IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9514 OF 2022

Dr. Parveen Parvez Sayyed ...Petitioner
Vs.
1. State of Maharashtra, through Principal Secretary Higher and Technical Education Dept. & Ors.

2. Director of Higher Education, Pune

3. Joint Director of Higher Education, Pune

4. Savitribai Phule Pune University, Pune ...Respondents

Mr. Mihir Desai, Senior Advocate a/w. Ms. Devyani Kulkarni and Ms. Sanskruti Yagnik for the petitioner.
Smt. D.S. Deshmukh, AGP for the State-Respondent Nos. 1 to 3.
Mr. Rajendra Anbhule for respondent no. 4.

CORAM	**:**	**G. S. KULKARNI & DR. NEELA GOKHALE, JJ.**
RESERVED ON	**:**	**11 AUGUST, 2026.**
PRONOUNCED ON	**:**	**21 SEPTEMBER, 2026**

JUDGMENT : (Per G.S. Kulkarni, J.)

1. The petitioner, who is presently serving as Senior Law Officer with respondent no. 4 – Savitribai Phule Pune University, Pune (for short **"the University"**), has filed the present petition, under Article 226 of the Constitution of India, being aggrieved by the communications dated 23 June, 2021 and 8 June, 2022 issued by respondent no. 1 – Higher and Technical Education Department, Government of Maharashtra, withdrawing the benefit accorded to her in counting her tenure of continuous service on the post earlier held by her as the "Law

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Officer" of the University for protection of her pay scale. At the outset, the substantive prayers as made in the petition are required to be noted, which read thus:

> "a) that this Hon'ble Court be pleased to issue a Writ of Certiorari or any other appropriate writ, order or direction in the nature of Certiorari quashing and setting aside the letters dated 23.06.2021 and 08.06.2022 annexed at Exhibit N and O issued by respondent no. 1 and respondent no. 3, respectively, withdrawing the benefit of protection of pay of previous service of the petitioner;
>
> b) that this Hon'ble Court be pleased to issue a Writ of Mandamus or a writ, order or direction in the nature of Mandamus directing the respondents-
>
> > i) to not to carry out any recovery of the salary paid to the petitioner pursuant to the letters dated 23/06/2021 and 08/06/2022 annexed at Exhibit N and O issued by respondent no.1 and respondent no. 3, respectively;
> >
> > ii) <u>To reckon and count the previous service of the petitioner rendered on the post of Law Officer created by the University through the University Development Fund and fix her salary by protecting her pay, by treating her in continuous appointment from her initial date of appointment as the Law Officer.</u>
> >
> > iii) <u>To reckon and count the previous continuous services of the petitioner rendered on the post of Law Officer created by the University through the University Development Fund for the purpose of pension and other allied benefits;</u>
> >
> > iv) <u>to continue to pay the Petitioner the regular pay scale protecting pay of previous services of the petitioner rendered on the post of Law Officer created by the University through the University Development Fund."</u>
>
> (emphasis supplied)

2. The relevant facts are :- The petitioner has the academic qualification of a Ph.D. in Law. She has been working with the University for about 29 years, initially as Law Officer from 9 June, 1997 and thereafter as Senior Law Officer from 1 August, 2010 till date. The University is a Non-Agricultural University.

3. It is the petitioner's case that the non-teaching employees of such universities, as also of the colleges affiliated to such universities, were governed by the Maharashtra Non-Agricultural Universities and Affiliated Colleges Standard

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Code (Terms and Conditions of Service of Non-Teaching Employees) Rules, 1984 (for short **"Standard Code"**), framed in exercise of the powers conferred under the erstwhile Universities Acts of 1974 and subsequently under the unified Universities Act, namely, the Maharashtra Universities Act, 1994 (for short, "**the 1994 Act**"). The 1994 Act has now been repealed by the Maharashtra Public Universities Act, 2016.

4. Insofar as the petitioner's earlier appointment as Law Officer is concerned, it is her case that she was appointed as 'Law Officer', of the University, by an order dated 27 May, 1997 issued by the University. Such appointment was made in pursuance of a full-fledged selection procedure undertaken by the University by constituting a Selection Committee comprising of the representative of the State Government, as also the representative of the University, which was under an advertisement issued for filling up the said post. The order appointing the petitioner as Law Officer dated 27 May, 1997 is annexed to the petition (Exhibit 'C'), which contains a specific condition incorporated in the appointment order, to the effect that the petitioner's service would be governed by the Standard Code and the rules and regulations framed by the State Government. The said condition reads thus:

> "**(Official Translation)**
>
> 3. You shall be bound by the provisions of the Maharashtra Universities Act, 1994 along with the Statutes, Ordinances, Rules and Service Regulations framed thereunder, including any amendments made thereto and such Rules as the University may frame from time to time; <u>as well as the terms and conditions of Service prescribed under the Standard Conduct, 1984 as laid down by the Government, together with any consequential rule modifications arising from amendments made therein from time to time</u>."
>
> (emphasis supplied)

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5. The petitioner contends that, although her appointment as Law Officer was strictly regulated in accordance with the provisions of the Standard Code prescribed by the State Government, the post was funded by the University and not by the State Government. The petitioner held the post of Law Officer from the year 1997 till she was appointed as Senior Law Officer in July 2010, pursuant to the advertisement dated 14 May, 2010 issued by the University, whereby various posts sanctioned by the State Government were advertised for being filled up. One of the posts so advertised was that of Senior Law Officer, in the pay scale of Rs.15600-39100 with a Grade Pay of Rs.6600. The relevant extract of the advertisement pertaining to the said post, as also the condition that the appointment would be governed by the provisions of Standard Code, is required to be noted, which reads thus:

(Official Translation)

Sr. No.	**Designation, Pay Band and Grade Pay**	**Class rank**	**Post No.**	**Reservation**	**Educational Qualification**
	Senior Law Officer Pay Band Rs.15600-39100 Grade Pay : Rs.6600	A	01	Open – 1	1. Master's degree in Law with minimum B+ with five years standing experience at the Bar. **Or** 2. Master's degree in Law with ten years experience as a Law Officer in the University or reputed educational institution. **Or** 3.L.L.B. with fifteen years standing at the Bar or twelve years experience as Law Officer in the University or reputed educational institution. Higher qualification and experience in the court procedure shall be preferred.

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Age limit

1. ….
2 ….
3. The maximum age limit for employees working in universities and affiliated colleges is as per the rules in the Standard Code, 1984,

Other suggestions:

1. ….
2. The rules of pension as per Circular No. Anniya 1005/126/Service-4, dated 31st October, 2005 of the Government of Maharashtra, Finance Department, will continue to apply to those appointed after 1st November, 2005, however, this rule will not be applicable to those currently working in pensionable posts."

6. The selection of the petitioner as Senior Law Officer was undertaken by a duly constituted Selection Committee, comprising of Vice Chancellor; Joint Director, Higher Education, who was the representative of the Director, Higher Eduction, Maharashtra State, Pune; Member of the Management Council, Experts nominated by the Vice-Chancellor and the Member Secretary, who was the Registrar of the University. The report of the Selection Committee is also placed on record. The relevant extract of the report of the Selection Committee is required to be noted, which reads thus:

> "After taking into consideration educational qualifications, experience, requirements for the post of "Senior Law Officer" and the performance of the candidates at the time of interview, the Selection Committee unanimously resolved to recommend to the University Authorities that following candidate be appointed to the post of "Senior Law Officer" in order of merit in the Pay Band Rs.15600-39100 with Grade Pay Rs.6600/- + Allowance, on probation for the period of two years. The basic pay of the candidate may be fixed according to the rules.
>
> Name of the selected candidate :
>
> SAYYED PARVEEN PARVEZ"

7. Pursuant to the aforesaid selection process, an appointment order dated 31

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July, 2010 was issued appointing the petitioner as the "Senior Law Officer". The relevant paragraphs of the said appointment order are required to be noted:

> (Translation of a photocopy of marked portion being Point Nos.1, 8 and 11 in the Appointment Order dated 31.07.2010, typewritten in Marathi.)
>
> "1. With reference to the Interview held on the date 31st July, 2010, you are hereby informed that you are appointed to the Government- approved post of 'Senior Law Officer', reserved for open category, in the pay structure of Pay Band of Rs.15,600 – 39,100 and Grade Pay Rs.6,600/-, on the basic pay of Rs.31,240/- (Rs.24,640 + Rs.6,600) on a probation period of two years, subject to the Government's approval."
>
> "8. Final Pay Certificate indicating the Basic pay and Allowances, Pay-scale, Date of Increment etc. issued by the Office where you are presently serving, should be submitted.
>
> 11. Government Resolutions issued/to be passed by the Government, from time to time in respect of Pension shall be applicable to you."

8. Thereafter, by an order dated 5 August, 2011 issued by the University, the petitioner was confirmed in the post of Senior Law Officer. The petitioner was informed that the Maharashtra Civil Services Rules, as also the decisions taken by the State Government and the Competent Authority of the University from time to time, would be binding upon the petitioner. The petitioner accordingly continued to discharge duties on the post of Senior Law Officer in the pay scale of Rs.15600-39100.

9. It appears that the Joint Director of Education raised an issue regarding the age of the petitioner to the effect that, on the last date for submission of the application for the post of Senior Law Officer, the prescribed age limit for a candidate was minimum of 30 years and a maximum of 40 years. It was stated that, as per the service book of the petitioner, on the date of her application for

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the post of Senior Law Officer, she was overage. Her age was stated to be 41 years, 9 months and 15 days and, therefore, the proposal for recognition of her past service as Law Officer and protection of her earlier pay for the purpose of fixation of her pay scale could not be considered. The University had issued appropriate clarifications in regard to this issue, more particularly referring to the provisions of the Standard Code, which were recognized under the provisions of Section 8(2)(e)(i) of the 1994 Act. Under its letter dated 7 February, 2013, the University forwarded the said proposal to the Director of Education for approval. Pursuant thereto, the Director of Education, by communication dated 11 August, 2015, made a recommendation to the Principal Secretary, Higher and Technical Education Department, stating that the benefit of the petitioner's 13 years of service as Law Officer ought to be recognized. The relevant extract of the said proposal is required to be noted, which reads thus:

(Translation of a photocopy of the LETTER, typewritten in Marathi)

GOVERNMENT OF MAHARASHTRA
DIRECTORATE OF EDUCATION (HIGHER EDUCATION)
MAHARASHTRA STATE, CENTRAL BUILDING, PUNE-411001.

No:UNI/2015/overage/Sayyad/S.P.P.U./U.E.-1/8388 Date : 11th August, 2015.

To,
The Principal Secretary,
Higher and Technical Education Department,
Mantralaya, Annexe Building,
Mumbai 400032.

Subject :- Regarding taking in to consideration, prior service of Smt. Parveen Sayyad, Senior Law Officer at Savitribai Phule Pune University and regarding seeking approval for over age limit for her appointment.

Reference :- 1. Government Letter No. Miscellaneous-2014/M.No. 318 / 2014/U.E.-1, dated 11th May, 2015

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2. Letter No. AN/1796 dated 13th April, 2015 from Savitribai Phule Pune University.

In connection with the letters referred to hereinabove on the above-mentioned subject, it is hereby submitted that a proposal is being submitted to the Government, for seeking approval for the overage of Smt. Parveen Sayyad, Senior Law Officer at Savitribai Phule Pune University, to fix her pay by taking into account her prior service on the post of Law Officer, which was created from out of the university funds.

As per the University's Order No. AN/2628 dated 27th May, 1997, Smt. Parveen Sayyad's initial appointment to the post of Law Officer created from out of University Funds, at Pune University was made by the Selection Committee pursuant to the Advertisement No. 56 dated 23rd August, 1996, by following the prescribed process. She reported for duty in the service of the University on the date 09th June, 1997. Her date of birth is 26.08.1968.

Thereafter, she was made permanent to the said post with effect from the date 05.08.2005 and subsequently, vide University's Order No. AN/3058 dated 31.07.2010, she was appointed to the Government approved post of Senior Law Officer, on probation for a period of two years, after completing the prescribed selection process in accordance with the Advertisement. Smt. Sayyad has been confirmed in the said post with effect from the date 01.08.2011.

