IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 4292 OF 2013

Association of college and University superannuated teachers (Maharashtra) a society registered at No.MAH-853/2009 under the provisions of the Society's registration Act, having its head office at 20, Sawarkar Nagar, 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

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,
Bahadurshan Jafar Marg,
New Delhi – 100 001. **RESPONDENTS**

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Mr. Pradeep Deshmukh h/f Mr. Y.R. Barhate, Advocate for the Petitioner.
Mr. G.R. Ingole, A.G.P. for the Respondent/State.
Mr. Alok Sharma, ASG for Respondent No.4.
Mr. R.B. Bagul, Advocate for Respondent No.1.

CORAM: S.S.SHINDE &
P.R.BORA, JJ.

Reserved on : 08.05.2015
Pronounced on: 09.06.2015

JUDGMENT: [Per S.S.Shinde, J.]:

This Petition is filed with the following prayers :-

> “B] By issue of writ of mandamus or appropriate writ or direction of like nature it be declared that the recommendations of Hakim committee are not applicable for deciding pensionary benefits for the category of teaching staff working in unversities and colleges in Maharashtra in general and the government Resolution dated 05/05/2009 and the government Resolution dated 12/08/2009 be quashed and set aside.
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> C] By issuing writ of mandamus or appropriate writ or direction of like nature it be declared 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 as such the members of petitioner Association are entitled for same.

D] By issue of writ of mandamus or appropriate writ or direction of like nature the Respondent No.2 & 3 be directed to pay the difference in the pensionary benefits i.e. additional 10% amount as pensionary benefit over and above the amount actually paid w.e.f. 1/1/2006 within three months with interest thereon and further directed to pay the pension at the rate 50% of pensionable pay in future."

2. It is the case of the petitioner that, the petitioner Association is aggrieved by the discrimination made by the respondent No.2 in respect of Revision of pension/family pension of the teachers who have retired between 1/1/1996 to 31/12/2005 (i.e. pre-1/1/2006 pensioners/family pensioners) while implementing the recommendations made by the sixth pay commission. It is the case of the petitioner that, the petitioner is Association of College and University superannuated teachers (Maharashtra), which is a

registered organization under the Maharashtra Societies Registration Act, 1860 bearing its registration No. MAH 853/2009. The Association of College and University superannuated teachers, (Maharashtra) (hereinafter referred to as “Association” for the sake of brevity). The Association is committed for the welfare of the superannuated college and university teachers including principals. The Association has its head office at Aurangabad (Maharashtra) within the jurisdiction of this Court. There are total 325 members of the association and they have filed present Writ Petition through Association.

3. The main grievance of the petitioner Association pertains to Government Resolution dated 5th May, 2009 by which discrimination is made by the respondent No.2 – State of Maharashtra while making the revision of pension/family pension as per the directions given in the office memorandum dated 15th December, 2009 and 1st July, 2010 issued by the

Government of India in respect of pay scales, revision of pay scales and fixation of pension/family pension as per the recommendations made by the sixth central pay commission and as per the decision taken by the University Grants Commission regarding the pre-1/1/2006 pensioners/family pensioners (i.e. who retired from the period of 1/1/1996 to 31/12/2005). It is the case of the petitioner that, the respondent No.2 – State of Maharashtra has made certain modifications in the rules regulating pension, retirement/death gratuity and family pension under the Maharashtra Civil Services (Pension) Rules, 1982, which are applicable to the State Government employees including petitioner by issuing Government Resolution dated 15th November, 1999. By which it is decided that, the full pension in no case shall be less than 50% of the minimum of the revised scale introduced by the pay commission for the post last held by the employee at the time of his retirement. It was further decided that such pension will be suitably reduced pro-rata, where the petitioner has less than the maximum required service for pension as rule 110 of the Maharashtra Civil Services (Pension) rules, 1982.

