maharashtra, taking up several questions, including the anomaly between the superannuation ages of Government College and

other College teachers by making the age of superannuation for Government Colleges as 60 years. This was followed by a meeting dated 6th

February 1979 with the Minister of Education and a fresh representation dated 7th March 1979 (Annexure-IX) was made by the petitioners to the

Minister of Education and Sports, Government of Maharashtra. On 11th May 1979, the Government rejected the representation, its answer in

respect of the age of superannuation being that the enhancement of the age of superannuation to 60 years could not be granted to the petitioners,

as their service conditions were on par those of the Government employees. In the return filed by the respondent No. 1 to this petition, the only

justification given for continuing the age of superannuation for Government employees as 58 years, was that teachers in Government Colleges,

being the Government employees would have to retire from Government Service at the age of 58 years only, and it was not possible to entertain

the request for raising the age of superannuation to 60 years available to the teachers in non-Government Colleges, who were not eligible for

certain fringe benefits available to the Government employees. Our attention was drawn on behalf of the petitioners, to the position that the

teachers in the Vishwesharyya Regional College of Engineering retired at the age of 60 years and in respect of the Regional College at Education in

respect of the Regional College of Education at Bhopal also the age of retirement was 60 years. We have no material, however, to ascertain

whether all other conditions of service of the teachers in Vishwesharyya Regional College of Engineering and the Regional College of Education at

Bhopal were similar to those of the petitioners. It is clear that the employees of those institutions are not employed by the State Government, nor

are they the beneficiaries of the liberal provisions made by the State Government by the several resolutions which have been placed record.

18. Though the respondent No. 1 had not given any details of the fringe benefits which the petitioner teachers received as Government servants, it

is apparent from the Government Resolution dated August 1983 (Annexure-VI), that the scheme of the pension-cum-gratuity was extended to the

teaching and non-teaching staff of the non-Agricultural Universities and affiliated non-Government colleges and the disparity with regard to the

pensionary benefits did not continue after this Resolution.

19. The submission on behalf of the petitioners was that there was no justification for the discriminatory treatment meted out to the teachers in

Government colleges when all the other service conditions of the teachers in Government and non-Government colleges are uniform. In the letter,

dated 17th June, 1987, which was sent by the Government of India, Ministry of Human Resources Development, Department of Education, to the

Secretaries of all the States, it was pointed out that in fulfillment of the constitutional responsibility for coordination and maintenance and standards

in higher education, the Central Government and UGC have taken from time several measures. As a part of these efforts, the Central Government

have revised the pay scales in Universities and Colleges in order to attract and retain talent in the teaching profession. The National Policy on

Education, 1986 envisages efforts to reach the desirable objective of uniform emoluments, service conditions and grievance removal mechanism for

teachers throughout the country. The policy also visualises the creation of an open, participative and data based system of teachers' evaluation. It

also suggests reorganisation of methods of recruitment, introduction of programmes of teacher orientation and continuing education, filling up of

posts in Universities and Colleges on the basis of merit, etc. From that letter, it is clear that following the appointment of the Fourth Central Pay

Commission for Central Government employees, the University Grants Commission had appointed a committee under the Chairmanship of

Professor R. O. Mehrotra, Professor Emeritus, University of Rajasthan, to examine the present structure of emoluments and conditions of service

of University and College teachers, taking into account the total packet of benefits such as superannuation, medical and housing facilities etc. and to

make recommendations on them having regard to the necessity of attracting and retaining talented persons in the teaching profession and providing

professional advancement opportunities to them. That Committee had submitted its report to the University Grants Commission in May, 1986. The

UGC considered the recommendations contained in the report, and made certain observations on them and requested the Government of India to

consider implementation of the report. After examination of the Recommendations, the Government of India proposed to implement the scheme in

the Central Universities and other institutions fully financed by the Central Government and also decided to assist the State Governments, who wish

to adopt and implement the scheme of revision of pay scales, subject to certain terms and conditions. The extent of Central assistance was upto

80% of the total additional expenditure involved in giving effect to the revision of scales of pay to be available for the period from 1st January,