However, Savitribai Phule Pune University fixed the pay scale of Smt. Sayyed for the post of Senior Law Officer on the pay scale of basic pay Rs.37,400 + Grade Pay Rs.6,600, by granting pay protection to her.

The University determined this pay fixation after taking into consideration the salary drawn from out of the University Fund. Under Rule 2(27) of the University Code of Conduct, 1984, in the definition of "Non-Teaching Employees," there is a provision that the persons appointed on a pay scale in the University or affiliated colleges and who are not teachers, shall be treated as non-teaching employees. Thus, if the provisions of the University Code of Conduct, 1984 are applied to all non-teaching employees working on government-approved posts and on the posts created from out of the University Fund, it is observed that Smt. Sayyad was appointed to the post of Law Officer, a Class-1 post created from out of the University Fund, under Rule 4(ii)(a) of the University Code of Conduct, 1984 and that the said selection was made through a duly constituted committee. It is also mentioned in her Appointment order that the provisions of the University Code of Conduct, 1984, apply to her.

Pursuant to Rule 3(3)(1)(iii)(a) of the University Code of Conduct, 1984, there is a provision for relaxation of the maximum age limit for employees working in the service of the University or affiliated colleges for appointment to Class-1 posts. In the relevant advertisement, the age limit for Class-1 posts was specified as a minimum of 30 years and a maximum of 40 years. In Clause No. 3 of the age limit related instructions in the advertisement, it was mentioned that the maximum age limit shall not apply to the employees working in the University and affiliated colleges. As on the last date for receipt of applications, age of Smt. Sayyad was 41 years, 09 months and 15 days. Since Smt. Sayyad was working on the post of Law Officer created from out of the University Fund and the provisions of the University Code of Conduct Rules, 1984 are applicable to her, considering the said provisions of the Code regarding non-applicability of the upper age limit to her, this Directorate is of the view that her appointment to this government-approved post of Senior Law

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Officer is not barred on the ground of over age.

Thus, by mentioning the aforesaid facts, this Directorate has clarified the points raised by Savitribai Phule Pune University in its proposal dated 13th April, 2015. Therefore, if appropriate orders are issued at the Government level as a special case for condoning the overage of Smt. Parveen Sayyad and for granting pensionary benefits in respect of her prior service, then retirement and all other benefits for her service rendered in the government-approved post of Senior Law Officer can be made admissible to her. It is, therefore, requested to the Government that appropriate orders may please be issued in this regard.

[Signature Illegible]
(Dr. Dhanraj Mane)
Director of Education
(Higher Education)
Maharashtra State, Pune – 1"

(emphasis supplied)

10. The State Government, upon considering the aforesaid proposal forwarded by the Director of Education, by its following communication dated 13 January, 2016, observed that, in view of Rule 3(3)(i)(iii)(a), the restriction relating to age would not be applicable to the regular employees of the University or its affiliated colleges. The said communication is required to be noted, which reads thus:

[Translation of a photocopy of a Letter typewritten in Marathi.]

GOVERNMENT OF MAHARASHTRA

Number – E.A.L. 2015/ M. No. 317/15/ U.E.-1

Department of Higher and Technical Education,
Madam Kama Marg, Hutatma Rajguru Chowk,
Mantralaya, Mumbai – 400 032.
Date - 13 th January, 2016.

To,
The Director,
Higher Education, Maharashtra State,
Pune.

Subject :- Regarding granting approval for the excess age limit for the appointment of Smt. Parveen Sayyed, Senior Law Officer, Savitribai Phule Pune University.

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Reference:- 1. Government letter bearing Even Number, dated 13th May, 2015.
2. Your letter bearing No. UNI 2015/ Excess Age Limit/ Sayyed/ 8088, dated 27th August, 2015.

Sir,

In connection with the letter under reference on the above-mentioned subject, you are hereby informed that the initial appointment of Smt. Sayyed was made as per the provisions of Section 8(2)(e)(i) of the Maharashtra Universities Act, 1994, by following the procedure prescribed under an advertisement. She was confirmed in the University service with effect from the date 05 th August, 2005. Thereafter, she was appointed to a Government approved post.

2. As per the provisions prescribed under Rule 3(3)(i)(iii)(a) of the Code of Conduct Rules, 1984, there is a provision for relaxing the upper age limit for employees serving in the University or its affiliated colleges for appointment to Class 1 posts.

3. In Clause No. 3 of the advertisement - notice regarding the age limit for the said post, it is clearly mentioned that the maximum age limit shall not be applicable to the employees working in the University and affiliated colleges and therefore, your view is hereby confirmed that although Smt. Sayyed's age was 41 years, 9 months, and 15 days as of the last date of submission of application, it cannot be deemed as excess age. Therefore, you are requested to take further steps at your level accordingly.

(Harshavardhan T. Jadhav)
Under Secretary, Govt. of Maharashtra

11. It is on the aforesaid backdrop that it is required to be noted that, in regard to the fixation of the petitioner's pay as the Senior Law Officer, the proposal of the University was approved by the Joint Director, Higher Education, Pune Regional Office, by his approval dated 25 January, 2016, in which in Column no. 8, the revised pay band and grade pay, as also pre-revised scale applicable to the post of Law Officer and the revised pay band applicable to the post of Senior Law Officer, were considered. The relevant extract of the said approval of pay fixation is required to be noted, which reads thus:

1	Name of the University employee and Emp. No.	SAYYED PARVEEN PARVEZ, Emp. No. 2785
2	Designation of the post in which pay is to be fixed as	LAW OFFICER

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	on 1.1.2006	
3	Status	Substantive
4	Pre-revised scale(s) of pay applicable to the post	10650-325-15800
5	….	
6	…	
7	Existing emoluments as on 1.1.2006 a) Basic pay (including stagnation increment, if any) b) Dearness Pay c) Dearness Allowance d) Total existing emoluments [(a) to (c)]	 13250 6625 4174 24049
8	Revised pay band and grade pay corresponding to the pre-revised scale shown at Sr. No. 4 above (in the case of HAG+and above the appropriate scale may be mentioned)	PB-3-15600-39100 Grade Pay 6600

12. It is the petitioner's case that the aforesaid approval of the pay scale by the Joint Director of Education has taken into consideration the substantive pay of the petitioner in respect of the post held by her as 'Law Officer', as also the subsequent post held by her as the Senior Law Officer, in the pay scale of Rs.15600-39100 Grade Pay Rs.6600/-. Thus, there was a clear recognition of the services rendered by the petitioner on the post of Law Officer from 9 June, 1997 till 30 July, 2010.

13. Despite the aforesaid clear position, by the impugned communication dated 23 June, 2021 issued by the Section Officer, Government of Maharashtra, addressed to the Director of Higher Education, as also the Registrar of the University, it was recorded that the petitioner had held the post of Law Officer, which was fully funded by the University and not by the State Government and that such services could not be taken into consideration for the purposes of pay protection and retirement benefits. It was further stated that an intimation to that

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effect had already been given to the Director of Higher Education vide letter dated 4 June, 2016 and, accordingly, necessary action be taken. In pursuance of the said communication of the Section Officer of the Government of Maharashtra, the Joint Director of Higher Education addressed a communication dated 8 June, 2022 to the Registrar of the University, recording that, insofar as the petitioner was concerned, the period of her service on the post of Law Officer could not be taken into consideration and pay protection could not be granted, there being no provision under the rules to that effect. It is these communications dated 23 June, 2021 and 8 June, 2022, which are the subject matter of challenge in the present proceedings in seeking the reliefs which we have noted hereinabove.

14. A reply affidavit is filed on behalf of the University of Pune of Shri. Pradeep Kamlakar Koli, Deputy Registrar, Administration (Non Teaching) *inter alia* contending that the terms and conditions of service of non-teaching employees in non-agricultural universities and affiliated colleges are governed by the Standard Code. It is stated that the said Rules were applicable to all full-time "non-teaching employees" of the non-agricultural universities and affiliated colleges in the State, other than those managed and maintained by the State Government and the local authorities, appointed on time-scale of pay. Rule 2(27) of the Standard Code is referred, which defines 'non-teaching employee" as the person in employment of the University or affiliated colleges, as the case may be, and appointed on a time-scale of pay other than "teachers" or "teachers of the University". It is thus contended that the terms and conditions of service of the

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non-teaching employees in the University, appointed on the posts sanctioned by the Government, as also on the posts sanctioned by the University from its development fund, were governed by the Standard Code.

14.1 In regard to the services of the petitioner, it is stated that the petitioner is presently working as Senior Law Officer with the University which is a non-teaching post in Class 'A' sanctioned by the State Government. It is further stated that the University is also conferred with the power to create posts through its development fund in exercise of the power vested under Section 8(2)(e)(i) of the Maharashtra Public Universities Act, 2016. It is stated that thus there are two types of posts in the University, namely, posts sanctioned by the State Government and posts sanctioned by the University. It is stated that before appointment of the petitioner as Senior Law Officer, the petitioner was appointed on the post of Law Officer, which was a post in Class 'A' created by the University from its development funds, as permissible under the provisions of Section 8(2)(e)(i) of the 1994 Act. It is stated that such appointment of the petitioner as a Law Officer was made after following due procedure prescribed under the 1994 Act and was governed by the Standard Code as published by the State Government, and after being interviewed by the duly constituted selection committee prescribed under Rule 4(ii)(a) of the Standard Code, which comprised of one of the members to be a Higher Officer of the State Government, namely, the Director of Higher Education, Maharashtra State, Pune or his representative not below the rank of Joint Director, and the representative of the Director of Higher Education, Maharashtra State. It is stated that the then Joint Director, Higher

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Education, Pune Region was one of the members of the selection committee. It is next stated that the petitioner accordingly joined the post of Law Officer on 9 June 1997, the services of the petitioner were also confirmed by the University as per the Resolution passed by the Council of the University.

14.2 In regard to appointment of the petitioner as Senior Law Officer, the affidavit states that after following the due procedure as noted hereinabove, the petitioner was appointed as Senior Law Officer vide appointment order dated 31 July 2010 being the post in Class 'A' as sanctioned and aided by the State Government, which was in pursuance of the recommendation as made by the appropriately constituted Selection Committee, as per the procedure prescribed under the Standard Code, 1984.

14.3 It is stated that at the time of appointment of the petitioner as a Senior Law Officer, the last basic pay drawn by the petitioner in her previous post that of the Law Officer was also protected. The affidavit further states that at all relevant times, the provisions of the 1994 Act, Statutes, Ordinance made thereunder and the provisions of the Maharashtra Civil Services Rules, as amended from time to time, were applicable to the petitioner in respect of her appointment on the post of Senior Law Officer. It is stated that the services of the petitioner on the said post was also confirmed and thus, the petitioner was in continuous service of the University from 9 June 1997 till date without any break in service. It is stated that in the said circumstances, the University time and again requested the Joint Director of Higher Education, Pune Region, for fixation of pay of the petitioner

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on the post of Senior Law Officer, after reckoning and counting her previous service as the Law Officer and by protecting her last pay. The affidavit refers to the correspondence which we have noted hereinabove, in regard to the objection of the petitioner's age at the time of her participation in the selection to the post of Senior Law Officer, in the context of the petitioner being age-barred, when it was held that the petitioner's services with the University as a Law Officer would be required to be recognized and hence, the Government accepted that being the employee of the University, the petitioner could not be considered to be age barred, and the petitioner was eligible for appointment to the post of Senior Law Officer as the stipulation of the upper age limit *inter alia* was not applicable to an employee of the University. The reply affidavit further states that as the Director of Higher Education as also the Joint Director of Higher Education having positively recommended the fixation of pay of the petitioner for the post of Senior Law Officer by recognizing her previous service as Law Officer and protecting her last pay and also granting pensionary and other benefits to her, the fixation of the petitioner's pay as per the proposal of the University on the post of Senior Law Officer had attained finality. The relevant contents of the University's reply affidavit in such context are required to be noted, which read thus:

> "10) **I say that in accordance with the said letter dated 13/01/2016 sent by the Respondent No. 1 State of Maharashtra, the Respondent No. 2 - Director of Higher Education, vide letter dated 21/01/2016 directed the Respondent No. 3 Joint Director, Higher Education, Pune Region, to act in compliance with the said direction of the Respondent No. 1. As directed by the Respondent No. 2 Director of Higher Education, the Respondent No. 3 Joint Director, has verified the fixation of pay of the Petitioner of the post of the Senior Law Officer of the Respondent University, by protecting the last pay drawn by her in her previous service as the Law Officer, and the said fixation of pay has also been approved by the Accounts Officer, Higher Education on 25/01/2016.** It is true that the name of the Petitioner has also been entered in

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the 'Sevarth' system of the State Government regarding payment of salary of the University employees a the Petitioner has been receiving the salary from the St Government through its 'Sevarth' system as per the sand fixation of pay made by protecting the last pay drawn by her in her previous service as the Law Officer, till the date of he impugned letter dated 08/06/2022 issued by the Respondent No. 3.

