SUPREME COURT OF INDIA

Secretary Mahatama Gandhi Mission & Anr.

Vs.

Bhartiya Kamgar Sena & Ors.

C.A.No.115-116 of 2017

(Jasti Chelameswar and Abhay Manohar Sapre,JJ.,)

05.01.2017

JUDGEMNT

Jasti Chelameswar,J.,

SLP(Civil)No.26523-26524 of 2012

1. Leave granted.

2. The first appellant in all these three appeals is a charitable trust registered under the Bombay Public Trusts Act, 1950. The first appellant established and has been administering two engineering colleges, one at Nanded and another at Aurangabad in the State of Maharashtra. The first respondent appears to be an unregistered body of persons who are the employees of the first appellant. They are the staff of the abovementioned two engineering colleges belonging either to the category of teaching or non-teaching staff. The details of which are not necessary for the purpose of this case.

3. In the year 2002, the first respondent and others (some non-teaching members in the employment of the appellant) approached the Bombay High Court by way of a Writ Petition No. 333 of 2002 praying that the respondent therein (which included the authorities of the State of Maharashtra) be directed to extend the benefits of the revised pay scales as recommended by the Fifth Pay Commission set up by the Government of India to the employees of the appellant herein. The said writ petition was allowed by a judgment dated 19th December, 2003 by the Division Bench of the ***Bombay High Court***[1] giving various

[1] *11. Considering the above, we are of the opinion that the Petition will have to be allowed by issuing thefollowing directions.(1) Dr. Babasaheb Ambedkar Marathwada University, Aurangabad, is directed, within a period ofthree months from today, to enforce the pay-scales in terms of the Rules, and on failure by Respondent No. 2, to make the payment to the non-teaching in terms of the Rules so also to take steps according to lawincluding withdrawal of recognition of the Respondent No. 2 as an affiliated college; (2) The Respondent No. 3, considering the Affidavit filed before this Court and the terms of recognition, within a period of three months from today, is directed to see that the Respondent No. 2 implements the recommendations of Fifth Pay Commission and on failure to do so, to take steps to withdraw the recognition according to law; Rule made absolute accordingly. There shall be no order as to costs. (Para 14 of the Judgment) directions to Dr. Babasaheb Ambedkar Marathwada University, Aurangabad (Respondent No. 5 in that Writ Petition).*

4. Aggrieved by the said judgment, the employer carried the matter to this Court in SLP(C) No. 19567-19568 of 2004 which came to be dismissed by an order of this Court dated 24.10.2005.

5. Subsequently, there was a settlement dated 30.1.2006 between the appellant and the petitioners in Writ Petition No. 333 of 2002. The terms of the settlement were reduced to writing whereunder the non-teaching staff (petitioners in W.P. 333 of 2002) of the appellant agreed to waive their right to claim arrears of pay calculated in terms of the recommendation of the Fifth Pay Commission for the period between January 1, 1996 to December 31, 2000. Correspondingly, the appellant herein undertook to implement future ***pay revisions***[2]**.**

6. The Sixth Pay Commission set up by the Government of India made its recommendations on 24.3.2008. The University Grants Commission (UGC) (a statutory body) recommended extension of the benefit of the revised pay scales under the Sixth Pay Commission Report to the teaching staff of all the Central Universities, deemed universities and universities whose maintenance expenditure is borne by the UGC. Government of India accepted the recommendation and formulated a scheme. Under the said scheme, the Government of India had decided to revise the pay scales of the various **classes of teachers**[3] in the Central Universities and colleges thereunder subject to various terms and conditions stipulated in the scheme. The Government of India communicated its acceptance to UGC by its letter dated 31.12.2008.

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[2]3) The management hereby agrees and admits that, the employees would be eligible for getting the pay and allowances revised regularly for the government employees by the government from time to time and the employees would be eligible for getting the pay and allowances arrived at having merged the 50% dearness allowance into the basic salary Pay of the employees from the month of July, 2006.

[3][Extract from letter dated 31st December, 2008]

"I am directed to say that the Government of India have decided, after taking into consideration the recommendations made by the University Grants Commission (UGC) based on the decisions taken at the meeting of the Commission held on 7-8 October 2008, to revise the pay scales of teachers in the Central Universities. The revision of pay scales of teachers shall be subject to various provisions of the Scheme of revision of pay scales as contained in this letter, and Regulations to be framed by the UGC in this behalf in accordance with the Scheme given below. The revised pay scales and other provisions of the

Scheme are as under:

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(p) Applicability of the Scheme

(i) This Scheme shall be applicable to teachers and other equivalent cadres of Library and Physical Education in all the Central Universities and Colleges thereunder and the Institutions Deemed to be Universities whose maintenance expenditure is met by the UGC. The implementation of the revised scales shall be subject to the acceptance of all the conditions mentioned in this letter as well as Regulations to be framed by the UGC in this behalf. Universities implementing this Scheme shall be advised by the UGC to amend their relevant statutes and ordinances in line with the UGC Regulations within three months from the date of issue of this letter."

It was also declared under the scheme:-

> "(v) The Scheme may be extended to universities, Colleges and other higher educational institutions coming under the purview of State legislatures, provided State Governments wish to adopt and implement the Scheme subject to the following terms and conditions;"

The scheme also provided that in the event of the extension of the scheme by any State government to Universities or colleges and other higher educational institutions coming under the purview of State legislatures, the Government of India would undertake to meet a part of the financial burden resulting from the implementation of such ***scheme***[4]**.** Copy of the said letter was also forwarded to all the State Governments.

7. The State of Maharashtra took note of the abovementioned developments and by a Government Resolution (hereafter "GR") dated 12.8.2009 made a "scheme" revising the pay scales and the dearness allowances of all teachers and other equivalent cadres of the Universities, colleges and other higher educational institutions coming under the purview of the State legislature. Preamble to the said GR insofar as it is relevant reads:

> "Government of India vide its letter dated 31st December, 2008 referred to above has revised the pay scales of teachers and equivalent cadres in the Central Universities subject to various provisions of the scheme of revision of pay scales as contained in the said letter, and regulations to be framed by the UGC in this behalf. Government of India has mentioned in the said letter that scheme may be extended to Universities, Colleges and other higher education Institutions coming under the purview of State Legislatures, provided State Governments wish to adopt and implement the scheme. It has further been clarified by the Government of India that payment of central assistance for implementing this scheme is subject to the condition that the entire scheme of revision of pay scales together with all the conditions etc. shall be implemented by the State Government as a composite scheme without any modification etc.

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[4] *"(a) Financial assistance from the Central Government to State Governments opting to revise pay scales of teachers and other equivalent cadre covered under the Scheme shall be limited to the extent of 80% (eighty percent) of the additional expenditure involved in the implementation of the revision.*
(b) The State Government opting for revision of pay shall meet the remaining 20% (twenty percent) of the additional expenditure from its own sources.
(c) Financial assistance referred to in sub-clause (a) above shall be provided for the period from 1.01.2006 to 31.03.2010.
(d) The entire liability on account of revision of pay scales etc. of university and college teachers shall be taken over by the State Government opting for revision of pay scales with effect from 1.04.2010.
(e) Financial assistance from the Central Government shall be restricted to revision of pay scales in respect of only those posts which were in existence and had been filled up as on 1.01.2006."

1.2. The question of revising the pay scales etc. of teachers and equivalent cadres in universities, college under State Legislature was under active consideration of the Government for some time. The Government after considering all the aspects has decided. To revise pay scales and the dearness allowance of all teachers and equivalent cadres w.e.f. 01/01/2006 as per the Central Government (UGC) scheme while other allowances as per the State Government employees;"

8. From the tenor of para 8(E) of the GR it is clear that the State of Maharashtra did not direct the revision of the pay scales of the non-teaching staff of the educational institutions mentioned therein.

"Para 8(E). Applicability of the Scheme:

(i) This scheme shall be applicable to teachers and other equivalent carders of library and physical education in all the Universities, Colleges and other Higher educational Institutes coming under the purview of state legislature though (sic) the department of Higher and Technical Education of Maharashtra and governed by the rules of University Grant Commission. However, the unaided colleges will not be entitled for any financial assistance from the State Government and similarly in case of aided institutes of the Government assistance will only be limited to the teachers who retired on or before 31st December 2005 and who worked on re-employment on that date, including those whose period of re employment was extended after that date.
The implementation of the revised scales shall be subject to acceptance of all the conditions mentioned in this Resolution as well as Regulations to be framed by the UGC in this behalf. Universities implementing this Scheme shall amend their relevant statutes and ordinances in line with the Resolution and the UGC Regulations issued in this regard from time to time."