4. It is the case of the petitioner that, the State of Maharashtra has given minimum 50% pension of the revised pay scale introduced by the pay commissions to the pre-1996 employees (i.e. teachers retired during 4th pay commission) and post 2006 (i.e. teachers retired during 6th pay commission) employees while implementing the recommendations of 5th and 6th pay commission respectively. Only in case of petitioner (i.e. college and University superannuated Teachers who retired during 1/1/1996 to 31/12/2005) the discrimination has been made by the State Government of Maharashtra while implementing the recommendations of sixth pay commission. It is the case of the petitioner that, the college and university teachers including principals forms a separate category/cadre i.e. all India cadre. For the recruitment

of the post of college and university teachers including principals, the advertisement has to be given in a national newspaper and appointments have to be made on all India basis. The pay scales of college and university teachers including principals are recommended by government of India, circulated by the University Grants commission accepted and implemented by the State Government. It is the case of the petitioner that, the other States have implemented the said recommendations pertaining to the pension which is arbitrary and violation of article 14 and 16 of the Constitution of India.

5. It is the case of the petitioner that, the government of India has constituted sixth pay commission. The sixth pay commission submitted its report in March, 2008. The sixth pay commission report recommended revision of pay scales and fixation of pension/family pension w.e.f. 1/1/2006. For the first time the sixth pay commission has evolved a pay band

system for the employees. It is the case of the petitioner that, the University Grants Commission prescribes qualification, service conditions and workload including pay scales. These service conditions are reviewed and revised by the pay commission. The pay scales and age of superannuation are also revised by the university grants commission and the recommendations of the university grants commission were accepted by the State of Maharashtra. It is the case of the petitioner that, revision of pension is a natural process and the pay scales and revised pensionary benefits are inseparable components. Therefore, extending the benefit of the revised pay scales to the teachers who were in service before 1/1/1996, after 1/1/2006 and denying the same who were retired before 1/1/2006 (i.e. who retired from the period between 1/1/1996 to 31/12/2005) ultimately results into discrimination. The superannuated teachers who were retired before 1/1/2006 are deprived from getting minimum 50% pension amounts of the revised pay scales introduced w.e.f. 1/1/2006. Therefore, it is necessary for the State of Maharashtra to ensure that, pensionary benefits are synchronized in such a way that pensionary benefits are in tune with revised pay scales introduced w.e.f. 1/1/2006. The respondent No.2 – State of Maharashtra has assured and paid the 50% of pension of the revised pay scales by making modifications in Maharashtra Civil Services (pension) Rules, 1982 to the pre-1996 and post 2006 pensioners/teachers.

6. It is the case of the petitioner that, the Government of India vide its office memorandum dated 1st September, 2008 directed all the heads of departments to revise the pension/family pension w.e.f. 1/1/2006 in accordance with the provisions mentioned in the said office memorandum. According to the clause 4.2 of office memorandum dated 1st September, 2008 the fixation of pension will be subject to the provisions of the revised pension, and in no case it shall be lower than 50% of the minimum of the pay band plus the

grade pay corresponding to the pre-revised pay scale from which the pensioner had retired. In the case of HAG + and above scales this will be 50% of the minimum of the revised pay scale (pay Band + AGP).

7. It is the case of the petitioner that, on 3rd October, 2008 the Government of India, Ministry of Personnel, Public Grievances and pensions had issued another office memorandum thereby making certain clarifications and modifications in respect of various provisions of the office memorandum dated 1st September, 2008.

8. It is the case of the petitioner that, when the pension is consolidated as per clause 4.2 is higher than the pension consolidated as per clause 4.1, then in that case, there would be no option but to treat the pension consolidated as per clause 4.2 as basic pension. Now it is settled position of law that, whichever is beneficial to the pensioner should be given to them. It is the case of the petitioner that, on 14th October, 2008, the

Government of India issued an office memorandum for effective implementation of government's decision on the recommendations of the sixth pay commission in respect of the revision of pension of Pre-2006 pensioners/family pensioners. It is the case of the petitioner that, on 31st December, 2008, the Government of India vide its letter had informed the respondent University Grants commission that, after taking into consideration the recommendations made by it, the government of India has decided to revise the pay scales of teachers and equivalent cadres in the central universities. The recommendation of sixth pay commission in respect of pension for central government employees, including the eligibility for full pension i.e. 50% of average pay or last pay drawn whichever is higher after 20 years of qualifying service, shall be adopted for only those teachers and other cadres who are already on pension in central universities and colleges and other institutions deemed to be universities under the purview of university

Grants commission. It is the case of the petitioner that, as far as applicability of the scheme is concerned, once the scheme is accepted and implemented by the State Legislature/Government to the universities, colleges and other higher educational institutions coming under the purview of state legislature/government, then it is to be implemented in as composite scheme without making any modifications in it.