13) It is submitted that the fixation pay of the Petitioner of the post of Senior Law Officer has been done in pursuance of the communications made by the Respondents No. 1 to 3 and the said fixation has also been approved by Accounts Officer of the Government. Further, the name of the Petitioner has also been added in Sevarth System by the Respondents. Therefore, the Respondent University, vide letter dated 11/07/2022 has brought these facts to the notice of the Respondent No. 3.

14) I say that the Petitioner is in continuous service of the Respondent University on regular posts, without any break in service, initially as the Law Officer from 09/06/1997 to 31/07/2010 and thereafter, as the Senior Law Officer from 01/08/2010 till date. As per the letter dated 08/06/2022 sent by the Respondent No.3 Joint Director of Higher Education, if the pay of the Petitioner of the post of Senior Law Officer is re-fixed, then the benefit of pay protection already granted to her by considering her previous service in the Respondent University on the regular post of Law Officer, will have to be withdrawn and this will result in reduction in the pay of the Petitioner, causing her a huge financial loss."

(emphasis supplied)

Reply affidavit filed on behalf of respondent nos.1 to 3/State Government of Dr. Kirankumar Laxman Bondar, Joint Director of Higher Education, Pune Region, Pune

15. The affidavit primarily contends that by the impugned communication dated 23 June 2021, the State Government has directed the Director of Education, Higher Education, Pune as also the University that as the service of the petitioner on the post of Law Officer was created by the University from its own funds, hence, such services as rendered by the petitioner on the post of Law Officer cannot be considered for protection of the pay-scale for the purpose of pensionary benefits. It is stated that hence by the impugned letter dated 08 June 2022, Joint Director of Higher Education, Pune Division, Pune, forwarded the State Government's communication dated 23 June 2021 (as impugned) to the

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University. It is contended that on 09 June 1997, the petitioner was temporarily appointed as a Law Officer of the University, on the post of Law Officer, which was created by the University under its own funds i.e. 'University Development Fund', and thereafter from 05 August 2005 till the year 2010, services of the petitioner as the Law Officer of the University were regularized by the said University. It is next contended that pursuant to Section 8(2) of the 1994 Act, it is the responsibility of the University to incur expenditure for the purposes of creation of posts in various cadres and in that regard, there is no financial liability, direct or indirect, immediate or in the future of the State Government. It is hence contended that from 09 June 1997 till the year 2010, the services of the petitioner on the post of law officer were funded by the University and the said post was never funded by the State Government. It is next contended that by Government Resolution dated 27 August 2009, the State Government approved staffing pattern of Group A to D for non-teaching employees of the University and thereafter, respondent no.4-University published advertisement and on 31 July 2010, the petitioner was appointed as Senior Law Officer of University by following due procedure of recruitment. It is contended that the post of Senior Law Officer of the University was a Government aided post. It is next contended that before the issuance of Government Resolution dated 27 August 2009, there was no Government approved post of Senior Law Officer and the State Government was not liable to protect the pay of the petitioner during the period 09 June 1997 till 31 July 2010. It is next contended that Finance Department had issued a Resolution dated 31 October 2005, whereby New Defined

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Contribution Pension Scheme (DCPS) was introduced for the Government servants who were recruited on or after 01 November 2005 in the State Government service. Accordingly, it is stated that the petitioner is entitled for new "Defined Contribution Pension Scheme".

15.1 It is next contended that under Rule 30 of the Maharashtra Civil Services (Pension) Rules, 1982 (for short **MCS (Pension) Rules"**) qualifying service of the petitioner shall commence with effect from 01 August 2010 i.e. the date the petitioner took charge of the post of Senior Law Officer with the University, which is a Government aided post. Hence, services rendered by the petitioner with the University as its Law Officer from 09 June 1997 till 31 July 2010 cannot be considered as qualifying service for pensionary benefits, and the service and pay of the petitioner as a law officer of University cannot be protected during the said period, is the contention. It is however submitted that insofar as the age relaxation qua petitioner's appointment as Senior Law Officer was concerned, the same was granted to the petitioner and hence, her appointment on the post of Senior Law Officer was held to be valid. It is accordingly contended that the petition be disposed of.

Rejoinder Affidavit on behalf of Respondent Nos.1 to 3

16. On behalf of respondent nos.1 to 3/State, rejoinder affidavit is filed of Dr. Ashok Udhav Ubale, Joint Director, Higher Education, Pune Region, Pune, to counter the stand taken by the University in its reply affidavit dated 08 August

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2022. In such affidavit, it is reiterated that initial appointment of the petitioner as the Law Officer under the provisions of Section 8(2)(e)(i) of the 1994 Act, was created using University funds, as the University is vested with the authority to create posts under various categories for specific periods utilizing such funds. It is stated that the post of 'Law Officer' which is a Class-I post was thus created using University funds, with the approval of the Management Council of the University. It is stated that the said appointment was made by following the prescribed recruitment process under an advertisement issued by University dated 27 May 1997. It is also stated that the petitioner had accordingly joined the duty on the post of Law Officer on 09 June 1997 and subsequently, was granted extensions on the said post and was officially confirmed in the University service with effect from 05 August 2005, pursuant to the resolution passed by the Management Council of the University. It is stated that selection of the petitioner by University was conducted by the Selection Committee prescribed for Class-I posts under Rule 4(ii)(a) of the Standard Code. These are the significant submissions in the rejoinder affidavit.

16.1 It is stated that on such backdrop, under the newly approved staffing pattern (Akrutibandh), the petitioner was appointed to the government-sanctioned post of 'Senior Law Officer' after completing the prescribed recruitment process vide appointment order dated 31 July 2010. Such appointment was made in the pay structure of Rs.15,600- 39,100/- with a Grade Pay of Rs.6,600/-, at a starting basic pay of Rs. 24,640/-, on a probation period of two years.

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16.2 The affidavit also deals with the issue in regard to the condonation of the age limit in appointment of the petitioner as a Senior Law Officer and a decision being taken by the State Government considering the provisions of the Standard Code, whereby the petitioner being an existing employee of the University, the petitioner's age bar was condoned. It is stated that such condoning would not have any relevance insofar as the earlier service of the petitioner as the Law Officer was concerned, as the petitioner's appointment as the Senior Law Officer vide an order dated 31 July, 2010 was a fresh regular appointment against a newly sanctioned State post. It is stated that there cannot be an integration or absorption of her previous cadre into the State Services.

16.3 It is next contended that in the absence of rules for pay protection and pensionary benefits for the post in the University under its funds, the petitioner would not become entitled for counting of her previous service with the University on the post of Law Officer. In such context, it is stated that by the Government communication dated 04 June 2016, it was communicated to the University that there is no provision under the prevailing rules to consider the petitioner's prior service under the University fund for salary protection and retirement benefits, hence, it was directed that action should be taken as per the prevailing rules.

16.4 It is next contended that the service rendered by the petitioner on an un-aided post created from the University-funds cannot be recognized or clubbed with a service rendered on a 100% state-aided post for the purposes of pensionary

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benefits or pay protection, as neither the Standard Code nor the Maharashtra Civil Services (MCS) Rules contain any enabling provision, for considering the past services rendered by the petitioner in a non-government sanctioned, un-aided post merely upon a fresh regular selection on a State-sanctioned Class-I post. It is stated that in such context, the impugned communication dated 23 June 2021 was issued by the said respondents appropriately and lawfully clarifying that since there is no prevailing rule or Government Resolution (GR) permitting the protection of pay or counting of past services rendered on posts created under the University funds, the service benefits available to the petitioner must strictly adhere to the general prevailing rules of the Government. In such context, referring to Rule 31 of the MCS (Pension) Rules, 1982, it is contended that service only qualifies as pensionable if the employee's duties and pay are regulated by the Government, and the remuneration is drawn directly from the consolidated fund of the State or a government-administered local fund.

16.5 The affidavit further contends that Rule 31(2) explicitly excludes service rendered in a non-pensionable establishment unless specifically declared as qualifying service by a special Government Order. It is further stated that the petitioner is covered under the National Pension Scheme (NPS). That the contributions towards Government share as well as individual share are being deposited regularly into the NPS account of the petitioner as per norms.

16.6 It is next stated that the legal effect in relation to the appointment of the petitioner as Law Officer of the University was of her appointment being made

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under Section 8(2) of the 1994 Act on the University funded post. Hence by issuing the impugned communications dated 23 June 2021 and 08 June 2022, the administrative oversight and the unauthorised drain on the public exchequer were rectified by denying to the petitioner the benefit of the prior service on the post of Law Officer. The affidavit has also dealt with the denial of the petitioner's case on the plea of natural justice to the effect that the impugned communication could not have been issued without granting an opportunity to the petitioner. It is stated that the initial act of the concerned State officer of the year 2016, in verifying the petitioner's pay protection and bringing her under the Old Pension Scheme was fundamentally illegal, being in direct conflict with the statutory bar in the proviso to Section 8(2) of the governing Acts and Rule 31 of the MCS (Pension) Rules, 1982. It is stated that there can be no prejudice to the petitioner when the State Government intends to follow the lawful norms.

16.7 It is next contended that the Management Council of the University in its Resolution dated 05 August 2005, explicitly demonstrates the restricted nature of the University-fund service as awarded to the petitioner on the post of Law Officer, as also the University was fully aware of the financial incidence qua the two positions namely, in relation to the post of the Law Officer, as also the post of the Senior Law Officer being distinct. Hence, the University cannot now shift the financial consequences of its independent pay protection promises, on to the State Government.

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16.8 It is next submitted that granting pay protection and pensionary benefits in respect of service rendered on unaided, University-funded posts cannot be sanctioned, as doing so would render the express proviso to Section 8(2) of both the 1994 Act and the 2016 Act wholly redundant. Such interpretation would create a recurring financial liability arising from service rendered against self-funded posts and would thereby frustrate the legislative mandate that such posts shall not, directly or indirectly, impose any burden on the public exchequer. Such course of action if accepted, would open the floodgates to widespread and unsustainable claims by employees appointed against University-funded, ad hoc, or unaided posts across the State seeking retrospective pay protection and coverage under the Old Pension Scheme at the exchequer's expense. This would, in effect, amount to treating service rendered against unsanctioned and fund-based posts as qualifying State service, thereby imposing an unbudgeted and perpetual pensionary liability upon public funds. It would also dismantle the State's financial control statutorily contemplated under Section 8, so as to severely compromise cadre discipline, and result in manifest financial inequity vis-a-vis the employees, regularly appointed against duly sanctioned Government posts. Accordingly, the long period of service rendered by the petitioner prior to her regular appointment against a State-sanctioned post cannot be reckoned for the purpose of pay scale protection or pensionary benefits. It is hence contended that the impugned communications dated 23 June 2021 and 08 June 2022 are just, fair and completely in accordance with law. It is hence prayed that the petition be dismissed.