9. Vice-Chancellor of the third respondent University, issued order No. 214 dated 29.8.2009 in the purported exercise of power under ***Section 14(8)***[5] of the Maharashtra University Act, 1994. The Order purported to extend the scheme propounded by the Government of India and adopted by the State by the GR dated 12.8.2009 to all the colleges affiliated to that university. The tenor of the order No. 214 makes it clear that the scheme is made applicable only to teachers and equivalent cadres of librarian and ***physical education***[6]. There is some

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[5] *Section 14(8) Where any matter is required to be regulated by the Statutes, Ordinances or Regulations, butno Statutes, Ordinances or Regulations are made in that behalf the Vice-Chancellor may, for the time being,regulate matter by issuing such directions as he thinks necessary, and shall, at the earliest opportunitythereafter, place them before the Management Council or other authority or body concerned for approval.He may, at the same time, place before such authority or body for consideration the draft of the Statutes, Ordinances or Regulations, as the case may be, required to be made in that behalf.*

[6] *(1) The scheme of revision of pay scales as laid down in the G.R. dated 12.8.2009 shall be made applicable to teachers and equivalent cadres of Librarian and Physical Education in the University, Colleges and other Higher Educational Institutes under the purview of the University and governed by the rules of the UGC.*

issue regarding the legality of the action of the Vice-Chancellor in resorting to the power under Section 14(8). We should deal with the same later.

10. On 7th October, 2009, the Government of Maharashtra made Rules invoking its power 5 under the provisions of the various ***Universities' Acts*** [7], etc., "prescribing a standard code providing for the terms and conditions of service" of the non-teaching employees of the various organizations described thereunder. The expression standard code is traceable to ***Section 8(3)***[8] of the Maharashtra Universities Act, 1994 which authorises the State to make rules providing for the various aspects of employment of officers, teachers and other employees of the Universities, affiliated colleges and recognised institutions. It further declares that when such Rules are made they would prevail over any other subordinate legislation made by any statutory authority functioning under the Act.

11. Rule 2(1) of the said Rules stipulates that those rules apply to the full time non-teaching employees of: (i) 12 specified non-agricultural universities, and (ii) the affiliated non-government aided ***colleges***[9]**.**

12. Under the said Rules elaborate provisions dealing with the pay structure of the non-teaching employees of the abovementioned two classes of educational institutions were made. The Rules did not apply to the non-teaching employees of the unaided non - government colleges.

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[7]Exercising the authority conferred by the provisions in Maharashtra Universities Act, 1994, Dr. Babasaheb Ambedkar Technical University Act, 1989, Smt. Nathibai Damodar Thakarsi Womens' University, 1974 and Kavi Kalguru Kalidas Sanskrit University Act, 1997 the Government of Maharashtra hereby makes the rules prescribing the Standard Code providing for the terms and conditions of the service of the Non-Teaching employees of the Non-Agricultural Universities in the Maharashtra State (including its officers) and of those of the affiliated colleges and recognised institutions other than those manager and maintained by the State Government and Local Authorities.

[8] "Section 8 (3) The State Government may in accordance with the provisions contained in this Act, for the purpose of securing and maintaining uniform standards, by notification in the Official Gazette, prescribe a Standard Code providing for the classification, manner and mode of selection andappointment, absorption of teachers and employees rendered surplus, reservation of posts in favour ofmembers of the Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribesand Other Backward Classes, duties workload, pay, allowances, post retirement benefits, other benefits,conduct and disciplinary matters and other conditions of service of the officers, teachers and otheremployees of the universities and the teachers and other employees in the affiliated colleges andrecognised institutions (other than those managed and maintained by the State Government, CentralGovernment and the local authorities). When such Code is prescribed, the provisions made in the Codeshall prevail, and the provisions made in the Statutes, Ordinances, Regulations and Rules made under this Act, for matters included in the Code shall, to the extent to which they are inconsistent with the provisions of the Code, be invalid."

[9] 2. Cadre of employees to whom these rules apply. (1) These rules will apply to the full time non teaching employees subject to the review of non teaching posts of the following 12 non agricultural universities and to the full time non teaching employees subject to the review of the non teaching posts in affiliated Non-Government Aided colleges other then those managed and maintained by the State Government and Local Authorities.

13. It is also necessary to take note of the fact that the All India Council for Technical Education ('AICTE' , for short) made Regulations dated 05.03.2010 in the purported exercise of the powers under Sections 10(1)(v) and 23(1) of the AICTE Act (52 of 1987). Those regulations deal with the pay scales and other service conditions of the teachers and other academic staff in technical institutions. ***Regulation 1***[10] makes it clear that these regulations are applicable only to the teachers and other academic staff of technical institutions. In other words, the regulations have no application to the non-teaching staff employed in the technical institutions though such technical institutions are run with the approval and under the superintendence of AICTE.

14. It is in the background of the abovementioned rules and regulations the correctness of the judgment impugned in these appeals is required to be examined.

15. By the impugned judgment, the Bombay High Court (Aurangabad Bench) disposed of four writ petitions, viz. writ petitions no.11091/2010, 8780/2010, 2035/2011 and 4443 /2009. We are only concerned with the impugned judgment insofar as it dealt with the writ petitions no.11091/2010, 8780/2010 and 2035/2011 because these appeals before us are directed only against those writ petitions.

16. There are numerous prayers in each of the writ petitions. It may not be necessary to extract all the prayers. But from the impugned judgment the main reliefs claimed in these three writ petitions and granted (insofar as they are relevant) can be culled out.

17. Writ Petition No.11091/2010 was filed by the "teaching and non-teaching staff of the engineering college" at Aurangabad run by the 1st appellant. The main prayer is for recovery of the amount in respect of the pay scales fixed by the Fifth Pay Commission and for the implementation of the pay scales fixed by the Sixth Pay Commission. The High Court declined to grant any relief with respect to the Fifth Pay Commission on the ground of laches but allowed the petition insofar as it prayed for the implementation of the pay scales fixed by the ***Sixth Pay Commission***[11]**.**

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[10] *1. Short Title, Application and Commencement.*

1.1 These Regulations may be called the All India Council for Technical Education (Pay Scales, Service Conditions and Qualifications for the Teachers and other Academic staff in Technical Institutions (Degree) Regulations, 2010.

1.2 They shall apply to technical institutions and Universities including deemed Universities imparting technical education and such other courses/programs and areas as notified by the Council from time to time.

[11] *See paras 25 and 29(ii) of the impugned judgment*

18. Writ Petition No.8780/2010: It was filed by the "non-teaching staff" of the Engineering College, Nanded run by the 1st appellant herein. They prayed that the management be directed to implement the Fourth, Fifth and Sixth Pay Commission Reports w.r.t. the petitioner/non-teaching staff. The High Court directed that the pay scales suggested by the Sixth Pay Commission for the non-teaching ***staff be given***[12]**.**

19. Writ Petition No.2035/2011: The prayer in this writ petition (filed by a lone petitioner) is for the implementation of the revision in the pay scales in terms of the Fourth, Fifth and Sixth Pay Commission Reports. The High Court opined that relief could be granted only with reference to the Sixth Pay Commission Report but not the other two Pay Commission Reports in view of ***laches***[13]**.**

20. Hence, these appeals by the employers.

21. Before we proceed to examine the correctness of the judgment under appeal and the various grounds on which the same is challenged, we think it appropriate to note the reasons given by the High Court for the conclusion reached by it.