1986 to 31st March, 1990, and the State Governments were to meet the remaining 20% of the expenditure from their own resources, without

passing on the liability or any portion thereof to the Universities or the management of private Colleges. From 1st April, 1990, the State

Governments were to take the entire responsibility for maintaining the revised scales of pay. In the event of the State Government introducing

scales of pay different from those mentioned in the scheme, prior approval from the Government was to be obtained. The payment of Central

assistance for implementation of the scheme was subject to the condition that the entire scheme of revision of pay scales together with all the

conditions attached to it, was implemented by the State Governments as a composite scheme, without any modification, except to the date of

implementation and the scales of pay in addition, it was necessary for the Universities and managements of Colleges to make necessary changes in

their statutes, ordinances, rules, regulations etc., to incorporate the provisions of the scheme. Anomalies, if any, may be brought to the notice of the

Department of Education, in the Ministry of Human Resources Development for clarification.

20. We have referred to this letter in detail, because it was the submission of Shri Aney, the learned Counsel for the petitioners, that the scheme

amounted to a direction to the State Governments, the subject of Education now being in the concurrent list and it being permissible to the Central

Government to issue directions to the States in these matters. Reliance was placed on the observations in *Maharashtra Shikshan Sansthan v. The*

State of Maharashtra. Special Civil Application No. 1156 of 1975, decided on 22nd April 1977, but the question, which arose for consideration

in that petition, was whether the communications addressed by the Education Officer, Zilla Parishad, Nagpur, requiring the reinstatement of certain

employees, was in excess of certain Government Resolutions. In *Chandrakant Sakharam Karkhanis and Others Vs. State of Maharashtra and*

Others, , it is laid down that Circulars. Orders or Resolutions or parts thereof laying down the rules of principles of general application which have

to be observed in the recruitment of fixation of seniority of Government servants generally or a particular class of them, and which have been duly

authenticated by a signature under endorsement ""By order or in the name of the Governor of Maharashtra"" and intended to be applicable

straightway, can amount to rules framed in exercise of the powers conferred under the proviso to Art. 309 of the Constitution, although the said

Circulars, Orders or Resolutions do not expressly state that the same are made or issued in exercise of the powers conferred under the proviso to

Art. 309 of the Constitution of India and are not published in the Government Gazette. What is, therefore applicable straightway without anything

more. We have referred in detail to the letter dated 17th June, 1987, in order to indicate that it cannot be construed as giving directions by the

Union to the States, as contemplated by Articles 256 and 257 of the Constitution. In fact, it was left open to the States to accept it with

amendments which it may propose, subject to the approval of the Union and sought a detailed proposal for the implementation on lines indicated in

that letter, for examination so that Central assistance could be given. The two rulings, on which reliance was placed, therefore, do not assist the

petitioners.

21. That brings us to the impugned Government Resolution dated 27th February 1989 (Annexure XVII), and it would be useful to set out in detail

the opening portion of the Resolution which runs as follows :

Government had approved the implementation of revised pay scales for University and College teachers with effect from 1st January, 1973 by

Government Resolution, Education and Youth Services Department No. USG 1177/129387/XXXII (CELL) dated 25th October, 1977 for

Librarians and Physical Education Staff by Government Resolution, Education and Employment Department No. USG 4280/157972/ (275) UNI-

4, dated 18th April, 1984. After appointment of the Fourth Pay Commission for Central Government Employees, the University Grants

Commission had appointed a Committee under the Chairmanship of Prof. Mehrotra to examine the present structure of emoluments and conditions

of service of University and College teachers. After considering the Mehrotra Committee's Report, the University Grants Commission submitted

its recommendations to the Government of India in February 1987. After examination of the Report, Government of India evolved a scheme of

pay revision for the University and College teachers and other measures for improvement of standards in higher education. By their letter dated

17th June, 1987 and subsequent letters dated 7th September, 1987 and 22nd July, 1988, the Government of India recommended to the State

Government to implement this scheme. The question of implementing Government of India's scheme of revision of pay scales of University and

College teachers and other relevant guidelines and Notifications issued by the U.G.C. from time to time was under consideration of the State

Government. After careful considerations of the Government of India's Package Scheme, 1986, for maintenance of standards in higher education

and after an agreement with the Maharashtra Education of University and College Teachers' Organisation, the State Government has now decided

to implement the terms and conditions of service as detailed below.