9. It is the case of the petitioner that, now a question arose about the petitioners who retired from the posts in the pre-revised scale of pay Rs. 12000-420-18300 (or the corresponding pay scale applicable to 1/1/1996) to determine their pension/family pension in terms of clause 4.2 of the office memorandum dated 1st September, 2008 in the category of readers/lecturers (selection grade), according to the revised pay scales applicable to teachers in equivalent cadres in central universities/colleges. It was directed vide letter dated 31st December, 2008 issued by the

government of India that, incumbents of the post of readers and lecturers who had completed three years of service in the pay scale of Rs. 12,000-420-18300 on 1/1/2006 will be placed in the pay band of Rs. 37,400-67,000/- with academic grade pay (AGP) of Rs. 9000/- and revised minimum pension shall be Rs. 37,400 + 9000 = 46,400 and 50% in terms of clause 4.2 is Rs.23,200/-. It is the case of the petitioner that, this policy of revision of pension was re-emphasized by government of India vide its office memorandum dated 15th December, 2009. It is the case of the petitioner that, whereas the retired principals and Professors who had completed three years of service in the pay scale of Rs. 16,400 – 22,400 on 1/1/2006 will be placed in pay Band of Rs. 37400-67000/- with academic grade pay (AGP) of Rs. 10,000/- and revised minimum pension shall be 37,400 + 10,000 = 47,400 and 50% in terms of clause 4.2 is Rs. 23,700/-.

10. It is the case of the petitioner that, on 1st

July, 2010, the Government of India issued a letter to the University Grants Commission with reference to office memorandum dated 1st September, 2008. It relates to the government's decision regarding pension/family pension of all pre-2006 pensioners/ family pensioners in terms of clause 4.2. It has been clarified that the fixation of pension will be subject to the provision that, the revised pension in no case shall be less than 50% of the minimum of the pay in the pay band plus the grade pay corresponding to the revised pay scale from which the pensioners had retired. It was also directed that, the entitlement of minimum pension of the faculty and other staff of the central universities and colleges retired prior to 1/1/2006 i.e. pre-2006 pensioners may be worked out by the individual universities and colleges following the principles laid down in clause 4.2 of the office memorandum dated 1st September, 2008, as clarified by office memorandum dated 3rd October, 2008. It was also clarified that, if the University/College has fixed the pension in a manner different from the above formula, then same may be reworked by them and necessary adjustments be made. It is the case of the petitioner that, in view of the recommendations made by the sixth pay commission, the State of Maharashtra vide its order dated 23rd September, 2008 constituted the State pay fixation committee under the Chairmanship of Shri. P.M.A. Hakeem. On 20th December, 2008, the pay fixation committee submitted its report to the State Government. In the said report the Hakeem committee recommended increase up to 40% on the actual pension. On 27th February, 2009, the Government of Maharashtra has approved the recommendations made by Hakeem committee.

11. It is the case of the petitioner that, a bare perusal of clause 34(4.2.1) of the Hakeem committee report reflects that, without considering the clause 4.1 and 4.2 of the office memorandum dated 1st September, 2008, issued by the government of India the Hakeem

Committee had given flat increase of 40% of the basic pay. The Hakeem committee while doing so observed that the said increase has been made in view of the sixth pay commission recommendations. It is the case of the petitioner that, it has been recommended that, the minimum pension proposed shall be applicable with prospecting effect. As per clause 37 (4.5.1) the committee recommended that for grant of 50% pension the minimum qualifying service which was 33 years has been reduced to 20 years as per the recommendations of central government. The employees who had or will complete minimum 20 years of service their pension shall be fixed on the basis of aggregate salary of last 10 months or 50% of the salary drawn in the last month, whichever is higher shall be paid to the pensioner. It was further recommended by the Hakeem committee that, this is to be implemented with prospecting effect. It is the case of the petitioner that, college and university teachers are excluded in the report submitted by Hakeem committee because the pay scales of college and university teachers are recommended by University Grants commission. Therefore recommendations made by the Hakeem committee are not binding on college and university teachers. All the recommendations made by Hakeem committee referred here in above as per direction from government of India were duly accepted by the State Government with certain modifications.

12. It is the case of the petitioner that, in view of the recommendations made by the 6th pay commission and Hakeem committee report dated 20th December, 2008, the Government of Maharashtra issued government resolution dated 27th February, 2009 and 5th May, 2009.