22. The relevant paragraph containing "reasons" for the decision is para 17 of the impugned judgment.

> "17. A copy of G.R. dated 4.2.1999 issued by the State Government under section 8 of the Maharashtra Universities Act, 1994 shows that from 1.1.1996 the State Government provided Standard Code of 1999 and it made changes in the Standard Code Rules of 1984. The pay scales came to be revised for non-teaching staff of non-agricultural universities of Maharashtra and also for non-teaching staff working in affiliated colleges and recognised institutions. A copy of notification issued by the State Government on 7.10.2009 shows that another revision of pay scales was done with effect from 1.1.2006. This time it was specifically mentioned that the G.R. was issued for non teaching staff working in ·universities and colleges receiving grants-in-aid from the ^Government. The aforesaid G.Rs. and Standard Code Rules 1984 show that both aided and unaided colleges must have hierarchical structure of clerical staff/administrative staff as provided in Standard Code Rules. In view of Rules 16(2) of Rules of 1984, it further follows that the time-scale of such staff and allowances shall be as prescribed by the State Government and as revised by the State Government from time to time. After every 10 years the State Government revises the pay scales and G.Rs. are issued in that regard. Though the notification or G.Rs. of year 2009 now cover the aided institutions, they are for the purpose of showing financial liability of the State Government. As in view of Rule 16(2) of Rules of 1984, such policy decision changes the pay scales of different classes of staff

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[12] *See paras 26 and 29(iii) of the impugned judgment*
[13] *See para 27 of the impugned judgment*

provided in 1984 Rules, the scales automatically apply to unaided institutions also, though they are not specifically mentioned in the G.R. These institutions are also covered under the State Legislature and so they are bound by the policy decision taken by the State in this regard."

23. The service conditions of the non-teaching employees of the affiliated colleges in the State of Maharashtra were earlier governed by a set of Rules known as the Maharashtra Non-Agricultural Universities and Affiliated Colleges Standard Code (Terms and Conditions of Service of Non-teaching employees) Rules, 1984 (hereafter "1984 Rules").

24. In exercise of the power under Section 8(3) of the Maharashtra Universities Act, the Government of Maharashtra made Rules known as the Maharashtra Non-Agricultural Universities and Affiliated Colleges Standard Code (revised pay of non-teaching employees) Rules, 1999 (hereafter "1999 Rules"). Under Rule 12 of the said Rules it is provided as follows:

> "Rule 12. Overriding Effect of Rules: The provisions of the Maharashtra Non-Agricultural Universities and Affiliated Colleges Standard Code (Terms and Conditions of Non-Teaching Employees) Rules, 1984, shall not, save as otherwise provided in these rules, apply to cases where pay is regulated under these rules, to the extent they are inconsistent with these rules."

25. Though it is a little difficult to interpret the meaning of the highlighted portion of the Rules in terms of the settled principles of the Interpretation of the Statutes, having regard to the context we believe that the Rule maker intended to declare that the 1984 Rules insofar as they are inconsistent with the 1999 Rules should give way to the latter. In other words, the 1984 Rules are not totally repealed. They still operate if they are not inconsistent with the 1999 Rules.

26. The 1999 Rules provided for the revision of the pay scales of the non-teaching ***employees***[14] of the non-agricultural universities and affiliated colleges. They did not make any distinction between employees of aided affiliated colleges and non-aided affiliated colleges. They apply uniformly to both categories of affiliated ***colleges***[15]**,** while specifically excluding

[14] *"Government of Maharashtra hereby makes the rules prescribing the Standard Code providing for the revised pay scales of the non-teaching employees…"*

[15] *"Rule 2: Categories of employees to whom the rules apply*
(i) These rules shall apply to all full-time non-teaching employees of the Non-Agricultural Universities and affiliated colleges, other than those managed and maintained by the State Government and local authorities, appointed on time-scale of pay
(ii) These rules shall not apply to
(a) Employees not in the whole time employment
(b) Employees on consolidated rates of pay
(c) Employees appointed on contract except where the contract provides otherwise
(d) Employees paid out of contingencies
(e) Daily rated employees
(f) Employees who retired on or before 31st December, 1995 and who were on re-employment on that date including those whose period of re-employment extended after that date"

certain classes of employees.

27. In the year 2009 the Government of Maharashtra framed another set of Rules known as Maharashtra Non-Agricultural Universities and Affiliated Colleges Standard Code (Non Teaching Employees Revised Pay) Rules, 2009 (hereafter "2009 Rules"). Rule 17 of the said Rules reads as follows:

> "Rule 17. The overriding effect of rules- Barring unless otherwise provided for in these rules in cases where pay has been regulated as per these rules the provisions in the Maharashtra Non-Agricultural Universities and Affiliated Colleges Standard Code (Service and Conditions of the non-teaching employees) Rules, 1984 if inconsistent with these rules then would not apply up to that limit."

28. The language of the Rule once again suffers from the same problem as its predecessors. The drafting of the Rules leaves much to be desired. Giving due allowance for the inelegance of language and bad drafting, we are of the opinion that Rule 17 declares that 2009 Rules override the 1984 Rules but makes no reference to the 1999 Rules.

29. If the content of the 1999 Rules is in any way inconsistent with the 2009 Rules, to the extent of the inconsistency the 2009 Rules ought to prevail over the 1999 Rules. Because one of the settled principles of interpretation is that if there is any inconsistency between two laws made by the same law making body at different points of time dealing with the same subject matter, the latest declaration of law would operate. It is for the first time under Rule 2 of the 2009 Rules the applicability of the revised pay scales is limited to the affiliated non-government aided colleges.

> "Rule 2- Cadre of employees to whom these rules apply:
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> 1. These rules will apply to the full time non teaching employees subject to the review of non teaching posts of the following 12 non agricultural universities and to the full time non teaching employees subject to the review of the non teaching posts in affiliated Non Government Aided colleges other then [sic] those managed and maintained by the State Government and Local Authorities."

However, according to the ***High Court*** [16], from Rule 16(2) of the 1984 Rules, "it ... follows ... that the time scale of" the non-teaching staff and "... allowances shall be as prescribed by the State Government and as revised by the State Government from time to time" and "As in view of Rule 16(2) of Rules of 1984, such policy decision changes the pay scales of different classes of staff provided in 1984 Rules, the scales automatically apply to unaided institutions also, though they are not specifically mentioned in the G.R. These institutions are also covered under the State Legislature and so they are bound by the policy decision taken

[16] *See Para 17 of the Judgment*

by the State in this regard." – Some logic!

30. We hasten to add that the incoherence of the reasoning adopted by the High Court need not necessarily mean that the judgment under appeal is unsustainable. We, therefore, proceed to examine the legal rights of the parties on the basis of the material available on record.

31. To determine the correctness or otherwise of the judgment under appeal, it is required to examine the legal right of the teaching and other academic staff on one hand and the non-teaching staff on the other hand of the two unaided engineering colleges administered by the 1st appellant to receive pay in terms of the recommendations of the Pay Commission set up by the Union of India.

32. Before we deal with the rival submissions made before us, we deem it profitable to capture the Scheme of educational system and employment herein under the Constitution of India.

33. Importance of the role of education in the life of human beings is well known to the society which invented the concept of 'Zero'. Even the colonial Rulers established educational institutions and encouraged the establishment of educational institutions by non-state actors by introducing a system of supporting them by providing financial aid to some extent. The very fact that the makers of the Constitution of India chose to refer to "aid out of State funds" to educational institutions in ***Article 29(2)***[17] and "aid to educational institutions" in ***Article 30(2)*** [18], is proof of the fact that the makers of the Constitution took note of the need to financially support educational institutions established even by non-state actors.

34. Education is one of the most vital elements for preservation of the democratic system of Government. The Supreme Court of America in *Wisconsin v. Yoder*[1], observed:

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[17] *Article 29. Protection of interests of minorities.—(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same. (2) No citizen shall be denied admission into any educational institution maintained State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.*

[18] *Article 30. Right of minorities to establish and administer educational institutions.—(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. (1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shallensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause. (2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language"*

> " ... some degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence. ..."

35. Education becomes a basic tool for individuals to lead an economically productive life. An economically productive life of the individual not only improves the quality of life of the individual and his family but also contributes to some extent to the benefit of the society at large. Production of goods and services to a large extent depend upon the availability of technically qualified human resources. Technical education therefore has the potential to directly contribute to the economic prosperity of a technically qualified individual as well as the society.

36. This Court in *Unni Krishnan,, J.P. & Others v. State of Andhra Pradesh & Others*[2], took note of the fact that "education is the second highest sector of budgeted expenditure after the defence" and also that it constitutes "3 per cent of the Gross National Product is spent in ***education"*** [19] **.**

37. This Court took note of the mandate of ***Article 41*** [20] "to illustrate the content of the right to education flowing from Article 21" and the fact that "the right to free education is available only to children until they complete the age of 14 years. Thereafter, the obligation of the State to provide education is subject to the limits of its economic capacity and development". Finally, this Court held that "the right to education is implicit in the right to life because of its inherent fundamental importance" and therefore an aspect of Article 21 of the Constitution. Parliament endorsed the conclusion of this Court and amended the Constitution to make an express declaration of the fundamental right to education by inserting Article 21A.