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Submissions on behalf of the petitioner

17. On behalf of the petitioner, Mr. Mihir Desai, learned senior counsel, has made extensive submissions. It is his submission that the petitioner's appointment as a Law Officer of the University by appointment order dated 27 May, 1997 was made after following due procedure for selection, namely, issuance of an advertisement, the petitioner appearing for interview and her satisfying all eligibility norms and it was only thereafter the petitioner was issued the appointment order. It is his contention that the appointment was also approved by the Management Council. Mr. Desai would submit that, viewed in its proper perspective, the appointment of the petitioner to the services of the University cannot be regarded as an appointment which was not a "public employment" or as falling within the category of any non-recognized or illegal appointment. It is submitted that the said appointment was made for the legitimate services of the University, also the petitioner discharged duties on the said post for a considerable period from 9 June, 1997 to 31 July, 2010, i.e., for a period of 13 years. It is his submission that it is not the case that in the capacity of Law Officer, the petitioner was precluded from pursuing the selection process undertaken for the post of "Senior Law Officer", which was, in fact, a sanctioned post in respect of which the University was to receive grant-in-aid. Mr. Desai's contention is that, being an in-service candidate of the University, the petitioner duly participated in the selection process and, being fully qualified, was appointed to the post of Senior Law Officer vide appointment order dated 31 July, 2010. There being no dispute in regard to the said appointment, which was also approved by the State

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Government.

18. It is submitted that although an issue was subsequently raised as to whether the petitioner was age-barred, inasmuch as the maximum age prescribed for participation in the selection process for the post of Senior Law Officer was 40 years, the petitioner was 41 years, 9 months and 15 days, which in fact was subsequently condoned by the State Government vide order dated 13 January, 2016, by applying the Standard Code and taking into consideration the fact that the petitioner was an in-service candidate, who had participated in the selection process and appointed as Senior Law Officer. Mr. Desai would submit that what is more significant is that the petitioner's proposal for fixation of pay was forwarded by the University to the State Government, which was considered by the Joint Director of Higher Education, who on 25 January 2016 accorded approval to the pay scale granted to the petitioner as the Senior Law Officer, namely, Rs.15600-39100 with Grade Pay Rs. 6600/-. The said pay scale as granted to the petitioner was stated in the appointment order dated 31 July, 2010, appointing the petitioner as the Senior Law Officer. Mr. Desai further submitted that in the said approval, in Column no. 2 thereof it records the pay of the petitioner as fixed on 1 January, 2006 on the post of "Law Officer". Thus, according to Mr. Desai, there was a tacit recognition of the services rendered by the petitioner as the Law Officer, which was taken into consideration for the purpose of fixation of her pay on the post of Senior Law Officer. It is his submission that in this view of the matter, it was not correct for the Director of Higher Education to issue the impugned communication so as to take a contrary

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position than what was taken in the fixation of petitioner's salary and recognition of petitioner's service as Law Officer, in the approval of pay scale granted by order dated 25 January, 2016 (Page 67 of Paper Book). Mr. Desai would next submit that the University in the reply affidavit has clearly recognized the entitlement of the petitioner for the services of the petitioner rendered on the post of Law Officer to be considered for the purpose of seniority and the qualifying services, which under law, needs to be taken into consideration for fixation of pension. He submits that the facts of the present case depict that it was certainly not a situation that any break in service could at all be attributed merely because the petitioner came to be appointed as Senior Law Officer while she was holding the post of the Law Officer. In supporting such contention, Mr. Desai has placed reliance on the reply affidavit filed on behalf of the University, which has referred to Rule 31 of the MCS (Pension) Rules, 1982 to contend that the services of the petitioner on the post of Law Officer was regulated by the Government or it was covered by the conditions determined by the Government and prescribed by Standard Code and hence, it is unacceptable that the services of the petitioner with the University, merely because the same was on the post funded by the University, would not disentitle the petitioner for pension.

19. It is also Mr. Desai's contention that the case which is put up by the Joint Director of Higher Education in the rejoinder affidavit is totally unacceptable and in fact the same is contrary to the provisions of the statutory rules and more particularly, Rule 31(1) of the MCS (Pension) Rules. This more particularly when it was recognized by the Joint Director of Higher Education that in granting pay

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fixation of the petitioner's pay scale for the post of Senior Law Officer, the petitioner's service and the pay-scale as availed by the petitioner on the post of Law Officer was considered as the last drawn pay scale. It is also his contention that once the pay scale in such manner was determined/fixed and approved by the Joint Director of Higher Education and accordingly, the salary was paid for all these years, it was arbitrary for the State Government to take a contrary position, that such fixation of pay was illegal, warranting any recovery from the petitioner, more particularly when the petitioner would now be retiring. This, according to Mr. Desai, is patently illegal and contrary to the well-settled position in law. In supporting such position, reliance is placed on the decisions of the Supreme Court in **State of Punjab & Ors. vs. Rafiq Masih (White Washer) & Ors.**[1] and **Jagdish Prasad Singh vs. State of Bihar & Ors.**[2] Mr. Desai has also placed reliance on the decision of Division Bench of this Court in **Dr. Shrikant Sakharam Jadhav vs. The State of Maharashtra & Ors.**[3] to contend that in such case the pensionary benefits were denied to the petitioner, on the ground that part of the services was rendered by the petitioner in an unaided school. The issue before the Court was whether the petitioner would be entitled to pensionary benefits by considering the services rendered in an unaided school however later on receiving aid. In such context, it is submitted that the Court taking into consideration series of decisions, held the services of the petitioner on the unaided post to be counted for the purpose of pension.

1 (2015) 4 SCC 334
2 2024 SCC OnLine SC 1909
3 Writ Petition No. 5357 of 2022 dated 29 March, 2023

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20. Mr. Desai has placed reliance on the Government Resolution dated 12 August, 1999, which provided for entitlement of pension to the employees of University as also to the affiliated colleges to contend that it would not be appropriate to deny pension to the petitioner discarding 13 years of services rendered by the petitioner on the post of Law Officer. In these circumstances, Mr. Desai submits that the petition deserves to be allowed.

Submissions on behalf of the University:-

21. Mr. Anbhule, learned counsel for the University has supported the petitioner's contention relying on the reply affidavit filed on behalf of the University, to which we have adverted in detail in the foregoing paragraphs. It is his submission that the petitioner's service on the post of Law officer for the period from 9 June, 1997 to 31 July, 2010 would be required to be reckoned and counted towards the petitioner's pensionable service when she retires from the post of Senior Law Officer of the University, this more particularly, once the employment of the petitioner was with the University, at all material times, which was regulated by the State Government and on the terms and conditions as set out in the Standard Code. It is also his contention that the petitioner is correct in her contention that Rule 31(1) is squarely applicable to the facts of the case, when the petitioner at all material times, was governed by the Standard Code, in the terms and conditions of the employment prescribed, qua such non-teaching post. It is also Mr. Anbhule's contention that the State Government in fact has taken an appropriate decision when on 25 January, 2016, the Joint Director of Higher Education considered the petitioner's pay scale of the earlier post of Law Officer

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as held by the petitioner, on the basis of which, the fixation of pay of the petitioner on the post of Senior Law Officer was approved. It is his submission that in the context of such approval, it would not be appropriate for the State Government to take a contradictory position as taken in the impugned communications dated 23 June 2021 and 08 June 2022. It is also his submission that although the University is bound by the directives of the State Government, however, in the present case, the benefit of the petitioner's long years services as Law Officer necessarily is required to be recognized. It is, therefore, his submission that the perspective which is put forth by the University if taken into consideration, would entitle the petitioner to the benefits of pension.

<u>Submissions on behalf of the State Government:-</u>

22. On behalf of State Government, Ms. Deshmukh, learned AGP has made extensive submissions. She has relied on the affidavit(s) filed by the Joint Director of Higher Education to support the case of the State Government that the petitioner would not be entitled to the benefit of the long years of service rendered by her on the post of Law Officer, to be considered for determination of the qualifying service for the purpose of pension. In other words, it is submitted that such services of the petitioner cannot be taken into consideration in counting the pensionable service. The entire basis of her submission is relying on the provisions of Section 8 of the 1994 Act, which is to the effect that it is the power exclusively with the University to make appointments from the funds of the University, when the petitioner was appointed as the Law Officer on 27 May, 1997. It is her submission that insofar as such appointment is concerned, it has

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nothing to do with the State Government, as the post would be funded by the University and not by the State Government and therefore, in respect of any appointment on the post not aided by the State Government, there is no question of previous services with the University, made from the University's fund being recognized. Ms. Deshmukh would next submit that the impugned communication was rightly issued and more particularly, in the stand which has been taken in the reply affidavit, that approval which was granted in the pay fixation of the petitioner by the Joint Director of Higher Education on 25 January, 2016 was an inadvertent mistake and which has been now rectified by the impugned communication. It is her contention that thus a liability which was exclusively within the domain of the University in relation to the post held by the petitioner as the Law Officer of the University for the period from 9 June, 1997 to 31 July, 2010 cannot be taken by the State Government, in considering or recognizing the petitioner's services for the purpose of pension. The reason being that only the petitioner's services qua the period which was spent by the petitioner on the post of the Senior Law Officer, being on the aided post vide appointment order dated 31 July, 2010 can be taken into consideration which is beyond the cut-off date of 1 November 2005. Ms. Deshmukh has placed reliance on the provisions of Section 8 of the 1994 Act to contend that the petitioner's appointment as Law Officer as made by the University as compared to the appointment of Senior Law Officer, on the post aided by the State Government are compartmentalized and therefore, there cannot be inter-mixing of the said appointments in relation to the length of the pensionable service as also in

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relation to fixation of pay. It is, therefore, her contention that the earlier fixation of pay which was done after taking into consideration the petitioner's service as a Law Officer was illegal, hence, the amounts which were paid to the petitioner in excess of the legitimate pay scale to which the petitioner would be entitled, deserved to be recovered from the petitioner. Such recovery is justified in law. It is also her submission that in such facts, the petitioner would not become entitled for award of the pension, as the pensionable length of services would be required to be reckoned only qua the period which was spent by the petitioner on the post of Senior Law Officer, i.e., period from 1 August, 2010 upto the date of retirement. It is also her contention that the petitioner has already accepted the National Pension Scheme and once the contribution towards Government share and individual share has been deposited regularly in the National Pension Scheme, the petitioner would not be entitled for regular pension under the Old Pension Scheme. In these circumstances, it is her submission that the petitioner is not entitled for any relief and the petition needs to be dismissed.

Analysis and conclusion

23. We have heard learned counsel for the parties and with their assistance, we have perused the record.

24. At the outset, some of the undisputed facts are required to be stated. Initially the petitioner was appointed on the post of Law Officer after following an appropriate selection procedure, leading to the issuance of an appointment order dated 27 May, 1997 by the University. It is not in dispute that such appointment was made under the provisions of Section 8(2)(e)(i) of the 1994 Act,

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i.e., the petitioner's appointment being made from the University's fund. The said appointment of the petitioner was on a non-teaching post, hence except for the fact that it was made from the University's fund, the said appointment was regulated under the provisions of the Standard Code [i.e., The Maharashtra Non-Agricultural Universities and Affiliated Colleges Standard Code (Terms and Conditions of Service of Non-Teaching Employees) Rules, 1984.] Sub-rule 1(2) of the Standard Code categorically provides that these rules shall apply to all full-time non-teaching employees of the non-Agricultural Universities and the affiliated colleges, other than those managed and maintained by the State Government and Local authorities, appointed on time-scale of pay. The "Non-teaching employee" has been defined under Rule 2(27) to mean 'the person in employment of the University or the affiliated colleges as the case may be, and appointed on a time-scale of pay other than "the teachers" or the "teachers of the University". It would be appropriate to note the provisions of Section 8, which provides for 'Control of the State Government and Universities', under which an appointment to be made by the University under sub-section (2)(e)(i) would be recognized. Section 8 of the 1994 Act reads thus:

> **"8. Control of State Government and universities.**
>
> (1) Without prior approval of the State Government, the university shall not-
>
> (a) create new posts of teachers, officers or other employees;
>
> (b) revise the pay, allowances, post-retirement benefits and other benefits of its teachers, officers and other employees;
>
> (c) grant any special pay, allowance or other extra remuneration of any description whatsoever, including ex gratia payment or other benefits having financial implications, to any of its teachers, officers or other employees;
>
> (d) divert any earmarked funds received for any purpose other than

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that for which it was received;

(e) transfer by sale or lease immovable property;

(f) incur expenditure on any development work from the funds received from the State Government or University Grants Commission or any person or body for the purposes other than the purposes for which the funds are received;

(g) take any decision regarding affiliated colleges resulting in increased financial liability, direct or indirect, for the State Government.