13. It is the case of the petitioner that, on 12th August, 2009 the Government of Maharashtra has passed a government resolution in pursuant to the letter dated 31st December, 2008, issued by the government of India, which revises the pay scales for

teachers and equivalent cadres. It has been clarified by the Government of India that, the payment of central assistance to implement this scheme will be subject to the condition that, the entire scheme of revision of pay scales together with all the conditions shall be implemented by the State Government as a composite scheme without any modification. It is the case of the petitioner that, the Government of Maharashtra has revised the pension of petitioner vide its government resolution dated 5th May, 2009, and thereafter has revised the pay scales of the college and university teachers vide its government resolution dated 12th August, 2009. In fact the revision of the pay scales should be made earlier before the revision of pension. This itself shows that the Government of Maharashtra is not serious in making revision of pension of petitioner. In this case, the revision of pension is not consistent with the revision of the pay scales. It is the case of the petitioner that, for the review, revision of the scale and revision of pension, it is necessary to implement one and same formula otherwise the formula of pay fixation and the basis of pension fixation will result into lifetime pecuniary losses to the pensioners as has been done by the State of Maharashtra (i.e. Respondent No.2). It is the case of the petitioner that, various State Governments have given protection to the revision of pension of college and university teachers including principals by issuing necessary orders relying on office memorandum dated 15th December, 2009 issued by Government of India.

14. It is the case of the petitioner that, the teachers who were in service during 1/1/1996 to 31/12/2005 i.e. during the period of fifth pay commission and retired on and after 1/1/2006 i.e. on the date of implementation of sixth pay commission are eligible and entitled for minimum 50% of the revised pay scales as recommended by sixth pay commission. It is the case of the petitioner that, in view of the decision of the Government of India to implement the

recommendations of sixth pay commission, the pay scales were fixed and accordingly the pension came to be revised for all central government employees who retired prior to 1/1/2006 and also after 1/1/2006 thereby eliminating the discrimination amongst the pre-2006 retired employees and post 2006 retired employees. It is the case of the petitioner that, the benefits of sixth pay scheme to the pre-2006 and post 2006 were extended by various state governments to its retired employees/teachers as per the recommendations made by the sixth pay commission. It is the case of the petitioner that, the State Governments of Tamil Nadu, Rajasthan, West Bengal, Gujarat, Kerla, Punjab and Orissa have already extended the benefits of sixth pay commission recommendations to their pre-2006 and post 2006 retired employees/college and university teachers. Thus the government of Maharashtra has made discrimination and disparity in the pension that has been granted to the teacher's and professor's selection grade in the State of Maharashtra and the similarly situated persons in other States.

15. The State Government through Incharge Director of Higher Education, Maharashtra State, Pune has filed two affidavits dated 25th August, 2014.

16. We have given careful consideration to the submissions advanced by the learned counsel appearing for the petitioner and also the learned counsel appearing for the respective respondents. With their able assistance, we have perused the pleadings, grounds taken in the Petition, annexures thereto, other documents placed on record and also the judgment of this Court, other High Courts and the Supreme Court, cited across bar by the learned counsel appearing for the petitioner. It appears that, the petitioner for the redressal of the same grievance, which is raised in this Petition, filed various representations with the State Government. It appears from perusal of Exhibit `K'

Colly to the Petition that, as many as five representations were filed. The said representations were filed to the concerned Authorities of Respondent Nos. 2 and 3 on 8th April, 2010, 14th May, 2010, 22nd June, 2011, 1st July, 2011 and 15th February, 2013. It further appears that, the State Government and its authorities have not addressed to the grievance raised by the petitioner through the said representations, and therefore, the petitioner is constrained to file the present Petition.

It appears that, in view of the recommendations made by the 6th Pay commission and Hakeem Committee report dated 28th December, 2008, the Government of Maharashtra issued Government Resolutions dated 27th February, 2009 and 5th May, 2009. It would be apt to reproduce hereinbelow the relevant clause (3) of the Government Resolution dated 5th May, 2009:-

"3. On the lines of the recommendations of sixth pay commission, the state government has decided to revise the pension of the pensioners, who retired before 1/1/2006 by giving 40% increase on the basic pension (Basic pension which does not include D.A. And D.P.) vide government resolution dated 27th February,2 009, accordingly pension in respect of the pensioners who retired before 1/1/2006 will be fixed as per the example given below :-

A. Basic pension as on 1st January, 2006.... Rs.10,000/-

B. D.P. Rs. 5000/-.

C. D.A. 24% Rs. 3,600/-

D. 40% increase on Basic pension (A) above Rs. 4,000/-

E. Pension as on 1/1/2006 (A+B+C+D)."

The para 4.1 of office memorandum dated 1st September, 2008 issued by the government of India is incorporated by government of Maharashtra i.e. respondent No.2 in its government resolution dated 5th May, 2009."