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[19] *Para 180. Before proceeding further, we think it right to say this: We are aware that "education is the second highest sector of budgeted expenditure after the defence. A little more than three per cent of the Gross National Product is spent in education", as pointed out in para 2.31 of Challenge of Education. But this very publication says that "in comparison to many countries, India spends much less on education in terms of the proportion of Gross National Product" — and further "in spite of the fact that educational expenditure continues to be the highest item of expenditure next only to defence the resource gap for educational needs is one of the major problems. Most of the current expenditure is only in the form of salary payment. It hardly needs to be stated that additional capital expenditure would greatly augment teacher productivity because in the absence of expenditure on other heads even the utilisation of staff remains low." We do realise that ultimately it is a question of resources and resources-wise this country is not in a happy position. All we are saying is that while allocating the available resources, due regard should be had to the wise words of the Founding Fathers in Articles 45 and 46. Not that we are not aware of the importance and significance of higher education. What may perhaps be required is a proper balancing of the various sectors of education.*

[20] *Article 41. Right to work, to education and to public assistance in certain cases.—The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. By the Constitution 86th Amendment Act 2002 w.e.f. 01-04-2010.*

38. Education is an important factor for maintaining democracy and the economic well-being of the society. Therefore, the Constitution of India bestows considerable attention to the field of education. It recognizes the need for regulating the various facets of activity of education and also the need for not only establishing and administering educational institutions but also providing financial support for the educational institutions run by private / non-state actors.

39. A brief sketch of the development of the system of college education in this country would certainly help to understand the problem on hand. Establishment of colleges imparting education based on the ***English Education System***[21] predated the establishment of universities in this country. Colleges were and are still being established by individuals, societies, trusts, etc. (hereinafter collectively referred to as "non-State actors") apart from the Governments or other instrumentalities of State. ***Universities were established in the provinces***[22] of British India in imitation of London University as it then was. They all began as purely examining bodies with the ***power to confer degrees***[23]. They were not teaching universities. In 1902, the Indian Universities Commission was appointed. It was followed by the Indian Universities Act, 1904. Under Section 3 of the Act, Universities were enabled to ***instruct students***[24]. Sections 20 and 21 thereof authorized the Universities to affiliate colleges. While Sec. 20 declared that colleges affiliated to any University prior to the 1904 Act "continue to exercise the rights conferred upon it by such affiliation", Section 21 provided for the grant of affiliation by the university upon an application by a college (obviously not earlier affiliated to the university) and matters incidental thereto. Section 19 of the said Act declared that "....no person shall be admitted as a candidate at any University examination unless he produces certificate from a College affiliated to the University, ... that he has completed the course of instruction prescribed by regulation".

[21] *Thomas Babington Macaulay's Minute of 1835 gave the impetus for introducing English educational system in India.*

[22] *Universities of Madras, Bombay and Calcutta are the earliest Universities established in 1857 by different enactments specifically made for the purpose of establishing Universities. Certain amendments were made to those various enactments by the Universities Act 1904.*

[23] *"…the modern universities were established, more than a hundred years ago, as exotic institutions created in imitation of the London University as it then was. The earliest of these were the Universities of Bombay, Calcutta and Madras – all founded in 1857 – and the University of Allahabad, founded in 1887. They all began as purely examining bodies and continued to be so till the opening of the present century when the Indian Universities Commission was appointed (1902) and the Indian Universities Act was passed (1904). As Lord Curzon observed: 'How different is India! Here the university has no corporate existence in the same (i.e., as in Oxford or Cambridge) sense of the term; it is not a collection of buildings, it is scarcely even a site. It is a body that controls courses of study and sets examination papers to the pupils of affiliated colleges. They are not part of it. They are frequently not in the same city, sometimes not in the same province (Lord Curzon in India, Vol. II, p.35). The Government Resolution on Educational Policy (1913) accepted the need for establishing more universities. It said 'The day is probably far distant when India will be able to dispense altogether with the affiliating universities. But it is necessary to restrict the area over which the affiliating universities have control by securing, in the first instance, a separate university for each of the leading provinces in India and secondly to create new local teaching and residential universities within each of the provinces in harmony with the best modern opinion as to the right road to educational efficiency…." (Kothari Commission Report at page 275)*

[24] *Section 3. The University shall be ……..incorporated for the purpose (among others) of making provision for the instruction of students,…..*

40. Over a period of time, prior to the advent of the Constitution, number of Universities came into existence in various parts of the country. Each of them was created either by or under a statute. After the advent of the Constitution by virtue of the power under Article 246 read with Entry 32 of List II of the Seventh Schedule legislative competence to establish universities vested ***exclusively***[25] with the State Legislatures. Many universities came to be established by or under various enactments made by the different State Legislatures. There is a discernible pattern in the scheme of all these enactments. Each of these enactments prohibits the conferment of any degree on any person by any body other than by the University. Universities are authorised to (i) establish teaching colleges, (ii) grant affiliation to colleges established by non-State actors. Correspondingly, colleges established by non-State actors are obliged to secure affiliation to the Universities. Affiliated colleges are permitted to train students for examinations to be conducted by the University (to which college is affiliated) for the purpose of the conferment of degrees in a given discipline. Universities are vested with considerable power to regulate the administration of the affiliated colleges. In exercise of such power, Universities have been making subordinate legislation stipulating the terms and conditions subject to which colleges could be administered and seek affiliation, etc.

41. Under the Constitution of India, both the Parliament and the Legislative Assemblies of the States are conferred with the power to legislate upon various aspects of education. The power to legislate with respect to the field of education vested basically with the State Legislatures under Article 246 (3) read with Entry 11 of List II of the Seventh Schedule as it stood prior to the Constitution 42nd Amendment. Parliament is exclusively authorised under Article 246(1) to make laws with respect to various educational institutions specified under ***Entries 63 to 66***[26] (both inclusive) of List I.

42. Original Entry 25 of the List III indicated the concurrent field of legislative authority (of the Parliament as well as the State Legislature) with reference to certain aspects of the education came to be ***substituted***[27]**.**

43. By the 42nd amendment of the ***Constitution, Entry 11 of List II***[28] was omitted and

[25] *Exceptions being Article 371 E "371E. Establishment of Central University in Andhra Pradesh - Parliament may by law provide for the establishment of a University in the State of Andhra Pradesh" and the educational institutions mentioned in Entries 63 to 66*

"63. The institutions known at the commencement of this Constitution as the Benares Hindu University, the Aligarh Muslim University and the Delhi University; the University established in pursuance of article 371E; any other institution declared by Parliament by law to be an institution of national importance.

64. Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance.

65. Union agencies and institutions for—

(a) professional, vocational or technical training, including the training of police officers; or

(b) the promotion of special studies or research; or

(c) scientific or technical assistance in the investigation or detection of crime.

66. Co-ordination and determination

[26] *See Footnote No. 25*

[27] *Entry 25 of List III prior to the 42nd Amendment. – "Vocational and technical training of labour."*

[28] *Entry 11 of List II prior to the 42nd Amendment. – "Education including universities, subject to the provisions of entries 63, 64, 65 and 66 of List I and entry 25 of List III."*

Entry 25 of List III was substituted. Entire field of legislation with regard to education became the subject matter of Concurrent List. Entry 25 now reads:

> "Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour."

44. The availability of such legislative authority to the States (both before and after the 42nd Amendment) necessarily carried with it co-extensive executive authority which authorised the States to establish and administer colleges.

45. Parliament also made laws exercising its exclusive authority over the field indicated under Entries 63, 64 and 65 of List I of the Seventh Schedule to the Constitution. By the said laws, educational institutions were established and their administration was entrusted to either the Government of India or some other authority

46. Entry 32 of List II of the Seventh Schedule indicates that State legislatures have exclusive legislative competence to make laws dealing with "incorporation, regulation and winding up of universities". In exercise of such legislative authority, laws are made by the State Legislatures bringing into existence Universities.

47. Various non-state actors including minorities established large number of colleges and other educational institutions in this country, both before and after the advent of the *Constitution*[29] (spanning over a period of about 200 years). Certain aspects of establishment and administration of colleges by non-state actors have always been regulated by the legislature. Various enactments (by or under which universities are established) command that colleges should secure affiliation to an appropriate university. However, after the 42nd Amendment, Parliament also became competent to regulate the activity of education. Some of the laws made by the Parliament do regulate. The All India Council for Technical Education Act (AICTE Act) is one such.