2. Coverage - The revised scales and other measures for improvement of standards in higher education are applicable to all categories of full-time

teachers employed by the non-Agricultural Universities, Government and non-Government Colleges in the faculties of Arts, Science, Commerce

and Education, in the State Government Institutes of Science/Government Institute of Management Studies/Social Sciences. The revised scales of

pay are also applicable to the Teachers/Librarians/Instructors of Physical Education/Directors of Physical Education in the affiliated, unaided

Colleges of Arts, Science, Commerce, Education in the State. However, these Colleges will not be entitled for any financial assistance from the

State Government and the same is the case with the unapproved (not covered under 100 percent salary grant) posts in affiliated unaided Colleges

in the non-Agricultural Universities in the State. The revised scales are not applicable to teachers who retired on or before 31st December 1985

and who worked on re-employment on that date, including those period of re-employment was excluded after that date"".

22. The two paragraphs, which we have extracted above, answer the contention of learned Special Counsel for the Government, who urged that

the category of Government teachers was not within the contemplation of this resolution, when the other comprehensive provisions of the resolution

were made. Obviously, the dichotomy, if any, which the resolution contemplated, was between the University teachers and the teachers in affiliated

Colleges. The latter category would include also teachers in Government institutions. Elaborate provisions were made regarding pay scales, manner

of fixation of pay, option for revised scales of pay, recruitment and qualifications, career advancement, promotions, continuing education,

performance appraisal of teachers, work-load, protection to teachers, vacation and other conditions of service which applied uniformly to all

categories of teachers, which came within the purview of the resolution. It was only in para 26, which dealt with superannuation and re-

employment that while extending the age of superannuation for teachers to 60 years and providing for re-employment that the age of

superannuation of teachers in Government Colleges and Institutes of Sciences was to continue to be 58 years as hitherto before. The other

subjects covered by the Government Resolution were grievance redressal mechanism, Code of Conduct and fixation of pay and preferring claim

for payment of arrears. Even in para 28, which related to Code of Conduct, it was mentioned that the UGC had been asked to prepare a Code of

professional ethics for University and College teachers. Till such a uniform code of professional ethics was evolved, the Code of Conduct already

drawn up by the Universities in the State for its teachers as well as for those in affiliated Colleges, consistent with the rules mentioned in this

Government Resolution should be held applicable to the University and College teachers. This would show that even the matter of Code of

Conduct as was contemplated prima facie, was not the Code of Conduct prescribed by the Government, but the Code of Conduct which had

been drawn up by the Universities in the State for their teachers. The submission on behalf of the respondent No. 1, therefore, that the Government

teachers were regarded as a class apart and were not within the contemplation of this resolution, cannot be accepted. The only departure, which

was made, was in respect of the age of superannuation which was to continue upto 58 years. We may point out that this Resolution adopted the

same line as was suggested by the UGC and accepted by the Government of India. The policy adopted by the UGC, the Government of India,

and the State of Maharashtra on the matters covered by the Resolution dated 27th February, 1989 (Annexure-XVII), was the result of the reports

of two expert bodies such as Sen Committee and Mehrotra Commission which were appointed by the UGC for the purpose. UGC is the apex

body in the matters which have been referred to and its recommendations were entitled to great weight and came to be accepted by both the

Government of India and the State of Maharashtra.

23. The learned Special Counsel for the respondent No. 1 urged that the classification between Government and non-Government institutions had

been accepted as a valid classification, and since it is founded on a rational differentia, it cannot be said that there was a discrimination which would

enable the petitioners to invoke Art. 14 of the Constitution.