(2) The university shall be competent to incur expenditure from the funds received from,-

(a) various funding agencies without any share or contribution from the State Government;

(b) fees for academic programmes started on self-supporting basis;

(c) contributions received from the individuals, industries, institutions, organizations or any person whosoever, to further the objectives of the university;

(d) contributions or fees for academic or other services offered by the university;

(e) development fund, if any, established by the university; for the purposes of-

(i) creation of posts in various categories for specific period;

(ii) granting pay, allowances and other benefits to the posts created through its own funds provided those posts are not held by such persons, who are holding the posts for which Government contribution is received;

(iii)starting any academic programme on self-supporting basis;

(iv)incurring expenditure on any development work,

without referring the matter for approval of the State Government, provided there is no financial liability, direct or indirect, immediate or in future on the State Government.

(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 <u>a Standard Code</u> providing for the classification, manner and mode of selection and appointment, absorption of teachers and employees rendered surplus, reservation of posts in favour of members of the Scheduled Castes, Scheduled Tribes, [Denotified Tribes (Vimukta Jatis), Nomadic Tribes] and 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 other employees of the universities and the teachers and other employees in the affiliated colleges and recognized institutions (other than those managed and maintained by the State Government, Central Government and the local authorities). <u>When such Code is prescribed, the provisions made in the Code shall 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</u>**

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<u>of the Code, be invalid</u>.

(4) In case of failure of the university to exercise powers or perform duties specified in section 5 or where the university has not exercised such powers or performed such duties adequately, or where there has been a failure to comply with any order issued by the State Government, the State Government may, on making such enquiry as it may deem fit, issue a directive to the university for proper exercise of such powers or performance of such duties or comply with the order; and it shall be the duty of the university to comply with such direction.

Provided that, in case the university fails to comply with the directives, the State Government shall call upon the university to give reasons in writing why the directives were not complied with. If the State Government is not satisfied with the explanation, it may refer the matter to the Chancellor for taking necessary action under subsection (3) of section 9.

(5) The State Government may carry out test audit or full audit of the accounts of an university, college, school or institution regularly at such intervals as the State Government may deem fit."

(emphasis supplied)

25. It is not in dispute that the petitioner was in continuous employment of the university on the post of Law Officer, between the period from 9 June, 1997 to 31 July, 2010, i.e. a period of 13 years. While working as Law Officer, the petitioner participated in the selection process undertaken for the post of Senior Law Officer, as advertised by the University, after the State Government had approved the staffing pattern whereby the post of Senior Law Officer was recognized as also was approved as the aided post, i.e., salary in the said post will be paid by the State Government. The petitioner till date has spent almost 16 years on the post of Senior Law Officer, a post fully aided by the State Government and prior thereto a period of about 13 years on the post of Law Officer, totaling to a period of 29 years in the service of the University.

26. As noted hereinabove, although initially an objection was raised regarding

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the age bar in the petitioner's appointment as the Senior Law Officer, the State Government condoned the same considering that the petitioner was an existing employee of the University on the post of 'Law Officer', and accordingly, her appointment on the post of Senior Law Officer was approved. Apart from this, what is most significant is that the last drawn pay of the petitioner, i.e., pay scale availed by the petitioner as the Law Officer was taken into consideration in the fixation of her pay on the post of Senior Law Officer, which is clear from the approval of the pay scale as granted by the Joint Director of Higher Education vide approval dated 25 January, 2016.

27. Even in the context of appointment of the petitioner by the University as a Law Officer under Section 8, it is clear that the University fund is not alien to the control of the State Government. Section 8 itself is a composite provision, which provides for 'Control of the State Government and Universities' in the context of the appointment to be made. However, what is most significant is that, such power under Section 8 to be exercised by the State Government and University even in making appointment from the University fund is integral to the working of the University. Even if the post is to be funded by the University from the University funds, it is completely within the statutory control, which the State Government may wield over the University, as even such employees are governed by the Standard Code.

28. In such context, some of the provisions of the 1994 Act, which at the relevant time were applicable to the appointment of the petitioner as 'Law Officer' and more particularly, in regard to the funds in the University, which can be

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utilized for payment of salaries under the specific heads "Salary fund" as provided for in Section 102(1)(b) of the 1994 Act and Section 103 providing for "Annual accounts and audit", are required to be noted, which read thus:

> **"102. University funds -**
>
> (1) The university shall establish the following funds, namely:-
>
> (a) general fund;
>
> (b) Salary Fund.-
>
> **(i) for all posts approved by the State Government;**
>
> **(ii) for all other posts separately;**
>
> (c) trust fund;
>
> (d) development and programme fund;
>
> (e) contingency fund;
>
> (f) any other fund which, in the opinion of the university, is deemed necessary to establish.
>
> (2) The following shall form part of, or be paid into, the general fund,-
>
> (a) non-salary contribution or grant, received from the State Government or Central Government or University Grants Commission;
>
> (b) all incomes of the university from any source whatsoever, including income from fees and charges;
>
> (c) any sums borrowed from the banks or any other agency, with the permission of the State Government;
>
> (d) sums received from any other source or agency.
>
> (3) **The salary fund shall consist of all amounts received from the State Government, Central Government or University Grants Commission towards full or part payment of the salary and allowances. No amount from this fund shall be utilised for the purposes other than payment of salary and allowances.**
>
> (4) All income or moneys from trusts, bequests, donations, endowments, subventions and similar grants shall from the trust fund
>
> (5)(a) The development and programme fund of the university shall consist of all infrastructure development grants received from the State Government, all contributions made by the University Grants Commission for development and research grants received from other funding agencies of the Central Government, United Nations and its affiliates, other international agencies, industry, banks and financial institutions or any person.
>
> (b) No amount from this fund shall be appropriate to any other fund of the university or expended for any other purposes;
>
> (c) the development and programme fund shall be utilised in the manner consistent with the object of the programmes for which a

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suitable code will be adopted to include the guidelines of the funding agency on expenditure and audit, to be granted and approved by the Management Council.

(6) The university shall have and maintain a contingency fund under a separate head of the university accounts which shall be used only for the purposes of meeting any unforeseen expenditure.

(7) Surplus money at the credit of these funds, which cannot immediately or at any early date be applied for the purposes aforesaid shall, from time to time, be deposited in the Nationalised or Scheduled Banks or invested in any other Equity or Securities issued by the Corporations having financial participation of the State Government or in units of U.T.I., N.S.C., Bonds issued by I.D.B.I. and I.C.I.C.I. or investment approved by the Management Council.]

103. Annual accounts and audit.

(1) The accounts of the university shall be audited at least, once every year and in any in any case within six months of the close of the financial year by the auditors appointed by the Management Council from amongst the firms of chartered accountants whose partners have no interest in any of the authorities or affairs of the university.

(2) The audited accounts shall be published by the university and a copy thereof, together with the copy of the auditor's report, shall be submitted to the Chancellor, State Government and, on receipt of such audited accounts the Senate shall consider and pass such resolution thereon as it thinks fit.

(2A) **The State Government shall cause the audited annual accounts of the university, received by it, to be laid before each House of the State Legislature.**

(3) **The State Government may conduct the test audit or full audit of the accounts of the university at regular intervals by the auditors appointed by the State Government.**"

(emphasis supplied)

29. It is clear from the reading of Section 102(1)(b) (supra) that the salary fund is required to be maintained for all posts approved by the State Government and for all other posts separately. Sub-section (3) of Section 102 categorically provides that the salary fund shall consist of all amounts received from the State Government, Central Government or University Grants Commission towards full or part payment of the salary and allowances and no amount from this fund shall be utilised for the purposes other than payment of salary and allowances. The

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bifurcation of salary fund in regard to the posts approved by the State Government and for all other posts separately is only for the purpose of accounting insofar as the specific amounts which will be received from the State Government. The State Government would retain control when the audited accounts are published by the University and the auditors report is submitted to the Chancellor and the State Government. Also the State Government under sub-section (2A), which was inserted by Mah. Act No. 14 of 2009 w.e.f. 24 March, 2009 provides that the State Government shall cause the audited annual accounts of the University, received by it, to be laid before each House of the State Legislature as also the State Government may conduct the test audit or full audit of the accounts of the University at regular intervals by the auditors appointed by the State Government.

30. Thus, the entire functioning of the University even in regard to the utilization of its funds is completely within the control of the State Government and it is only for administrative reasons and considering the grants as may be received from the State Government, the salary fund is required to be separately maintained. However, the fact remains that all such grants have a common legal character and utility, mainly to be utilized purely and purely for the purpose of administration of the University and for grant of salaries to the officers on different posts which are created. The appointment on these posts is required to be made by the University, considering the exigencies of the work and the requirements of the University, which is entirely within the domain of the University. There is no embargo on the powers of the University to make

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appointments and depending upon the circumstances, it would be subject to the approval of the State Government when financial aid is sought. This, however, does not mean that appointments to be made by the University can only be after creation of posts, after sanction is received from the State Government, as clearly it is permissible for the University to make appointments, which will still be governed by the provisions of the Act and the Standard Code.

31. In the present case, it cannot be overlooked that, when the petitioner was appointed as Law Officer, the staffing patten was certainly a matter of consideration by the State Government and the same was ultimately approved, leading to the appointment of the petitioner to the post of Senior Law Officer in the year 2010. Thus, it cannot be ruled out that, when the State Government accepted the staffing pattern by according sanction to the post of Senior Law Officer, while, at the same time, the post of Law Officer was retained, it was certainly open to the State Government, at the material time when the petitioner served as Law Officer from 9 June, 1997 to 31 July, 2010, to consider and approve the creation of such post of Senior Law Officer at the very time. However, as the University has submitted its proposal for final approval of the staffing pattern and the State Government took substantial time to accord such approval, in the fact and circumstances of the present case, it would not only be untenable but also a travesty of justice if the petitioner's valuable services rendered on the post of Law Officer for a substantial period from 9 June, 1997 to 31 July, 2010 are not recognized. This fact stands recognized by the State itself when it accorded approval to the petitioner's appointment as Senior Law Officer

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by condoning the age bar of her being overage.

32. In our opinion, the facts of the present case are peculiar. The petitioner has served the University for a long period, initially as Law Officer from 9 June 1997 to 31 July, 2010 and thereafter as Senior Law Officer with effect from 1 August 2010 till date. Thus, she has rendered a total period of 29 years of service with the University, from 1997 till date. In such circumstances, it would be wholly unjust if the valuable service rendered by the petitioner exclusively in the service of the University for such a long period is not duly recognized to be counted for the purpose of pension. The statutory scheme would indicate that such appointments are integral to the functioning of the University, merely because such appointments are made by the University, the State Government ought not to deny the benefits that would otherwise entail to the employees of the University. It is not in dispute that the employment with the University, in any event, is a public employment. It is in such perpective the State Government, as also the Joint Director of Higher Education understood the requirements under the Maharashtra Universities Act, while undertaking the exercise of condoning the age bar as also in fixation of the petitioner's pay scale on the post of Senior Law Officer on the basis of the petitioner's last drawn pay on the earlier post of Law Officer, which ultimately resulted in approval being granted on 25 January, 2016. The document granting approval of the pay scale is on record at page no. 67 and 68 of the petition. A perusal thereof clearly shows that, while granting such approval, the petitioner's pay scale on the post of Law Officer was duly taken into consideration, on the basis of which her pay fixation was determined upon her

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appointment to the post of Senior Law Officer. Accordingly, the petitioner was paid her salary on the basis of such pay fixation for all these years and which is now sought to be recovered as an excess payment by the impugned communication.