48. Employment is essentially a contractual relationship between the employer and the employee. Employment in colleges could be employment by State, or its instrumentalities or by non-state actors, because there exist colleges conducted either by State or its instrumentalities or non-state actors. Therefore, the nature of the legal relationship of employment varies depending upon the employer.

49. The basic norms (employment under State) are regulated by the Constitution. The Constitution guarantees equality of opportunity in the matter of public employment ***under Article 16***[30]**.** Article 309 declares that the appropriate legislature may regulate the

29 Article 30 confers a fundamental right on (minorities both religious and linguistic non-state actors) to establish and administer educational institutions of their choice

30 Article 16. Equality of opportunity in matters of public employment. -- (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or any State. The appropriate legislature would be Parliament in the context of employment under the Government of India and the concerned State Legislature in the context of employment under any of the States within Union of India. Article 311 stipulates that no civil servant employed either by the Government of India or by any State shall either be dismissed or removed from the service except in accordance with the procedure stipulated thereunder. Therefore though employment even by State is essentially contractual relationship, such relationship is encumbered by the legal obligations emanating from the provisions of the Constitution and laws made thereunder. It is in the context of these constitutional provisions that this Court had repeatedly held that employment under State is a matter of status but not a matter of contract.

50. Employment under the various instrumentalities of State, either statutory or non-statutory, is also subject to the discipline of Article 14 of which Article 16 is only a facet. This Court in innumerable cases held that though Part XIV of the Constitution (wherein Article 309 etc. occur) is not applicable to such employment, some of the principles underlying the provisions of Part XIV still govern the employment under the instrumentalities of the ***State***[31]**.**

51. The expression 'education' occurring under Entry 25 of List III to the Seventh Schedule of the Constitution takes within its sweep the authority to legislate with respect to every aspect of education including establishment and administration of educational institutions such as schools, colleges etc. Administration of an educational institution has mainly two facets (i) imparting of knowledge, and (ii) maintaining the necessary infrastructure for providing the venue and other facilities for imparting of knowledge. To perform the twin functions, manpower is required. Such manpower consists of two classes of persons, teaching staff and non-teaching staff.

52. Therefore Entry 25 must necessarily take within its sweep inter alia the power to regulate the activity of employment by educational institutions, whether they are established by the State, or its instrumentalities or non-State actors.

53. In view of the fact Entry 25 occurs in the Concurrent List of the Seventh Schedule, both the Parliament and State legislatures are competent to make laws regulating inter alia the establishment and administration of colleges either by the governments (Union or State) or their instrumentalities or by non-State actors (private sector).

54. As of now, there is no law made by the Parliament regulating the entire activity of education either in public sector or private sector. Only certain areas of education such as medical education and technical education in some of the aspects are regulated by the laws made by the Parliament. For the purpose of the present case we are only concerned with technical education. AICTE Act is the relevant law made by the Parliament in the context of the present case.

[31] *Managing Director, ECIL, Hyderabad & Others v. B. Karunakar & Others (1993) 4 SCC 727*

55. The following principle submissions are made by the appellants:

> "(i) The rights and obligations arising out of the relationship of employment between the appellants and their employees (whether teaching or non-teaching) is purely contractual. Such rights and obligations can be modified by law. But there is no statutory obligation (law) compelling the appellant to pay anything more than what is agreed to at the time of employing each one of the employees. According to the appellants, there is no law which obliges the appellants to pay the salaries and other allowances to its employees whether teaching staff or non-teaching staff in accordance with the pay structure recommended by the Sixth Pay Commission.
>
> (ii)A law creating such statutory obligation must be express.
>
> (iii)2009 Rules made under Section 8(3) of the Maharashtra Universities Act, 1994 only deal with the service conditions of the non-teaching employees that too of aided colleges. Therefore, the appellant which is an unaided college cannot be compelled to pay the salary and other allowances to its employees in terms of the recommendations of the Sixth Pay Commission in the absence of any express statutory obligation to make such payment.
>
> (iv)The AICTE Regulations dated 05.03.2010 though textually apply to the teaching and other academic staff etc. imparting technical educations in the technical institutions and universities do not ipso facto apply to the institutions governed by the respective State legislations dealing with ***education and universities*** [32]**.**
>
> (v) The AICTE Act does not authorize the AICTE to regulate the service conditions of the employees of technical institutions."

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[32] *Written Submissions of the Appellants:*
Para 25. That is why the AICTE notification dated 05.03.2010 itself even in the context of central funding, preserves the authority of the state Government to extend the notification to institutions falling within the State legislations. This is on the premise that the conditions of service of employees of institutions governed by university legislations is a matter to be dealt within the terms of such a legislation.
Para 26. It is, therefore, submitted that AICTE notification does not ipso-facto become applicable to all and every institutions governed by respective State legislation dealing with education and universities.
Para 27. Conditions of service of employees, even though matters of contract can still be regulated by law. Such a law can fall under entry ‑ 25 List III. But the law must expressly deal with such subject and not by any implication. As the law stands today private unaided institutions as far as various aspects of education are concerned including the aspect of conditions of service are governed only and exclusively by legislation relating to universities.
Para 28. As the Government of Maharashtra has not exercised its statutory power under
sub-section (3) of section 8 of the 1994 Act and since the notification issued by it on 25.08.2010 omits to deal with private unaided institutions, they cannot be compelled to abide by AICTE notification. It is well settled that the writ of mandamus is not a creative writ but only enforces statutory duties or rights.
Para 29. The issue of conditions of service of employees within the scope of universities
legislation can always be dealt with in terms with such a law in the absence of any such determination by the State Government, on principles of parity alone, the court will not issue a writ of mandamus.

56. On the other hand, it is submitted on behalf of the respondents-employees that once the State Government decided to accept the suggestion of the Government of India to extend the benefits of the Sixth Pay Commission to the employees of the various educational institutions falling under the purview of the State Legislature, the State Government is not justified in directing the revision of the pay scales of only the employees of those institutions which are either directly under the control of the State Government or its instrumentalities and private aided institutions. The non- extension of the same benefits to the employees of the unaided educational institutions which otherwise function under the control and supervision of the State Government would be a dereliction of the Constitutional mandate under ***Article 38*** [33] ***and Article 39(d)***[34] and violative of Article 14 on the ground that the law is 'under inclusive'. In other words, it makes an artificial classification between the teaching and non-teaching staff of the educational institutions and further between the employees of aided and unaided educational institutions without there being any nexus between such classification and the purpose sought to be achieved by the pay revision.

57. We shall now examine the various submissions mentioned above.

58. The source of the rights, if any, of the employees * of the appellants to receive pay and allowances in terms of the recommendations of the Sixth Pay Commission is first required to be identified.

59. The Sixth Pay Commission appointed by the Government of India is only a body entrusted with the job of making an assessment of the need to revise the pay structure of the employees of the Government of India and to suggest appropriate measures for revision of the pay structure. The recommendations of the pay commission are not binding on the Government of India, much less any other body. They are only meant for administrative guidance of the Government of India. The Government of India may accept or reject the recommendations either fully or partly, though it has never happened that the recommendations of the pay commission are completely rejected by the Government so far.

[33] *Article 38. State to secure a social order for the promotion of welfare of the people-- (1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a socialorder in which justice, social, economic and political, shall inform all the institutions of the national life.*

(2) The State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongstgroups of people residing in different areas or engaged in different vocations.

[34] *39. Certain principles of policy to be followed by the State -- The State shall, in particular, direct its policy towards securing—*

xxx xxx xxx

(d) that there is equal pay for equal work for both men and women;
We have already taken note of the fact that the writ petitioners (respondents herein), employees of theappellants fall into two categories i.e. teaching staff and non-teaching staff.

60. Once the Government of India accepted the recommendations of the pay commission and issued orders signifying its acceptance, it became the decision of the Government of India. That decision of the Government of India created a right in favour of its employees to receive pay in terms of the recommendations of the Sixth Pay Commission and the Government of India is obliged to pay.