24. The principles about the applicability of Art. 14 have been laid down in Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, and

In Re: The Special Courts Bill, 1978, . We may refer to point Nos. 4, 5, 6, 7 and 8 out of all the 13 points formulated in the latter :

(4). The principle underlying the guarantee of Art. 14 is not that the same rules of law should be applicable to all persons within the Indian

territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons

similarly circumstances shall be treated alike, both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the

same situation, and there should be no discrimination between one person and another, if as regards the subject matter of the legislation, their

position is substantially the same.

(5). By the process of classification, the State has the power of determining who should be regarded as a class for purposes of legislation and in

relation to a law enacted on a particular subject. This power, no doubt, in some degree is likely to produce some inequality, but if a law deals with

the liberties of a number of well defined classes, it is not open to the charge of denial of equal protection on the ground that it has no application to

together persons. Classification thus means segregation in classes which have a systematic relation, usually found in common properties and

characterisation. It postulates a rational basis and does not mean herding together of certain persons and classes arbitrarily.

6) The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can even

recognize degrees of evil, but the classification should never be arbitrary, artificial or evasive.

7). The classification must not be arbitrary but must be rational, that is to say it must not only be based on some qualities or characteristics which

are to be found in all the persons grouped together and not in others who are left out, but those qualities and characteristics must have a reasonable

relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, viz., (i) that the classification must be founded on

an intelligible differentia which distinguishes those that are grouped together from others and (ii) that differentia must have a rational relation to the

object sought to be achieved by the Act.

8) The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a

nexus between them. In short, while Art. 14 forbids class discrimination by conferring privileges or imposing liabilities upon persons arbitrarily

selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liabilities proposed to be

imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense abovementioned.

25. In AIR India Vs. Nergesh Meerza and Others, it was pointed out that in order to judge whether a separate category has been carved out of a

class of service, the following circumstances have generally to be examined (p. 325) :

a) the nature, the mode and the manner of recruitment of a particular category from the very start,

b) the classification of the particular category,

c) the terms and conditions of service of the members of the category,

d) the nature and character of the posts and promotional avenues,

e) the special attributes that the particular category possess which are not to be found in other classes, and the like.

26. If regard is had to the totality of the attributes and the common features applicable to the teachers as a class in the Resolution dated 27th

February 1989, it would be apparent that there is no distinction, except in the matter of the age of superannuation in the Government teachers and

other teachers. In the face of this Government Resolution we would expect more material from the State to show why the Government teachers

were regarded as a class apart from the other teachers when they have so much in common with the others who were the subject of that

Resolution, and to show that there were such similarities between the teachers and other classes of Government servants who are governed by

Rule 161 of the BCSR, which would outweigh the considerations in Government Resolution dated 27th February, 1989. Apart from saying that

the Government servants are a class apart, no material was placed before us to show that the Government teachers were similarly circumstanced

with the other categories of Government servants to whom Rule 161 of the BCSR applies.

27. In *Katra Educational Society Vs. State of Uttar Pradesh and Others*, , on which reliance was placed, it was held that Section 16-II of the U.P.

Intermediate Education Act (2 of 1921) was not ultra vires the State legislature on the ground of violation of Art. 14 of the Constitution, but that

was because prima facie there was a justifiable classification between the privately managed educational institutions and those maintained by the

State Government, the Central Government and Local Bodies, and it was pointed out to claim protection of Art. 14, it must be shown that persons

differently treated are similarly situated and discrimination is made with an uneven hand. Careful reading of para 13 of the judgment would show

that no particulars were furnished in the petition and the classification made was not based on a rational basis having relation to the object sought to

be achieved thereby. The material placed on record by the State, viewed in the light of complete absence of any details furnished by the Society,

were sufficient to indicate that the plea of unlawful discrimination cannot be adjudged unless the petition contains a full averment of the grounds on

which equality is claimed, and the denial of equality is pleaded as not based on a rational relation to the object sought to be achieved by the statute

which makes a classification.