33. We are, thus, in agreement with the petitioner's contention that, once such approval was granted and the same has not be revoked in any manner, it would be wholly impermissible for respondent nos. 1 to 3 to direct recovery of the amounts so paid, more particularly when the petitioner is on the verge of retirement. In such context, reliance on behalf of the petitioner on the decision of Supreme Court in **State of Punjab & Ors. vs. Rafiq Masih (White Washer) & Ors.** (supra) is apposite. The Supreme Court has held that it would not be permissible for the State Government as an employer to seek recovery of monetary benefits wrongly extended to employees, as it would have very serious ill-effects and would be unfair to the employees to effect such recovery. This was a case where the respondents-employees were given monetary benefits, which were stated to be in excess of their entitlement. These benefits flowed to them, consequent upon a mistake committed by the concerned competent authority, in determining the emoluments payable to them. It was observed that the mistake could have occurred on account of a variety of reasons including the grant of a status, which the concerned employee was not entitled to or payment of salary in a higher scale, than in consonance of the right of the concerned employee; or because of a wrongful fixation of salary of the employee, consequent upon the upward revision of pay-scales; or for having been granted allowances, for which the concerned

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employee was not authorized. The Supreme Court observed that the respondents-employees were beneficiaries of a mistake committed by the employer, and on account of the said unintentional mistake, employees were in receipt of monetary benefits, beyond their due. It was also observed that it was not a case where employees were in any manner guilty of furnishing any incorrect information, which had led the concerned competent authority, to commit the mistake. Thus, in such circumstances, the Court considered whether the respondent-employees against whom an order of recovery (of the excess amount) was made, should be exempted in law, from the reimbursement of the same to the employer. The Supreme Court taking a review of the decisions, held that certain categories of recoveries from the employees would be impermissible in law. It was held that recovery from employees, when the excess payment was made for a period in excess of five years, before the order of recovery was issued, cannot be permitted. The relevant observations of the Supreme Court are required to be noted, which read thus:

> "9. The doctrine of equality is a dynamic and evolving concept having many dimensions. The embodiment of the doctrine of equality, can be found in Articles 14 to 18, contained in Part III of the Constitution of India, dealing with "Fundamental Rights". These Articles of the Constitution, besides assuring equality before the law and equal protection of the laws; also disallow, discrimination with the object of achieving equality, in matters of employment; abolish untouchability, to upgrade the social status of an ostracized section of the society; and extinguish titles, to scale down the status of a section of the society, with such appellations. The embodiment of the doctrine of equality, can also be found in Articles 38, 39, 39A, 43 and 46 contained in Part IV of the Constitution of India, dealing with the "Directive Principles of State Policy". These Articles of the Constitution of India contain a mandate to the State requiring it to assure a social order providing justice - social, economic and political, by inter alia minimizing monetary inequalities, and by securing the right to adequate means of livelihood, and by providing for adequate wages so as to ensure, an appropriate standard of life, and by promoting economic interests of the weaker sections.
>
> 12. It is not possible to postulate all situations of hardship, which would govern

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employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) **Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.**

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

(emphasis supplied)

34. In a recent decision of the Supreme Court in **Jagdish Prasad Singh vs. State of Bihar & Ors.**[4], the Supreme Court observed that any decision taken by the State Government to reduce an employee's pay scale and recover the excess amount cannot be applied retrospectively and that too after a long time gap. The following observations of the Supreme Court are required to be noted, which read thus:

"21. We firmly believe that any decision taken by the State Government to reduce an employee's pay scale and recover the excess amount cannot be applied retrospectively and that too after a long time gap. In the case of Syed Abdul Qadir and Others v. State of Bihar and Others, this Court held that when the excess unauthorised payment is detected within a short period of time, it would be open for the employer to recover the same. Conversely, if the payment had been made for a long duration of time, it would be iniquitous to make any recovery. The relevant paras of the Syed Abdul Qadir(supra) are extracted hereinbelow: -

"57. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and (b) if such excess payment was made by the employer by

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applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess.

59. Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter- affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made."

23. In the case of State of Punjab and Others v. Rafiq Masih (White Washer) and Others, this Court held as under: -

"18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

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> (v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."
>
> 26. The learned Single Judge as well as the Division Bench of the High Court of Patna also seem to have fallen in the same error. In addition thereto, we are of the view that any step of reduction in the pay scale and recovery from a Government employee would tantamount to a punitive action because the same has drastic civil as well as evil consequences. Thus, no such action could have been taken against the appellant, more particularly, because he had been promoted as an ADSO, while drawing the pay scale of Rs.6500-10500 applicable to the post, way back on 10th March, 1991 and had also superannuated eight years ago before the recovery notice dated 15th April, 2009 was issued. The impugned action directing reduction of pay scale and recovery of the excess amount is grossly arbitrary and illegal and also suffers from the vice of non-adherence to the principles of natural justice and hence, the same cannot be sustained."

35. In the context in hand, it would be imperative to refer to the MCS (Pension) Rules, 1982, which govern the grant of pension on various parameters including on the qualifying services which would be required to be reckoned for the purpose of grant of pension. The relevant rules in this regard are :

Rule 30 - Commencement of qualifying service
Rule 31 - Conditions subject to which service qualifies
Rule 33 - Service rendered under Government followed without interruption by confirmation counts in full as service qualifying for pension.
Rule 38 - Counting of service on contract
Rule 57 - Non-pensionable service
Rule 100 - Compulsory Retirement Pension
Rule 110 - Amount of pension

We extract the aforesaid Rules, which reads thus:

"Maharashtra Civil Services (Pension) Rules, 1982

> "**Rule 30. Commencement of qualifying service**. Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity:
>
> Provided that at the time of retirement he shall hold substantively a permanent post in Government service or holds a suspended lien or certificate of permanency:

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[Provided further that, in cases where a temporary Government servant retires on superannuation or on being declared permanently incapacitated for further Government service by the appropriate medical authority after having rendered temporary service of not less than ten years, or voluntarily after completion of twenty years of qualifying service, shall be eligible for grant of superannuation, Invalid or, as the case may be, Retiring Pension; Retirement Gratuity; and Family Pension at the same scales as admissible to a permanent Government servant.]
Exception. The rules regarding grant of terminal benefits to temporary Government servants 1[except those mentioned in the second proviso] who retire without being confirmed in any post in Government service are embodied in Appendix II.

Note 1. If a Government servant is holding a temporary post when the permanent post on which he holds a lien is abolished in the circums- tances described in Rule 81, or if, at or very shortly after the abolition of the permanent post, he is appointed to a newly created temporary post, his service in the temporary post is pensionable service.

Note 2.-In the case of employees of former Indian States who have been absorbed in Government service previous pensionable service rendered by them under the same State should it immediately followed by Government service be taken into account for purposes of pension on his final retirement from Government service, Pensionable service rendered under different States should be taken into account for purposes of pension provided that the employees were transferred or sent on deputation from one State to another under a written agreement between the Governments of the States concerned.

The term "immediately" appearing in Note 2 above includes a break in service if it does not exceed six months, between the date on which the service was terminated and the date of his re-employment in service.

The question whether the previous service in Indian States is pensionable or not should be determined in accordance with these rules as if those rules were applicable to that service.

Rule 31. Conditions subject to which service qualifies. (1) The service of a Government servant shall not qualify unless his duties and pay are regulated by the Government or under conditions determined by the Government.

(2) For the purposes of sub-rule (1), the expression "service" means service under Government and paid by Government from the Consolidated Fund of State or a Local Fund administered by Government but does not include service in a non-pensionable establishment unless such service is treated as qualifying service by Government.

(3) In the case of a Government servant belonging to the Central Government, who is permanently transferred to a service or post to which these rules apply, the continuous service rendered under the Central Government in an officiating or temporary capacity, if any, followed without interruption by substantive appointment, or the continuous service rendered under that Government in an officiating or temporary capacity, as the case may be, shall qualify:

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Provided that nothing contained in this sub-rule shall apply to any such Government servant who is appointed otherwise than by deputation to a service or post to which these rules apply.

Rule 33. Service rendered under Government followed without interruption by confirmation counts in full as service qualifying for pension.- A Government servant who holds a permanent post substantively or holds a lien or a suspended lien or a certificate of permanency on the date of his retirement, the entire temporary or officiating service rendered under Government followed without interruption by confirmation in the same or another post, shall count in full as service qualifying for pension except the service rendered against one of the posts mentioned in rule 57.
Note. The benefit of above rule should also be extended to Government servants who have rendered service in temporary post in the former Civil Supplies Department including those re-employed after the break, provided they agree to refund the terminal gratuity, if any, received by them on their retrenchment from the former Civil Supplies Department (In order to avoid hardship, the gratuity may be refunded in monthly instalments not exceeding rupees twenty). Competent authorities are authorised to condone where necessary, breaks not exceeding 3 years. In cases where break exists, the terminal gratuity referred to above should be refunded within three months from the date of the order of the competent authority condoning the break and the right to count the service under the above rule does not accrue until the gratuity is wholly refunded. The condonation should be postponed until the Ex-Civil Supplies Department personnel actually pass the examination, if any, required for confirmation and are actually confirmed. The benefit of condonation of break should be allowed only in those cases in which breaks have occurred on account of discharge from service for want of post and not on any other ground, e.g., voluntary resignation etc. and in computing the period of break, the terminal leave availed of by the persons concerned, should also be taken into account. The leave salary is not, however, refundable.
…...

Rule 38. Counting of service on contract. (1) A person who is initially engaged by Government on a contract for a specified period and is subsequently appointed to the same or another post in a substantive capacity in a pensionable establishment without interruption of duty, may opt either :-

(a) to retain the Government contribution in the Contributory Provident Fund with interest thereon including any other compensation for that service; or

(b) to agree to refund to Government the monetary benefits referred to in Clause (a) or to forgo the same if they have not been paid to him and count in lieu thereof the service for which the aforesaid monetary benefits may have been payable.

(2) The option under sub-rule (1) shall be communicated to the appointing authority under intimation to the Audit Officer within a period of three months from the date of issue of the order of permanent transfer to pensionable service, or if the Government servant is on leave on that day, within three months of his return from leave, whichever is later.

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(3) If no communication is received by the appointing authority within the period referred to in sub-rule (2), the Government servant shall be deemed to have opted for the retention of the monetary benefits payable or paid to him on account of service rendered on contract.
…….

Rule 57. Non-pensionable service. As exceptions to Rule 30, the following are not in pensionable service :-

(a) Government servants who are paid for work done for Government but whose whole-time is not retained for the public service,

(b) Government servants who are not in receipt of pay but are remunerated by honoraria,

(c) Government servants who are paid from contingencies,

(d) Government servants holding posts which have been declared by the authority which created them to be non-pensionable,

(e) Holders of all tenure posts in the Medical Department, whether private practice is allowed to them or not, when they do not have an active or suspended lien on any other permanent posts under Government.

Note 1.-In case of employees paid from contingencies who are subsequently brought on a regular pensionable establishment by conversion of their posts, one-half of their previous continuous service shall be allowed to count for pension.

Note 2.-In the case of persons who were holding the posts of attendants prior to 1st April, 1966, one-half of their previous continuous service as attendants, shall be allowed to count for pension.

Rule 100 - Compulsory Retirement Pension. (1) A Government servant compulsorily retired from service as a penalty may be granted, by the authority competent to impose such penalty, pension or gratuity or both at the rate not less than two-third and not more than full compensation pension or gratuity or both admissible to him on the date of his compulsory retirement.

(2) Whenever in the case of a Government servant the Government passes an order (whether original, appellate or in exercise of the power of review) awarding a pension less than the full compensation pension admissible under these rules, the Maharashtra Public Service Commission shall be consulted before such order is passed.

Explanation. In this sub-rule, the expression “Pension" includes gratuity.

(3) A pension granted under sub-rule (1) shall not be less than the minimum pension as fixed by Government.

110. Amount of pension.-[(1) In the case of a Government servant retiring

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> **on Superannuation, Retiring, Invalid or Compensation Pension before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's pay for every completed six monthly period of qualifying service.]**
>
> 2[(2)(a) In case of Government servant retiring on Superannuation, Retiring, Invalid or Compensation Pension in accordance with the provisions of these rules after completing qualifying service of not less than twenty years, the amount of pension shall be calculated at fifty per cent of the 'Pensionable Pay' subject to maximum of Rs.67,000 plus admissible grade pay.
>
> (b) In the case of a Government servant retiring on Superannuation, Retiring, Invalid or Compensation Pension in accordance with the provisions of these rules before completing qualifying service of twenty years but after completing qualifying service of ten years, the amount of pension shall be calculated at fifty per cent of the 'Pensionable Pay' subject to maximum of Rs. 67,000 plus admissible grade pay and in no case the amount of pension shall not be less than Rupees One Thousand Nine Hundred and Thirteen per month.]
>
> (3) In calculating the length of qualifying service, fraction of a year equal to 3[three months] and above shall be treated as a completed one- half year and reckoned as qualifying service.
>
> (4) The amount of pension finally determined under clause (a) or clause (b) of sub-rule (2), shall be expressed in whole rupee and where the pension contains a fraction of a rupee it shall be rounded off to the next higher rupee."