61. The fact that the Government of India accepted the recommendations of the Sixth Pay Commission (for that matter any pay commission) does not either oblige the States to follow the pattern of the revised pay structure adopted by the Government of India or create any right in favour of the employees of the State or other bodies falling within the legislative authority of the State. The Government of India has no authority either under the Constitution or under any law to compel the States or their instrumentalities to adopt the pay structure applicable to the employees of the Government of India.

62. The Government of India decided to extend the benefit of revised pay scales to the employees of various central universities etc. on the basis of the recommendations of the University Grants Commission - a statutory body. While accepting the recommendations of the UGC, the Government of India chose to extend the benefit of revised pay scales only to the teachers and other equivalent cadres of Library and Physical Education etc. in all the Central Universities and Colleges thereunder etc. The Government of India was not oblivious of the fact that various other categories of employees are working with those institutions. Therefore, it made a specific mention in the Scheme dated 31.12.2008 that though the Scheme did not extend to the cadres of Registrar, Finance Officer, Controller of Examinations etc., the revision of pay scales of such categories of employees was in contemplation.

> "Scheme of the Government of India
>
> [Extract from Letter dated 31.12.20018:
>
> (ii)This Scheme does not extend to the cadres of Registrar, Finance Officer and Controller of Examinations for which a separate Scheme is being issued separately.
>
> (iii)This Scheme does not extend to the Accompanists, Coaches, Tutors and Demonstrators. Pay and Grade Pay of the said categories of employees shall be fixed in the appropriate Pay Bands relative to their existing Pay in each university/institution corresponding to such fixation in respect of Central Government employees as approved by the Central Government on the basis of the recommendations of 6th Central Pay Commission.
>
> (iv)This Scheme does not extend to the posts of professionals like System Analysts, Senior Analysts, Research Officers etc. who shall be treated at par with similarly qualified personnel in research/scientific organizations of the Central Government."

63. The Government of India's decision to extend the revised pay scales even to the employees of the various educational institutions established and administered by it or its instrumentalities, is a policy choice of Government of India.

64. However, after adopting such a policy the Government of India thought it fit to suggest to the States by its communication dated 31.12.2008 that the States may also adopt the policy of the Government of India if they so choose. As an incentive for the States to adopt the policy, the Government of India offered to undertake a substantial portion of the financial burden of the States resulting from the adoption of such policy. However, such an undertaking is limited only for a period of five years.

65. Accepting the offer made under the scheme of the Union of India, the State of Maharashtra issued the GR dated 12.8.2009 revising the pay scales of the cadres specified therein (essentially teaching staff) of the "universities' colleges and other higher educational institutions". By the said GR, the State of Maharashtra declared the revision of the pay scales of the teaching staff of the educational institutions. It is stated in the counter affidavit filed before this Court on behalf of the State:

> "3. I say that as things stand today, the Government of Maharashtra has taken a policy decision to implement the recommendations of 6th Pay Commission to teaching and non-teaching staff of government-run and government-aided educational institutions only.
>
> 4. I say that the Government of Maharashtra has not taken any policy decision and/or issued any Government Resolution in respect of implementation of the recommendations made by 6th Pay Commission for teaching and non-teaching staff in un-aided private educational institutions. ..."

However, the universities were directed by the GR dated 12.08.2009 to make appropriate amendments to the relevant subordinate legislative instruments of the various universities to provide, in the opinion of the State, requisite legal framework for the implementation of such policy decision. Whether such amendments are really required is a separate issue. In view of the power under Section 8(3) of the Maharashtra Universities Act authorizing the State to make rules dealing with the various aspects of the service of the employees of the universities and other educational institutions, the authority, if ***any***[35]**,** of the universities to deal with the said subject would cease the moment the State Government chooses to make Rules. In view of the elaborate provisions in the G.R. dated 12.08.2009 stipulating the pay scales of the teaching staff of the educational institutions, any further directions to the universities to make amendments to the relevant subordinate legislative instruments is wholly redundant.

66. Order No.214 of the Vice-Chancellor dated 29.08.2009, purports to have been issued in exercise of the power conferred on the Vice-Chancellor under Section 14(8) of the Maharashtra Universities Act, 1994. Section 14(8) reads as follows:

> "Section 14. Powers and duties of Vice-Chancellor– (8) Where any matter is required to be regulated by the Statutes, Ordinances or Regulations, but no Statutes, Ordinances or Regulations are made in that behalf the Vice-Chancellor may, for the time being, regulate matter by issuing such directions as he thinks necessary, and shall, at the earliest opportunity thereafter, place them before the Management Council or other authority or body concerned for approval. He may, at the same time, place before such authority or body for consideration the draft of the Statutes, Ordinances or Regulations, as the case may be, required to be made in that behalf."

67. From the language of sub-section (8) to Section 14, the Vice-Chancellor could have issued such order if only the Universities Act authorised making of Statutes, Ordinance or Regulations dealing with the service conditions (including pay-scales) of the employees of the affiliated colleges. No specific provision under the said Act which authorised making of either Statutes, Ordinance or Regulations dealing with the service conditions including the pay-scales of the employees of the affiliated colleges is brought to our notice. On the other hand, Section 8(3) expressly authorises the State Government to make rules with respect to the service conditions of the employees (teaching and non-teaching staff) of the affiliated colleges. Therefore, in our opinion, the order of the Vice-Chancellor dated 29.08.2009 is superfluous and without any authority of law.

68. We are now left only with the GR dated 12.08.2009 which laid down the policy of the Government of Maharashtra to adopt the pay-scales stipulated by the Government of India in its Scheme dated 31.12.2008 insofar as the teaching staff of the various affiliated colleges are concerned and the rules framed by the Government of Maharashtra dated 07.10.2009 in exercise of the power under Section 8(3) insofar as the non-teaching staff are concerned.

69. While the GR dated 12.08.2009 is specific in its declaration that the elaborate Rules contained therein dealing with the pay scales of the various cadres of the teaching staff of the educational institutions mentioned therein, it does not make any distinction between aided and un-aided colleges. However, the GR does not purport to be one made in exercise of the power under Section 8(3) of the Universities Act. It is agreed on all hands at the Bar that the expression "Government Resolution" in the Maharashtra Administrative jargon means a decision taken either in exercise of the authority of the State under Article 162 of the Constitution of India or in exercise of the authority under some statutory provision. No doubt the GR does not refer to the source which authorises the exercise of the power for revising the pay scales of the teaching staff of the various educational institutions mentioned therein. The mere absence of the recital of the source of power in our opinion cannot determine the legal status of the instrument or deprive the instrument of its efficacy.

[35] *We say "if any" only because we have neither examined the complete scheme of the Maharashtra Universities Act, nor any submission made by any one of the parties - with regard to the competence of the University or its authorities to regulate the service conditions of the employees of the affiliated colleges whether aided or not.*

70. The difference between the authority of the State flowing from Article 162 of the Constitution or Section 8(3) of the Maharashtra Universities Act is two-fold. Firstly, the statutory authority under Section 8(3) could be abrogated anytime by the legislature while the constitutional authority under Article 162 cannot be abrogated by the State Legislature. Secondly, the procedural requirements for the exercise of the power vary depending upon the nature of the source of the power, but the existence of power itself cannot be doubted.

71. In our opinion, the GR dated 12.8.2009 can be safely construed to be one made in exercise of the power under Section 8(3) of the Universities Act conferring a legal right on the teaching staff of the affiliated colleges irrespective of the fact whether they are aided or not.

72. The colleges run by the appellants are admittedly colleges affiliated to the Universities functioning under the Act. Therefore, their teaching staff would be entitled to the revised pay scales in terms of the G.R. dated 12.08.2009.

73. Coming to the non-teaching staff working in the colleges run by the appellant, the Rules of 2009 purport to be the rules revising the pay-scales of the non-teaching staff of only the affiliated aided colleges. Therefore, textually the colleges administered by the appellants are not governed by the rules. However, the question - whether such Rules are sustainable in view of the mandate of Article 14 of the Constitution of India that "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India" is required to be examined. If the answer to the question is in the negative, the further question would be what would be the legal remedy available to the aggrieved persons.

74.At the outset, it must be remembered that the 1999 Rules, which extended the 5th pay commission recommendations to the non-teaching staff of the affiliated colleges, did not make any distinction between the aided and un-aided colleges. For the first time, that classification is sought to be made under the 2009 Rules. No doubt aided and un-aided colleges ostensibly fall under two separate categories. But for the purpose of Article 14, every classification does not automatically become permissible. Second requirement of the doctrine of reasonable classification is that such classification must bear a nexus to the objects sought to be achieved. Therefore, the object sought to be achieved by the 2009 Rules is required to be identified and that it is required to be examined whether the classification made bears any reasonable nexus to such object.