28. In order to lend support to his contention, the learned Special Counsel for the respondent No. 1 also relied upon *Shri B. Narayana Murthy*

and *Others Vs. The State of Andhra Pradesh, etc.*, , the position as is apparent from para 13 of the report is that different ages were prescribed on

the basis of the benefit which had to be given pursuant to the orders of the Higher Court which had become final, and this provided a valid

differentia and the petitioners could not claim to be equated with those employees who had been given such benefits. Reference was also made on

behalf of the respondent No. 1 to *Vithalrao Ramchandra Ghorpade v. State of Maharashtra*, 1972 Mh. L.J. 841 and *Life Insurance Corporation*

of India and *Others Vs. S.S. Srivastava and Others*, . In the former Rule 161 of BCSR as amended by 7th Amendment Rules, 1971, relating to

compulsory retirement came to be considered and while upholding the validity of that rule, it was observed that fixing different ages of compulsory

retirement for gazetted government servants and non-gazetted Government servants was not arbitrary, because the classification was based on

nature of work. In the case of *Life Insurance Corporation of India*, (supra) the case of 16 persons was treated on a different footing, because an

order came to be passed about retiring them at the age of 60 years having regard to the negotiations which had taken place between the

Corporation and the Government before taking over their services by the Corporation, and they belonged to a different category altogether and the

fixation of the age of retirement in their case at 60 years could not be challenged by those who were directly recruited by the Corporation after 1st

September, 1956, as there was no similarity between them and the said 16 officers.

29. With regard to the value to be attached to the opinion of expert bodies, we might with advantage refer to the observations in AIR 1974 753

(SC) , where it has been observed that the answer to the question depends upon several factors. It does not just depend upon either the nature of

work or volume of work done by Bench Secretaries. Primarily it requires among others, evaluation of duties and responsibilities of the respective

posts. More often functions of two post may appear to be same or similar, but there may be difference in degree in the performance. The quantity

of work may be the same, but quality may be different that cannot be determined by relying upon averments in affidavits of interested parties. The

equation of posts or equation of pay must be left to Executive Government. It must be determined by expert bodies like the Pay Commission. They

would be the best judges to evaluate the nature of duties and responsibilities of posts. If there is any such determination by a Commission or

Committee, the Court should normally accept it. The Court should not try to tinker with such equivalence unless it is shown that it was made with

extraneous consideration.

30. As we have already indicated, the proposals, which were accepted by the State of Maharashtra by its Resolution dated 27th February, 1989,

were based, in respect of the class of teachers as a whole, on the recommendations made by the Sen Committee and Mehrotra Committee, which

came to be accepted by a high power body such as the UGC. When the Government of India, which relied on their recommendations, did not

make any distinction between Government teachers and other teachers, we should have expected atleast some indication why the Government

teachers and the other teachers who, in the opinion of these expert bodies formed a homogenous class, should have been treated differently by the

Government for the age of superannuation. The same principle is reiterated in Mew Ram Kanojia Vs. All India Institute of Medical Sciences and

Others, .

31. The learned Counsel for the petitioners referred us to certain Supreme Court decisions which recognized the present trend in prescribing higher

ages of superannuation. In Imperial Chemical Industries (India) Private Limited Vs. The Workmen, , it was recognized that where an employer

adopts a fair and reasonable pension scheme, that would play an important part in fixing the age of retirement at a comparatively earlier stage. If a

retired employee can legitimately look forward to the prospect of earning a pension, then the hardship resulting from early compulsory retirement is

considerably mitigated. This made the contention of the learned Special Counsel for the respondent No. 1, that the absence of a pension scheme

or retirement benefits to non-Government teachers, was a factor which must have been taken into consideration while granting superannuation at

60 years to the non-Government teachers. This point of difference, if any, stands obliterated by giving the benefits of the pension and gratuity

scheme to the other lecturers, and what could have been originally a valid criteria for making the distinction between the ages of superannuation of

the two classes would cease to have any validity after giving the benefit of pension and gratuity schemes to the non-Government teachers. Our view

is supported by the observations in *Workmen of The Bharat Petroleum Corporation Ltd. (Refining Division) Bombay Vs. Bharat Petroleum*

Corporation Ltd. and Another, where it was observed that the general terminal benefits on attaining the age of super-annuation are pension,

gratuity and provident fund, and since the clerical staff of the Refinery Division were not entitled to any pension, this must necessarily have an

impact on the raising of their retirement age.