(emphasis supplied)

36. Rule 30 clearly provides for "Commencement of qualifying service". It provides that the qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. Note 1 therein provides that if a Government servant is holding a "temporary post" when the permanent post on which he holds a lien is abolished in the circumstances described in Rule 81, or if, at or very shortly after the abolition of the permanent post, he is appointed to a newly created temporary post, his service in the temporary post is pensionable service. Rule 31 also clearly provides that the service of a Government servant shall not qualify unless his duties and pay are regulated by

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the Government or under conditions determined by the Government, which in our opinion is aptly applicable in the facts of the present case in asmuch as the petitioners service at all material times were regulated by the conditions determined by the Government under the Standard Code, which includes even the fixation of the pay scale as granted to the petitioner on the post of Law Officer. Rule 33 also provides that a Government servant who holds a permanent post substantively or holds a lien or a suspended lien or a certificate of permanency on the date of his retirement, the entire temporary or officiating service rendered under Government followed without interruption by confirmation in the same or another post, shall count in full as service qualifying for pension except the service rendered against one of the posts mentioned in rule 57. Also, notwithstanding what has been provided for in Rules 30, 31 and 33, Rule 38 provides that a person who is initially engaged by Government on a contract for a specified period and is subsequently appointed to the same or another post in a substantive capacity in a pensionable establishment without interruption of duty, may opt either - (a) to retain the Government contribution in the Contributory Provident Fund with interest thereon including any other compensation for that service; or (b) to agree to refund to Government the monetary benefits referred to in Clause (a) of the said Rule or to forgo the same if they have not been paid to him and count in lieu thereof the service for which the aforesaid monetary benefits may have been payable.

37. We may observe that Rule 57 is also significant providing for "Non-pensionable service", which are exceptions to Rule 30, providing that certain

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services as specified in Clauses (a) to (e) are not pensionable services, they being, (a) Government servants who are paid for work done for Government but whose whole-time is not retained for the public service; (b) Government servants who are not in receipt of pay but are remunerated by honoraria; (c) Government servants who are paid from contingencies; (d) Government servants holding posts which have been declared by the authority which created them to be non-pensionable; and (e) Holders of all tenure posts in the Medical Department, whether private practice is allowed to them or not, when they do not have an active or suspended lien on any other permanent posts under Government. However, an exception has been carved out in Note 1 below Rule 57 wherein it is provided that in case of employees paid from contingencies who are subsequently brought on a regular pensionable establishment by conversion of their posts, one-half of their previous continuous service shall be allowed to count for pension.

38. We also find it appropriate to refer to the decision of the Full Bench of this Court in **Dilipkumar Bhagwan Deshmukh vs. State of Maharashtra**[5], for the reason that the Full Bench was called upon to decide an issue in regard to the applicability of MCS (Pension) Rules, 1982 vis-a-vis the implementation of DCPS vide Government Resolution dated 31 October, 2005, which are relevant in the present context. Akin to the situation in hand, when indisputedly the employees of the University are in actual public employment, in regard to the applicability of the Pension Rules, they would be at par with the employees of the schools receiving State aid (partially or fully), also become beneficiaries for award

5 Writ Petition No. 8387 of 2013, decided on 26 August 2019

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of pension under the said Rules if their appointment is prior to 1 November, 2005. In such context, issues which *inter alia* fell for consideration of the Full Bench was whether the employees of private schools, at the time of their appointment on the teaching and non-teaching posts, would become entitled to pension irrespective of the fact that at the time of their respective appointments, their schools were not receiving aid, which was subsequently granted and at the time of their retirement, the school was a aided school. Thus, the analogy which we intend to draw is that the position of such teaching and non-teaching staff of an unaided or partially aided school at the time of their appointment would not be different from the facts in the present case where the appointment of the petitioner was not on a post which was receiving grant-in-aid from the State Government albeit it was a public post held with the University for which salary was being paid by the University for the relevant period, i.e., 9 June, 1997 to 31 July, 2010 in regard to the petitioner's appointment as Law Officer and subsequent to which the petitioner admittedly continued to serve on such public post of Senior Law Officer which was a post fully aided by the State. Thus, when the Full Bench has held that although a person who was initially appointed on a non-aided post would become entitled for pension by counting of the service rendered by the employee on unaided post, as at the time of retirement the school was fully aided, is a situation which would be required to be considered to be similar as in the present case and it is for reason, in our opinion, the decision of the Full Bench which we intend to refer in extenso squarely becomes applicable in the present facts which would require the respondent-State to consider the tenure

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of petitioner's service on the post of Law Officer to be taken into consideration in counting the qualifying services for the purposes of pension. Moreover, the present case stands on a much higher pedestal, with the petitioner throughout being indisputedly the employee of the University. Even in the facts of the case before the Full Bench, the Full Bench has held that the services of the employees prior to the receipt of aid and rendered by them before the introduction of DCPS and/or the cut-off date of 1 November, 2005 would become eligible for grant of pension under the MCS (Pension) Rules, 1982. We thus find that this decision is certainly significant in regard to the principles of law which are required to be borne in mind when the issue of qualifying service and applicability of the pension rules falls for consideration.

39. In the case before the Full Bench, all the employees were appointed prior to 01 November 2005. However, at the time of their appointments, the schools were not receiving 100% grant-in-aid and it was an admitted position that all the schools started receiving 100% grant-in-aid only after 01 November 2005, which is the cut off date as prescribed under Government Resolution dated 31 October, 2005, under which the DCPS was introduced making only those employees eligible who are appointed after 01 November 2005. The question which fell for consideration of the Full Bench was as to whether those employees who were appointed prior to 1 November 2005 but not in a fully aided school, would be entitled to grant of pension under the Old Pension Scheme and not DCPS. The Full Bench considering the provisions of the MCS (Pension) Rules, 1982 *inter alia* held that only those employees of private recognized aided schools who were

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recruited prior to 01 November 2005 in schools receiving 100% grant-in-aid would continue to be governed by the old pension scheme was the correct and valid interpretation. On the aforesaid premise, the Full Bench had framed the following questions to be answered by the Full Bench:

> "1. Whether only those schools and colleges of education which are receiving 100% aid can be termed as the aided institutions or whether schools and colleges of education receiving less than 100% aid can also be termed as aided institution?
>
> 2. Whether the employees who were appointed prior to 1st November 2005 in the aided recognized primary, secondary and higher secondary schools as well as colleges of education which were receiving less than 100% grant-in-aid as on 1st November 2005 are entitled to the benefice of Old Pension Scheme under the Pension Rules and the Commutation of Pension Rules or whether they will be governed by the New Pension Scheme under the GR of 2005?
>
> 3. Whether the employees who were appointed prior to 1st November 2005 in the aided recognized primary, secondary and higher secondary schools as well as the colleges of education which were receiving less than 100% grant-in-aid as on 1st November 2005 but which became 100% aided before the date on which the GR of 2010 came into force, are entitled to the benefit of Old Pension Scheme under the Pension Rules and the Commutation of Pension Rules or whether they will be governed by the New Pension Scheme under the GR of 2005?

40. In answering the aforesaid questions and taking a review of the law, the Full Bench made the following observations:

> "18. Heavy reliance was placed on a decision of Division Bench of this Court in case of Anuradha Jaywant Gangakhedkar Vs. Brihanmumbai Municipal Corporation & Ors. in which in the context of eligibility of a retired teacher to claim pension, it was observed that test which must be applied is as to whether an employee was a full time confirmed and approved member of the teaching or non-teaching staff of a private primary aided school on the date of her retirement. It was observed that there is no warrant in the Pension Scheme or the Pension Rules to exclude while computing qualifying service, the service which is rendered by an employee before a school came to be in receipt of grant-in-aid. So long as the school was in receipt of grant-in-aid on the date on which an employee retired from service upon attaining the age of superannuation, the application of the Pension Scheme would be attracted.
>
> 19. Reliance was placed on a decision of the Supreme Court in the case of State of Maharashtra Vs. Manubhai Pragaji Vashi & Ors., in which it was

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held that not extending the grant-in-aid to non-Government law colleges and at the same time extending such benefit to non-Government colleges with faculties such as Arts, Science, Commerce, Engineering and Medicine (other professional non-Government colleges) is patently discriminatory.

20. Reliance was also placed on the decision of the Supreme Court in the case of State of Himachal Pradesh & Ors. Vs. Rajesh Chander Sood & Ors. in which facts were that, such of the employees who had exercised their option to be governed by "1999 Pension Scheme", claimed to be regulated by the said scheme immediately on their having submitted the option. In such background, it was held as under:-

> "71. We are also of the view, that there is merit in the contention advanced on behalf of the respondent-employees, inasmuch as, the seeds of the right to receive pension, emerge from the very day, an employee enters a pensionable service. From that very date, the employee commences to accumulate qualifying service. His claim for pension would obviously crystallise, when he acquires the minimum prescribed qualifying service, and also, does not suffer a disqualification, disentitling him to a claim for pension.
>
> 72. In the above view of the matter, it is not possible for us to accept, that the rights of the concerned employees under 'the 1999 Scheme', can be stated to get vested, only on the date when a concerned employee would attain the age of superannuation, and satisfy all the pre-requisites for a claim towards pension. We are also persuaded to accept the contention advanced on behalf of the respondent-employees, that the cause of action to raise a claim for pension, would arise on the date when a concerned employee actually retires from service. Any employee governed by a pension scheme, enrolls to earn qualifying service, immediately on his enrollment into the pensionable service. Every such employee must be deemed to have commenced to invest in his eventual claim for pension, from the very day he enters service. More so, in the present controversy, by having expressly chosen to forego his rights, under the Employees' Provident Funds Scheme, 1995.

21. Reliance was placed on a decision of the Division Bench of Panjab and Haryana High Court in case of Harbans Lal Vs. The State of Punjab & Ors., in which in case of daily wage employee who was later on regularized, it was held that entire daily wage service of the employee till the date of his regularization would be counted as qualifying service for the purpose of pension.

22. Inevitable reference was made to the decision of the Constitution Bench of the Supreme Court in case of D.S. Nakara & Ors. Vs. Union of India. As is well known, in the said case, the Supreme Court was considering the validity of the cut off date contained in liberalized Pension formula. The Union of India had liberalized the pension formula which contained a cut off date for its applicability only to those employees who retired on or after

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said date. In other words, the employees retiring prior to the said date would not be governed by this liberalized formula. The Supreme Court held that said cut off date was arbitrary and violative of Article 14 of the Constitution of India.

23. Reliance was placed on the decision of the Supreme Court in the case of Andhra Pradesh Dairy Development Corporation Federation Vs. B. Narasimha Reddy & Ors. in support of the contention that the DCP Scheme has been introduced with retrospective effect taking away vested rights which was impermissible.

24. Reliance was placed on a decision of the Division Bench of this Court in case of Vivenne Choudhury & Ors. Vs. Dy. Director of Education & Ors., in which it was held that
the period spent by the employee in a junior college prior to it becoming aided would count for the purpose of fixation of senior scale.

25. Reliance was placed on the decision of the Supreme Court in the case of State of Zharkhand & Ors. Vs. Jitendra Kumar Srivastava & Anr. to contend that pension and other post-retiral benefits cannot be taken away without the authority of law.

26. Reliance was placed on the decision of the decision of the Supreme Court in the case of Chandigarh Administration Vs. Rajni Vali10 in which it was observed that imparting primary and secondary education is the bounden duty of the State administration. It is the constitutional mandate that the State shall ensure proper education to the students on whom the future of the society depends.