75. The objects sought to be achieved by the periodic revision of the pay-scales is obviously to comply with the constitutional mandate emanating from Article 43 of the Constitution of India. If that is the object, we fail to understand the rationale behind the classification made by the State of the Maharashtra between aided and unaided colleges. People employed in educational institutions run by non-State actors are not treated any more kindly by the market forces and the economy than the people employed either by the Government or its

instrumentalities or institutions administered by non-State actors receiving the economic support of the State.

76. The very fact that the Government of India thought it fit to revise the pay scales of its employees and also thought it fit to accept the suggestions of the UGC to revise the pay scales of various Universities and other bodies whose maintenance expenditure is met by the UGC (in other words virtually by the Union of India), shows that the Government of India is completely convinced that there is a definite need to revise the pay scales of not only its employees, but also the employees of its instrumentalities. The fact that the Government of India made an offer to the States that the Government of India is willing to shoulder a substantial portion of the financial burden arising out of the adoption of revised pay scales in the event of the States choosing to adopt the revised pay scales, also indicates that the Government is fully convinced that having regard to various factors operating in the economy of the country there is a need to revise the pay scales of the personnel employed even by various States and their instrumentalities. Such a conclusion of the Union of India is endorsed by the State of Maharashtra. The decision of the State in issuing the two GRs revising the pay scales of the teaching staff of all the educational institutions and non-teaching staff of the aided educational institution is proof of such endorsement. Therefore, we see no justification in excluding the non-teaching employees of the unaided educational institutions while extending the benefit of the revised pay scales to the non-teaching employees of the aided educational institutions. Such a classification, in our opinion, is clearly violative of Article 14 of the Constitution of India.

77. Next, we need to examine the question, whether a constitutional court could compel the executive to exercise its statutory authority to make subordinate legislation in a manner which would be consistent with the command of Article 14 and other provisions of the Constitution. In the alternative, whether the executive could be compelled to ignore the letter of law and enforce the law even against bodies which are not covered by the text of the subordinate legislation either by an injunctive or declaratory relief.

78. If a law (whether primary or subordinate legislation) is found to be untenable on the touchstone of Article 14 by the constitutional court, one clear option for a constitutional court is that it can declare such law to be unconstitutional and strike down the law. But, striking down a law, which confers some benefit on a class of people ignoring others who are otherwise similarly situated in our opinion is not to be done as a matter of course. If the benefit sought to be conferred by such a law is not repugnant to the directive principles of the State policy, striking down the same would virtually amount to throwing away the baby with bath water. The doctrine of equality has many a facet. Law laid down by this Court on the interpretation of Article 14 in the last 70 years illuminated some of them. In a series of judgments commencing from *E.P. Royappa v. State of Tamil Nadu & Another*[3], the orientation of this Court in dealing with article 14 has been dynamic. Justice Mathew in his dissenting Judgment in *Bennett Coleman & Co. and Others v. Union of India*

and ***Others,*** [36] very precisely identified the question, which this Court should address while interpreting Article 14:

> "The crucial question today, as regards Article 14, is whether the command implicit in it constitutes merely a bar on the creation of inequalities existing without any contribution thereto by State action.
>
> His Lordship went on to say:
>
> It has been said that justice is the effort of man to mitigate the inequality of men. The whole drive of the directive principles of the Constitution is toward this goal and it is in consonance with the new concept of equality."

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[36] *Para 162. It has been said that in the scheme of distribution of news- print, unequals have been treated equally and therefore, the Newsprint Policy violates Art' 14 of the Constitution. To decide this question regard must be had to the criteria to be adopted in distributing the material resources of a community. Arguments about equality in this sphere are really arguments about the criteria of relevance. The difficulties involved in developing such criteria have occupied philosophers for centuries. Despite the refinements that distinguish the theories of various philosophers, most such theories represent variations on two basic notions of equality : numerical equality and proportional equality. The contrast between the two notions is illustrated by the difference between the right to an equal distribution of things and the equal- right with respect to a distribution of such things. According to the former, each individual is to receive numerically identical amounts of the benefit being distributed or the burden imposed in the public sector, whereas the latter means only that all will receive the same consideration in the distributional decision, but that the numerical amounts distributed may differ. Proportional equality means equality in the distribution according to merit or distribution- according to need (see Developments-Equal Protection). (2) But the Supreme Court of U.S.A. has departed froth this traditional approach in the matter of equality and has adopted a more dynamic concept as illustrated by the decision in Griffin v. Illinois(") and Douglas v. California. (4) In these cases it was held that the State has an affirmative duty to make compensatory legislation in order to make men equal who are really, unequal has undergone radical other words, the traditional doctrine that the Court is concerned with formal equality before the law and is not concerned to make men equal who are really unequal has under gone radical change in the recent years as illustrated by these cases. Justice Harlan dissented both in Griffin's case and Douglas' case and his dissenting opinion in the former case reveals the traditional and the hew approaches and also highlights the length to which the majority has, gone :*

"The Court thus holds that, at least in this area of criminal appeals, the Equal Protection Clause imposes on the States an affirmative duty to lift the handicaps flowing from differences in economic circumstances. That holding produces the anomalous result that a constitutional admonition to the States to treat all persons equally means in this instance that Illinois must give to some what is requires others to pay for.... It may as accurately be said that the real issue in this case is not whether Illinois has discriminated but whether it has a duty to discriminate."

Para 163. The crucial question today, as regards Art. 14, is whether the command implicit in it constitutes merely a ban on the creation of inequalities by the State, or, a command, as well, to eliminate inequalities existing without any contribution thereto by State action. The answer to this question, has already been given in the United States under the equal protection clause in the two cases referred to, in certain areas. The Court, in effect, has began to require the State to adopt a standard which takes into account the differing economic and social conditions of its citizens, whenever these differences stand in the way of equal access to the exercise of their basic rights. It has been said that justice is the effort of man to mitigate the inequality of men. The whole drive of the directive principles of the Constitution is toward this goal and it is in consonance with the new concept of equality. The, only norm which the Constitution furnishes for distribution of the material resources of the community is the elastic norm of the common good [see Art. 39 (b) 1] 1 do not think I can say that the principle adopted for the distribution of newsprint is not for the common good.

79. In a similar situation, a Constitution Bench of this Court has in *D.S. Nakara & Others v. Union of India*[5] adopted a more innovative procedure of directing the State to fill up the lacuna by extending the benefit uniformly to all the people who are otherwise similarly situated."

The facts of D.S. Nakara's case are:

> "5. On May 25, 1979, Government of India, Ministry of Finance, issued Office Memorandum No. F-19(3)-EV-79 whereby the formula for computation of pension was liberalized but made it applicable to government servants who were in service on March 31, 1979 and retire from service on or after that date ('specified date', for short) ..."
>
> 6.... Consequently those who retired prior to the specified date would not be entitled to the benefits of the liberalized pension formula."

This Court made an elaborate examination of the concept of pension and its legal implications; the obligations of State under the Constitution of India flowing from the directive principles and a host of other factors. The Court recorded a conclusion.

> "43. Further the classification is wholly arbitrary because we do not find a single acceptable or persuasive reason for this division. This arbitrary action violated the guarantee of Article 14. The next question is what is the way out?"
>
> The Court was then confronted with a question whether the court could grant any relief by enlarging the ambit of the scheme. Incidentally this Court had to deal with a submission that such a course of action was unprecedented:
>
> "40. ... Alternatively, it was also contended that where a larger class comprising two smaller classes is covered by a legislation of which one part is constitutional, the court examines whether the legislation must be invalidated as a whole or only in respect of the unconstitutional part. It was also said that severance always cuts down the scope of legislation but can never enlarge it and in the present case the scheme as it stands would not cover pensioners such as the petitioners and if by severance an attempt is made to include them in the scheme it is not cutting down the class or the scope but enlarge the ambit of the scheme which is impermissible even under the doctrine of severability. In this context it was lastly submitted that there is not a single case in India or elsewhere where the court has included some category within the scope of provisions of a law to maintain its constitutionality."