32. In *K. Nagaraj and Others Vs. State of Andhra Pradesh and Another*, after tracing reports of the various Commissions which went into

formation of the policy governing the fixation of the retirement age and why policy could not be struck down as arbitrary or irrational, it was

observed that the question of age of retirement should always be examined by the Government with more than ordinary care, more than what the

State Government had bestowed upon it in that case, because the fixation of age of retirement has minute and multifarious dimensions which shape

the lives of citizens. Therefore, it is vital from the point of view of their well-being that the question should be considered with the greatest

objectivity and decided upon the basis of empirical data furnished by scientific investigation. What is vital for the welfare of the citizens is, if

necessary, vital for the survival of the State. Unfortunately, in the case before us, no material has been placed by the State to show that it had taken

the care that was necessary for prescribing the age of 58 years for Government teachers. As we have pointed out, the mere consideration that

BCSR Rule 161 governed the Government servants, was no answer to the effort, which we should have expected from the State. In fact Rule 161

itself shows that it has not been uniformly applied by the Government to all its employees. Exceptions have been made in respect of Class-IV

Government servants, the Principal Judge of the City Civil Court, Bombay : the Judges of the Court of Small Causes, Bombay : the Administrator

General and Official Trustee, Bombay : and Stipendiary Patels appointed u/s 16 of the Land Revenue Code and Section 5 of the Village Police

Act, 1887. It is not that Rule 161 of the BCSR was of uniform application, but itself extended separate treatment to separate categories. Evidence

is totally wanting to show that the Government teachers, with whom we are concerned here, had greater similarity with or were similarly situated

with the other categories to which Rule 161 of the BCSR applies, and not to the other categories of teachers who were to be covered by the

Government Resolution dated 27th February 1989. We must regretfully say that in overlooking these material circumstances and by herding

together the class of Government teachers with the other unlike classes, which would be governed by Rule 161 of the BCSR, the Government

acted arbitrarily.

33. Even if it were to be recognized that before formulation of the schemes by the UGC and their application by the Government of India and the

Government of Maharashtra, the government teachers might have fallen into a different category which could be treated like the others who were

governed by Rule 161 of the BCSR, in view of the revision of pay scales and other measures taken for improving the standards of teaching for

fulfillment of the Constitutional responsibility for co-ordination and maintenance of standards in higher education, the line of demarcation between

the Government teachers and other Government servants gradually vanished. It was not possible for the learned Special Government Pleader to

indicate to us the points of similarity which could be found in all cases other than those accepted by Rule 161 of the BCSR and the Government

teachers. The object to be achieved by the Government Resolution, dated 17th June, 1987, is to be found in the National Policy on Education,

1986, which envisaged efforts to reach the desirable objective of uniform emoluments, service conditions and grievance removal mechanism for

teachers throughout the Country. That policy visualised the creation of an open, participative and data based system of teacher evaluation for

achieving the higher goal of the maintenance of standards in higher education. We tried hard to find out the nexus between the retention of the age

of 58 years in respect of the Government teachers and the achievement of these objectives and what valid differentia there could be for

distinguished between the Government teacher of the age of superannuation. The return filed by the State of Maharashtra is silent on this point and

apart from what we have stated above, no grounds came forward in the course of the arguments by the learned Special Counsel for the

respondent No. 1 who frankly stated that he could not say more than saying that the differential treatment was necessary, because the petitioners

were Government teachers. We are afraid, this cannot be the basis for classification in the present case.