It is the contention of the learned counsel appearing for the petitioner that, para 4.2 of office memorandum dated 1st September, 2008, issued by the Union of India, is deliberately omitted by the State of Maharashtra and the members of the petitioner were deprived of their rightful claims and thereby the State Government has made discrimination while granting the revision of pensionary benefits to the members of the petitioner – Association.

In order to appreciate aforementioned contention of the learned counsel appearing for the petitioner, it is necessary to make reference to the office memorandum dated 1st September, 2008 issued by the Government of India, directing all the heads of departments to revise the pension/family pension w.e.f. 1/1/2006. The relevant clause 4.1 and 4.2 of the said memorandum read thus :-

> "4.1 The pension/family pension of existing pre-2006 pensioners/family pensioners will be consolidated with effect from 1/1/2006 by

adding together :-

I. The existing pension/family pension.

II. The dearness pension, where applicable.

III. Dearness relief up to AICPI (IW) average index 536 (Base year 1982 = 100) i.e. @ 24% of basic pension/basic family pension plus dearness pension as admissible vide this departments O.M. No. 42/2/2006-P & PW (G) dated 5/4/2006.

IV. Fitment weight – age @ 40% of the existing pension/family pension.

Where the existing pension in (1) above includes the effect of merger of 50% dearness relief w.e.f. 1/4/2004, the existing pension for the purpose of fitment weight age will be recalculated after excluding the merger dearness relief of 50% from the pension.

The amount so arrived will be regarded as consolidated pension/family pension with effect from 1/1/2006.

4.2 <u>The fixation of pension will be subject to the provision that the revised pension, in no case shall be lower than 50% of the minimum of the pay in the pay band plus the grade pay corresponding to the pre-revised pay scale from which the pensioner had retired. In the case of</u>

HAG + above scales, this will be 50% of the minimum of the revised pay scale." (Underlines supplied)

17. Upon careful perusal of the said clause 4.2 of the aforementioned memorandum dated 1st September, 2008, it appears that, the fixation of pension will be subject to the provision that the revised pension, in no case shall be lower than 50% of the minimum of the pay in the pay band plus the grade pay corresponding to the pre-revised pay scale from which the pensioner had retired. In case of HAG + and above scales this will be 50% of the minimum of the revised pay scale (pay band + AGP).

18. It further appears that, on 3rd October, 2008, the Government of India, Ministry of Personnel, Public Grievances and Pensions had issued another office memorandum, thereby issuing certain clarifications and modifications in respect of the office memorandum dated 1st September, 2008, which is

reproduced hereinbelow :-

"**Clarification/modification of clause 4.2-** the pension calculated at 50% of the minimum of pay in the pay band plus grade pay would be calculated (i) at the minimum of the pay in the pay band (irrespective of the pre-revised scale of pay) plus the grade pay corresponding to the pre-revised the pay scale. For example, if a pensioner had retired in the pre-revised scale of pay of Rs. 16400-22400, the corresponding pay band being Rs. 37400-67000 and the corresponding grade pay being Rs. 10,000/- p.m., and therefore the minimum guaranteed pension would be 50% of Rs. 37,400 + Rs. 10,000 (i.e. Rs.23,700).

The pension will be reduced to pro rata, where the pensioner had less than the maximum full required service for full pension as per rule 49 of the centre's civil services (pension) Rules, 1972 applicable on 1/1/2006 and in no case will be less than Rs. 3500 p.m. Whereas the pension consolidated as per para 4.1 of the office memorandum dated 1/9/2008 is higher

> than the pension calculated in the manner indicated above; the same (hired consolidated pension) will be treated as basic pension.”

According to the learned counsel appearing for the petitioner, thereafter the government of India has been persuading the same issue of Pre-2006 pensioners from time to time till February, 2013.