This court rejected the submission based on the lack of precedent, holding:

> "41. The last submission, the absence of precedent need not deter us for a moment. Every new norm of socio-economic ·justice, every new measure of social justice commenced for the first time at some point of history. If at that time it is rejected as being without a precedent, the law as an instrument of social engineering would have long since been dead and no tears would have been shed. To be pragmatic is not to be unconstitutional. In its onward march law as an institution ushers in socio-economic justice. In fact, social security in old age commended itself in earlier stages as a moral concept but in course of time it acquired legal connotation. The rules of natural justice owed their origin to ethical and moral code. Is there any doubt that they have become the integral and inseparable parts of rule of law of which any civilised society is proud? Can anyone be bold enough to assert that ethics and morality are outside the field of legal formulations? Socio-economic justice stems from the concept of social morality coupled with abhorrence for economic exploitation. And the advancing society converts in course of time moral or ethical code into enforceable legal formulations. Overemphasis on precedent furnishes an insurmountable road-block to the onward march towards promised millennium. An overdose of precedents is the bane of our system which is slowly getting stagnant, stratified and atrophied. Therefore, absence of a precedent on this point need not deter us at all. We are all the more happy for the chance of scribbling on a clean slate." and the Court finally concluded as follows:

> "65. That is the end of the journey. With the expanding horizons of socio-economic justice, the Socialist Republic and welfare State which we endeavour to set up and largely influenced by the fact that the old men who retired when emoluments were comparatively low and are exposed to vagaries of continuously rising prices, the falling value of the rupee consequent upon inflationary inputs, we are satisfied that by introducing an arbitrary eligibility criterion: "being in service and retiring subsequent to the specified date" for being eligible for the liberalised pension scheme and thereby dividing a homogeneous class, the classification being not based on any discernible rational principle and having been found wholly unrelated to the objects sought to be achieved by grant of liberalised pension and the eligibility criteria devised being thoroughly arbitrary, we are of the view that the eligibility for liberalised pension scheme of "being in service on the specified date and retiring subsequent to that date" in impugned memoranda, Exs. P-1 & P-2, violates Article 14 and is unconstitutional and is struck down. Both the memoranda shall be enforced and implemented as read down. ... Omitting the unconstitutional part it is declared that all pensioners governed by the 1972 Rules and Army Pension Regulations shall be entitled to pension as computed under the liberalised pension scheme from the specified date, irrespective of the date of retirement. Arrears of pension prior to the specified date as per fresh computation is not admissible. Let a writ to that effect be issued. But in the circumstances of the case, there will be no order as to costs."

80. When Justice Mathew declared that Article 14 interdicts the State from creating inequalities, he was stressing the obvious. Further, he articulated the remedial measures the State has been enjoined to take recourse to: eliminate the existing inequalities through positive-affirmative-action, rather than passive neutrality. What is the remedy open to the citizen and the corresponding obligation of the judiciary to deal with such a situation, where the inequalities are created either by the legislation or executive action ? Traditionally, this Court and the High Courts have been declaring any law, which created inequalities to be unconstitutional, but in Nakara's case this Court realised that such a course of action would not meet with the obligations emanating from a combined reading of the directive principles and Article 14. Therefore, this Court emphatically laid down in Nakara's case that it is possible to give an appropriate inductive relief by eliminating the factors, which creates the artificial classification leading to a discriminatory application of law.

81. Though this Court is not bound by the law declared by the municipal courts of other countries, this court in the last 70 years always examined with due regard decisions of the American Supreme Court on questions of constitutional law. In a comparable situation, American courts did exercise jurisdiction by granting appropriate injunctive orders compelling the State to comply with the constitutional mandate by ignoring the legislative command and extending the benefit provided under a legislation to a certain class of people who were expressly excluded from receiving that benefit provided by the legislation. [See: *James Plyler v. J. and R. DOE et al. (supra)*[37]*]*

82. Notwithstanding the wholly unsatisfactory reasoning adopted by the High Court for allowing the claims of the writ petitioners, (the respondents herein), we are convinced that the conclusion of the High Court could be justified on basis of the principle enunciated in D.S. Nakara's case.

83. We must at this stage mention that the appellants made elaborate submissions during the course of the arguments regarding the inter play between Entry 66 of the List I and Entry 25 of the List III of the Seventh Schedule and the judgments of this Court in the line of judgments commencing from *State of Tamil Nadu v. Adhiyaman Educational and Research Institution*[6]*, Bharathidasan University v. AICTE*[7], etc. in a bid to demonstrate that the Council constituted under the AICTE Act would be incompetent to regulate the service conditions of the employees of the engineering colleges and therefore the Regulations of 2010 dated 05.03.2010 made by the AICTE purporting to give effect to the recommendations of the Sixth Pay Commission are without any authority of law.

[37] *The facts of James PLYLER are as follows: The Texas Legislature revised its education laws to withhold from local school districts any state funds for the education of children who were not "legally admitted" into the United States. A class action was brought on behalf of certain school-age children of Mexican origin who could not establish that they had been legally admitted into the United States, complaining of discrimination. The District Court held that the children were entitled for the protection of the Fourteenth Amendment (Equal Protection Clause) and injuncted the State from denying the funds for their education. On appeal, the Court of Appeals for the Fifth Circuit upheld the injunction. Eventually, the matter reached the Supreme Court of the United States, which affirmed the injunction.*

84. In view of our conclusion that the State of Maharashtra has taken a decision in exercise of the power allowable to it under Section 8(3) of the Maharashtra Universities Act, the question whether AICTE is the competent body to regulate the service conditions of the employees of engineering colleges in our opinion is wholly irrelevant to the issue and academic. Even if the appellant's submissions in this regard were to be accepted, it only leads to the inevitable conclusion that the Maharashtra State legislature is the competent body to deal with the subject. It did deal with the subject under Section 8(3) of the Maharashtra Universities Act. Section 8(3) clearly authorizes the State Government to frame rules dealing with the service conditions of the employees (both teaching and non-teaching) of various educational institutions. The power is duly exercised. While exercising such power is that State of Maharashtra drew an artificial distinction between aided and unaided educational institutions.

85. Another submission of the appellants that is required to be dealt with is that since the appellant does not receive any financial aid from the State, calling upon the appellants to pay its employees in terms of the revised pay scales would be compelling them to perform an impossible task. The appellants submitted that their only source of revenue is the fee collected from the students. Their right to collect fee is regulated pursuant to judgments of this Court in incoherence *T.M.A. Pai Foundation & Others v. State of Karnataka & Others*[8], and Islamic *Academy of Education & Another v. State of Karnataka & Others,*[9] . Therefore, if they are compelled to pay their staff higher salaries they would be without any financial resources as they do not receive any aid from the State.

86. On the other hand it is argued by the respondent that the determination of the fee structure and the amount of the fee that could be collected by the appellants from the students is made by the Fee Regulatory Committee and such a body is bound under law and does in fact take into account the various relevant factors in determining the fee structure. It is, therefore, submitted that it is always open to the managements to make an appropriate application before the Fee Regulatory Committee bringing all the relevant factors to the notice of the body competent to determine the fee structure and raise appropriate revenue.

87. At the outset, we make it clear that at least insofar as non-teaching staff are concerned, the appellants have no excuse for making such a submission because in the earlier round of litigation the respondents - non-teaching employees of the appellants, though succeeded both before the High Court and this Court in obtaining appropriate directions to the appellant and other authorities to revise the pay scales of the employees in tune with the Fifth Pay commission, entered into a settlement dated 30th January, 2006, the terms of which have already been taken note in this judgment at para 5.

88. Under the said agreement, the management agreed to revise the pay scales from time to time in tune with the Revision of the pay scales of the employees of the State. Therefore, the submission of the management in this regard is liable to be rejected on that ground alone.

89. Even otherwise, if the appellants are obliged under law, as we have already come to the conclusion that they are in fact obliged, it is for the appellants to work out the remedies and find out the ways and means to meet the financial liability arising out of the obligation to pay the revised pay scales.

90. In the result, the appeals being devoid of merit are dismissed with no order as to costs.

Judgment Referred.

[1]*406 US 205 1972*
[2]*(1993) 1 SCC 0645*
[3]*(1974) 4 SCC 0003*
[4]*(1972) 2 SCC 0788*
[5]*(1983) 1 SCC 0305*
[6]*(1995) 4 SCC 0104*
[7]*(2001) 8 SCC 0676*
[8]*(2002) 8 SCC 0481*
[9]*(2003) 6 SCC 0697*