34. In *Motor General Traders v. State of Andhra Pradesh*, AIR 1948 SC 121, it has been pointed out in para 12 while considering the question

of exemption from Rent Control Legislation to certain buildings for giving incentive to the building activity, that what was once a non-discriminatory

piece of legislation, may in course of time become discriminatory and be exposed to a successful challenge on the ground that it violated Article 14

of the Constitution. With Regard to the observations in *State of Madhya Pradesh Vs. Bhopal Sugar Industries Ltd.*, and *H.H. Shri Swamiji of Shri*

Amar Mutt and Ors. v. Commissioner, Hindu Religious and Charitable Endowments Department and Ors. and *H.H. Shri Swamiji of Shri Amar*

Mutt and Others Vs. Commissioner, Hindu Religious and Charitable Endowments Department and Others, it was pointed that the Court had

declined to strike down the impugned Legislation as it found that there was no adequate material to do so. Those two decisions arose in the

context of re-organisation of States and there were on the same subject laws of different patterns in force in the several integrating units on the eve

of reorganisation. Those laws were allowed to continue in force as a matter of necessity in the different local areas until the State Legislature

concerned passed a common legislation on such subject for the whole State on enquiry, probably the Legislature might have preferred to apply the

very legislation impugned before the Court for the entire State and it was in these circumstances that it was not possible to decide whether a

particular law which was challenged before them was discriminatory or not in the absence of necessary pleadings and relevant material. The Court

also held by the passage of time, considerations of necessity and expediency would be obliterated, and the grounds which justified classification of

geographical regions for historical reasons may cease to be valid. A purely temporary provision which, because of compelling forces, justified

differential treatment when the Reorganisation Act was enacted cannot obviously be permitted to assume permanency, so as to perpetuate that

treatment without a rational basis to support it after the initial expediency and necessity have disappeared.

35. Having regard to all these factors, we find no justification whatsoever for upholding the discrimination on the question of superannuation as

contained in Clause 26 of the Government Resolution dated 27th February, 1989, in view of the intrinsic material afforded by the other clauses of

that Resolution which treated all teachers on par and as forming one class. The Government Resolution will have the force of law as it lays down

the rules of principles of general application, in view of the Full Bench judgment in Chandrakant Sakharam Karkhanis case (cited supra). If the

clauses of that Resolution are obnoxious, because they fall foul of Article 14 of the Constitution, the differential treatment sought to be given to the

Government teachers by continuing their age of superannuation as 58 years, while other of the same class have the age of 60 years, that part of the

Government Resolution will have to be struck down.

36. The learned Counsel for the petitioners conceded that through the petition was filed in the year 1980 and the challenged had come to be raised

in respect of the similar provisions in the earlier Resolutions, the effect of out quashing down the offending part of the Government Resolution,

dated 27th February 1989, can only be prospective in its application. Unfortunately, many others, who could have taken advantage of this petition,

have retired and no redress can be given to them.

37. With regard to the provisions of Rule 161(C-1), of the BCSR in the application to the Government teachers, no concrete instances have been

brought to our notice that the State Government has initiated action for putting an end to any teacher at the age of 50 years or 55 years. It will not

be possible for us to decide this question in a vacuum and when we pointed this out to the learned Counsel to the parties they stated that this

question may not be decided in this petition, but should be left open to be agitated if and when action is taken by Government under Rule 161(C-

1) of BCSR or the analogous provisions of Rule 10 of the Maharashtra Civil Service (Pension) Rules 1982, which would now govern that position.

We, accordingly, leave that question open.

37-A. In the result we quash the last sentence in para 26 of the Government of Maharashtra, Education and Employment Department, Resolution

No. NGC 1286/ (1224) /MH/UNI-4, dated 27th February 1989 (Annexure-VII to the petition), which runs as follows :-

The age of superannuation of teachers in Government Colleges and Institutes of Sciences, will however, continue to be 58 years as hitherto

before".

and declare that the cases of Government teachers will be governed by the remaining portion of Clause 26 *ibid*.

38. Rules 161 of the BCSR will stand modified to that extent, so the age of superannuation for them shall not be 58 years but the age as

prescribed by Clause 26 of the Government Resolution dated 27th February 1989. We make it clear that the other matters which we have left

open as mentioned in the earlier portions of this judgment, have not been decided by us and the petitioners would be free to re-agitate those

matters, after the Government decides upon their representations, should an occasion arise in future.

39. Rule made absolute in the above terms, but there will be no order as to the costs.