19. Upon careful perusal of the Government Resolutions dated 27th February, 2009 and 5th May, 2009, it appears that, Government of Maharashtra did not incorporate clause 4.2 of the memorandum dated 1st September, 2008 in the aforesaid Resolutions. Therefore, prima facie, it appears to us that, the petitioner is justified in making grievance that, the State Government did not incorporate clause 4.2 of the memorandum dated 1st September, 2008 issued by the Government of India in the Government Resolutions, which caused prejudice to the interest of the members

of the petitioner-Association.

20. It is also not in dispute that, the Government of India issued an office memorandum on 14th October, 2008, for effective implementation of the Government's decision on the recommendation of 6th Pay Commission in respect of revision of pension of the persons like the members of the petitioner association prior to 2006. It is also not in dispute that, on 31st December, 2008, the Government of India vide its letter had informed the Respondent – University Grants Commission that, after taking into consideration the recommendations made by it, the Government of India has decided to revise the pay scales of the teachers and equivalent cadres in the Central Universities. It, prima facie, appears that, the petitioner's service conditions are governed by the guidelines issued by the U.G.C. There is also substance in the contention of the petitioner that, once the scheme framed by the Government of India, as recommended by the U.G.C., is

accepted by the State Legislature/Government to the universities, colleges and other higher educational institutions coming under the purview of state legislature/government, then it is to be implemented in as composite scheme without making any modifications in it. The petitioner's grievance that, the Hakeem Committee's recommendations would not apply to the petitioner or the State Government is bound to abide by the recommendations of the Union of India and U.G.C. like other States are already following, has not been considered or gone into by the State Government inspite of the various representations addressed by the petitioner to the State and State Authorities. It is not necessary for us to enter into merits of the claim of the petitioner at greater length. However, it needs to be mentioned that, the State Government has failed to address the grievance of the petitioner raised through various representations about alleged discrimination by holding that, the pre-1996 employees i.e. teachers retired during 4^{th} pay commission, and post 2006 i.e.

teachers retired during 6^{th} pay commission are entitled for minimum 50% pension of the revised pay scale. However, denied the same to those who have retired during 1/1/1996 to 31.12.2005. The petitioner is also justified in contending that, the State of Maharashtra should have first considered the revision of pay, and then should have proceeded further for revision of pension, but the State proceeded to revise the pension in absence of revision of pay scales of the members of the petitioner – Association on the line of recommendations by the U.G.C. and Government of India. It appears that, the Hakeem Committee recommended increase up to 40% on the actual pension. However, according to the petitioner, Hakeem Committee's recommendation would not apply to them. Therefore, in our opinion, it was necessary for the State Government to consider the grievances raised by the petitioner through various representations.

21. It prima facie appears that, the State

Government did not abide by clause (6) of the Government Resolution issued by the Finance Department of Government of Maharashtra dated 15th November, 1999, which is placed on record at Exhibit `A' Colly by the petitioner. The said resolution was issued for modification in the Maharashtra Civil Services (Pension) Rules, 1982. The clause (6) of the said Resolution reads thus :-

> "**(6)** Pension shall be calculated at 50% of "Pensionable Pay" in all cases and shall be subject to a minimum of Rs. 1275 per month and a maximum of upto 50% of highest pay admissible in the State Government, (which is Rs. 24,500 per month since 1st January 1996), <u>but the full pension in no case shall be less than 50% of the minimum of the revised scale of pay introduced with effect from 1st January 1996 for the post last held by the employee at the time of his retirement</u>. However, such pension will be suitably reduced pro-rata where the pensioner has less than the maximum required service for pension as per rule 110 of the Maharashtra Civil Services (Pension) Rules,

> 1982 applicable to the pensioner as on the date of his superannuation/retirement and in no case it will be less than Rs. 1,275 per month. By way of illustration an example is given as **Annexure-I.”** (Underlines added)

22. The learned counsel appearing for the petitioner invited our attention to the unreported judgment of the Division Bench of Bombay High Court, bench at Aurangabad decided on 1st August, 2012 in Writ Petition No. 2630 of 2010, wherein the controversy in relation to fixation of pay of the petitioners therein, was considered by the Division Bench. The Division Bench of this Court in para 8 of the said judgment observed that, the issue raised is squarely covered by the decision in the case of D.S. Nakara V/s Union of India reported in AIR 1983 SC 130, wherein the Hon'ble Apex Court has found that, all pensioners constitute a single homogeneous class and no norm can be inserted or used to discriminate amongst them. In the said judgment in para 11, the

Division bench observed that, the denial by Respondents to fix petitioners' pay at minimum i.e. Rs. 14,940/- is arbitrary, unfounded and hence, unsustainable, and therefore, in the facts of that case, the Respondents were directed to undertake exercise of revising the wages of petitioners in accordance with remark appearing in appendix-I to Government Resolution dated 11.12.1999.

