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

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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

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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

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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 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. Uniono f 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

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 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 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 :

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 than rupees three hundred and seventy-fivel 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 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 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

arp/