23. The learned counsel appearing for the petitioner has brought to the notice of this Court by inviting attention to the orders issued by various State Governments, wherein the similarly situated employees like the members of the petitioner-Association have been extended benefit of clause 4.2 of the memorandum dated 1st September, 2008 issued by the Government of India, by revising the pay scales and then pension. In the case of **Union of India and another V/s Central Government SAG and others** decided on 29th April, 2013 in Writ Petition (C) No. 1535

of 2012 by Delhi High Court, it is observed in para 26 that, the State Government did by passing resolution dated 29th August, 2008 accept the recommendation of the Central Pay Commission with certain modifications. Subsequent office memorandum dated 3rd October, 2008 and 14th October, 2008 were not in consonance with the earlier resolution dated 29th August, 2008. Therefore, the Court observed that, the Resolution dated 29th August, 2008 ensures that, the fixation of pension will be subject to the provision that the revised pension, in no case, shall be lower than 50% of the sum of the minimum of the pay in the pay band and the grade pay thereon corresponding to the pre-revised pay scale from which the pensioner had retired, this would clearly mean that the pay of the retiree i.e. who retired before 01.01.2006 is to be brought corresponding to the revised pay scale as per 6th Central Pay Commission and then it has to be ensured that pension fixed is such that, it is not lower than 50% of the minimum of the pay in the band and the grade pay thereon. Accordingly, in the facts of that case, the Delhi High Court allowed the Petitions and mandamus was issued to the Respondents to refix the pension of the petitioners within a period of two months and pay arrears of pension within two months thereafter.

24. It is not in dispute that, various State Governments of which the names are mentioned in the Petition, have taken a decision based upon the instructions issued by the Government of India and on the recommendations of the U.G.C. If the members of the petitioner-Association forms a same class, as that of employees who have been granted benefits by other State Governments, there is no reason for the Government of Maharashtra not to reconsider the case of the petitioner in the light of various Government memorandums issued by the Government of India governing the subject. The State Government is bound to abide by clause (6) of the Government Resolution dated 15th November, 1999, which is reproduced

hereinabove. Since this Court is inclined to give directions to the State Government to consider the grievances raised by the petitioner through various representations, it is not necessary to elaborate any further on merits. However, prima facie, we find substance in the contention of the petitioner that, the State Government ought to have considered the revision of pay and then should have proceeded further for revision of pension.

25. According to the clause 4.2 of office memorandum dated 1st September, 2008, the fixation of pension will be subject to the provisions of the revised pension, and in no case it shall be lower than 50% of the minimum of the pay band plus the grade pay corresponding to the pre-revised pay scale from which the pensioner had retired. In the case of HAG + and above scales this will be 50% of the minimum of the revised pay scale (pay Band + AGP). Upon perusal of the Government Resolution dated 5th May, 2009 and

further revision of pay scales of the college and university teachers by Government Resolution dated 12th August, 2009, we find that, the Government of Maharashtra has first proceeded to revise the pension and then pay scale, rather it should have been other way round. Therefore, we are of the considered view that, the State Government should reconsider the entire issue including the relevant clauses of the Government Resolutions, which affects on the members of the petitioner-Association, and to take necessary steps for fixation of pay and on the basis of the said pay fixation proceed further for revision of pension, keeping in view the office orders issued by the various State Governments giving the benefits of 6th pay commission recommendation to their pre-2006 and post 2006 retired employees of college and university teachers, various State Governments have also given protection to the revision of pension of college and university teachers including principals by issuing necessary orders relying on office memorandum dated

15th December, 2009 issued by the Government of India.

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.

28. Rule made absolute in above terms. Writ Petition is disposed of.

Sd/- Sd/-

(P.R. BORA, J.) ***(S.S.SHINDE,J.)***

sga/-