28. We have traced the origin of the right of the employees of the aided recognized schools to receive pension from the Government. It originated from the GR dated 4.1.1968 under which it was provided that the pension, gratuity and other retiral benefits admissible to the Maharashtra State Government Servants under the Revised Pension Rules 1950 as amended from time to time and the family pension would be applicable to the full time teaching staff in recognized aided non-Government secondary schools in the State who retire on or after 1.4.1966. Over a period of time, such benefits were extended also to the employees of aided primary schools. In order to regulate, recruitment and conditions of service of employees in private schools in the State, the said Act of 1977 was enacted. In exercise of powers conferred under the said Act, the State Government framed the Rules of 1981 in which the pensionary benefits of the employees of the private recognized aided schools were recognized under Rule 19. As per this Rule, an employee of an aided secondary school and aided Junior College of

Education working on full time basis and retiring on or after 1.4.1966 and an employee of an aided primary school working on full time basis and retiring on or after 1.4.1979 who have opted for pension and the employee appointed on or after the said dates would be eligible for pension at the rates and in accordance with the rules as are sanctioned by the Government specifically to the employees of private schools. Thus, the Government brought within the fold of the pension scheme all the full time employees of aided secondary school, aided Junior College of education and primary school from respective dates. The existing staff would have an option to be

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continued to be governed by the contributory provident fund scheme or to switch over to the pension scheme. All employees appointed after the cut off date would automatically and compulsorily be governed by the pension scheme. The right to claim pension from the Government by a full time employee of a school was thus closely linked with the educational institution receiving aid from the Government. Unless and until, the school in question was paid grant-in-aid by the Government, the question of the employee of said school claiming pensionary benefits from the Government would not arise. It is indisputable that even in absence of the present controversy, an employee of a private recognized school could claim pension from the Government only if the school in which he was employed at the time of his retirement was receiving Government grant-in-aid. Even otherwise, the concept of asking the Government to pay pension to an employee of a school which does not receive grant from the Government is entirely unknown. The liability of the Government to pay to a retired employee of a private recognized school the post retirement benefits would arise only if the school from which the employee retired was receiving Government grant-in-aid.

30. It is true that the petitioners who are before the Court in this group of petitions were recruited in recognized private schools prior to 1.11.2005. Admittedly, however, on 1.11.2005, the schools, in which they were so recruited, were not receiving 100% grant-in-aid. At the time, when therefore the State Government decided to introduce the DCP scheme w.e.f. 1.11.2005, the right of these employees to claim pensionary benefits had not yet crystallized. The Government had no obligation to cover such employees in the pension scheme. By GR dated 29.11.2010, therefore, when the Government made detailed provisions for implementation of the DCP scheme for teaching and non-teaching staff of aided private recognized schools, the Government merely elaborated the procedure. This GR referred to the employees of 100% aided posts in the private recognized schools and provided that those who have been appointed after 1.11.2005 would be governed by the DCP scheme. This provision in the GR dated 29.11.2010 is merely in the nature of clarification. It made the position explicit which was already implicit in the GR dated 31.10.2005. In our opinion, Government's stand that only those employees of private recognized aided schools who were recruited prior to 1.11.2005 in schools receiving 100% grant-in-aid would continue to be governed by the old pension scheme is a correct and valid interpretation.

31. The GR dated 29.11.2010 merely made detailed provisions for implementation of the Government decision to introduce DCP scheme which decision was already declared under GR dated 31.10.2005. This, therefore, is not a case of introduction of the DCP scheme with retrospective effect. In that view of the matter, it cannot be said that the Government by virtue of said GR dated 29.11.2010 disturbed or took away the vested or existing rights of the employees to receive pension under the old scheme. As far back as on 31.10.2005, the Government had already taken a decision to implement the DCP scheme in relation to certain class of employees.

34. It is true that the service put in by an employee of a recognized private school during the time when such school was not receiving grant, would also count towards the qualifying service for pension when such employee retires from a school which receives grant. This was also the context of G.R. dated 8.4.2018 noted earlier. This, however, would not mean that the employee appointed in a school can claim to be governed by the pension scheme till

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> the school starts receiving 100% grant.
>
> 36. The petitioners had also argued that right of retired Government servants to receive pension is a vested right. It is neither bounty nor a largesse to be given by the employer. To this proposition, there can be no quarrel. However, right to receive post-retiral benefits flow from the scheme provided by the employer. In the present case, as discussed earlier, the existing pension scheme is replaced by new pension scheme. No vested right of the employees is being taken away."

41. In the light of the aforesaid consideration, the Full Bench answered the questions in terms of what was held in paragraph 37 of the decision:

> 37. Under these circumstances, we answer the Reference as under:-
>
> **Question No. 1 :**
>
> In the context of the right of an employee of private school or college of education to receive pensionary benefits and the corresponding liability of the Government to pay the same, only those schools and colleges of education which are receiving 100% grant-in-aid can be termed as aided institutions.
>
> **Question No. 2 :**
>
> The employees who were appointed prior to 1.11.2005 in aided recognized primary, secondary schools as well as colleges of education which were receiving less than 100% grant-in-aid as on 1.11.2005 would be governed by the DCP scheme.
>
> **Question No. 3:**
>
> Similar will be the situation of the employees who were appointed prior to 1.11.2005 in aided primary, secondary and higher secondary schools as well as the colleges of education which were receiving less than 100% grant-in-aid as on 1.11.2005 but which became 100% aided before 29.11.2010 would also be governed by the DCP scheme."

42. It is thus clear from the observations of the Full Bench that even an employee in a not fully aided school, however, receiving 100% aid at the time of retirement would be required to be taken into consideration for the purpose of determination of qualifying service for the purpose of pension under the MCS (Pension) Rules, 1982.

43. The present case in any event would fall within the purview of Rule 31 of the MCS (Pension) Rules, 1982, under which sub-rule (1) provides that "The

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service of a Government servant shall not qualify unless his duties and pay are regulated by the Government or under conditions determined by the Government". It is manifest and not in dispute that even the petitioner's service as a Law Officer was governed and/or regulated by the State Government and which was by applicability of the Standard Code in terms of what sub-rule (1) of Rule 31 would provide.

44. We are also in agreement with the learned senior counsel for the petitioner when he places reliance on the decision of the Division Bench of this Court in **Dr. Shrikant Sakharam Jadhav vs. The State of Maharashtra & Ors.**[6] in the context of reckoning of the qualifying pensionable service. In such case, the petitioner therein was aggrieved by the denial of the Joint Director of Higher Education for the retiral benefits, including pension and gratuity. The petitioner was initially appointed on temporary basis on the post of Lecturer, although he was appointed after following a procedure approved by the University. Also, in the routine course, the petitioner was afforded Career Advancement Scheme benefits and annual grade pay as well similarly to the facts of the case. The respondent raised a contention that the petitioner was appointed on a grant-in-aid basis from the year 2003 and thus, the prior services from 1987 to 1999 till he was appointed on aided post on 17 January, 2005 and that the petitioner would not be entitled for grant of old pension scheme. It is in such context, the Court considering the question as to from what date the Petitioner's services must be computed for the period of reckoning the pension, it was held that the issue was

6 Writ Petition No. 5357 of 2022 dated 29 March, 2023

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covered by the decision of a Division Bench of this Court in **Sister Ansela D'mello & Anr v The State of Maharashtra & Ors.**[7]**.** In the said decision, the Court recognized that pensionary benefits were denied to petitioner no.1, on the ground that part of the service of the petitioner was rendered in an unaided school, and therefore, she would not be entitled to pensionary benefits. It was held that such stand taken by the State was not correct and was in fact in ignorance of law, considering the definition of "qualifying service" in the Pension Rules. It was held that the test which has to be applied was as to whether an employee was a full time confirmed and approved member of the teaching or non-teaching staff of a private primary aided school on the date of her retirement. If that test is satisfied, it was held that the pension scheme would be made applicable by virtue of the rules. It was also held that there was no warrant in the Pension Scheme or the Pension Rules to exclude while computing qualifying service, the service which was rendered by an employee before a school came to be in receipt of grant-in-aid. It was held that so long as the school was in receipt of grant-in-aid on the date on which an employee retired from service upon attaining the age of superannuation, the application of the Pension Scheme would be attracted. The relevant observations of the Division Bench are required to be noted:

> "12. Thus, the question of the NET/SET examination requirement being a prerequisite is answered in favour of the Petitioner. What remains is the question of the date from which the Petitioner's services must be computed for the period of reckoning the pension and this is covered, apart from the previous judgments by the decision of a Division Bench of the BR Gavai J (as he then was) and Dama Seshadri Naidu J of 16th April 2019 in Writ Petition (St) No. 9011 of 2017, Sister Ansela D'mello & Anr v The State of Maharashtra & Ors. The decision notes the judgment

7 Writ Petition (St) No. 9011 of 2017 dated 16 April, 2019

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of another Division Bench of this Court in Anuradha Jayant Gangakhedkar v Brihanmumbai Municipal Corporation & Ors. and, also the judgment in Homraj Hansaram Bisen & Ors v State of Maharashtra & Ors. Paragraphs 4 and 5 of the Division Bench order in the Sister Ansela D'Mello case read thus:

> "4. On perusal of records, it could be seen that the petitioner was in continued service from 13th June 1986 till 31st December 2014 i.e. almost 28 years and 6 months. Out of this, almost entire period she has been working in aided School and only from period 5th July 1996 to 15th June 2008 i.e. for approximately for a period of 12 years she worked in unaided school. The pensionary benefits were denied to petitioner no.1 on the ground that part of service the petitioner has rendered in unaided school, and therefore, she would not be entitled to pensionary benefits. Stand taken by the respondents is totally incorrect and ignorance of law laid down by the Division Bench of this Court in the case of Anuradha Jayant Gangakhedkar Vs. Brihanmumbai Municipal Corporation & Ors. It would be relevant to refer to the following observations made by the Division Bench in the said Judgment:
>
> > "6. ... ... The definition of the expression "qualifying service" in the Pension Rules refers to service rendered in a permanent post. In the present case, there is no dispute about the position that the Petitioner worked in a post which was sanctioned. Her services were duly approved by the Education Officer. The test which must be applied is as to whether an employee was a full time confirmed and approved member of the teaching or non-teaching staff of a private primary aided school on the date of her retirement. If that test is satisfied, the Pension Scheme is made applicable by virtue of the provisions of clause 5(ii). There is no warrant in the Pension Scheme or the Pension Rules to exclude while computing qualifying service, the service which is rendered by an employee before a school came to be in receipt of grant-in-aid. So long as the school was in receipt of grant-in-aid on the date on which an employee retired from service upon attaining the age of superannuation, the application of the Pension Scheme would be attracted. The Pensioner was an employee of a private primary aided school on the date of retirement and was hence eligible."
>
> It could be thus seen that the ratio the Division Bench has applied is whether on the date on which the employee retires was working in a School which was receiving grant- in-aid. Even if a part of the period of service is rendered in a School which was not receiving grant-in-aid, it cannot be ground to deny the Petitioner's pensionary benefits.
>
> 5. Similarly, is the ratio of Homraj Hansaram Bisen and Ors v State of Maharashtra & Ors. It would be relevant to refer to paragraph 16 of the said judgment:
>
> > "16. We find that had the Government not prescribed such a cut-off date, it would have led to anomalous situation. As already discussed hereinabove, the basic responsibility in an unaided recognized school to pay salary to its employees is on the management of the school. Taking the hypothetical situation as suggested by the counsel for petitioners, if an employee is

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appointed in 1998 and school comes to hundred percent grant in 2008 the question would be who would pay employer's contribution for a period of ten years. We, therefore, find that Scheme as formulated by the State Government is also totally workable inasmuch as employee who is receiving hundred percent salary from the public exchequer prior to 1st November, 2005 is being governed by old Scheme. Had such a cut-off date not being provided for, there would have been discrimination between employees of the State Government who are appointed on or after 1st November 2005 and who are getting hundred percent salary from the State Government and the employees like the petitioner who are not getting full salary from the State Government. The Scheme has also taken care to see to it that a person who, though appointed in a school prior to 2005 and the school receives hundred percent grant-in-aid after 2005, would be entitled to enter into the new scheme as on the date on which the school comes to hundred percent grant-in-aid. In that view of the matter, we are unable to accept the contention of learned counsel for the petitioners that the Scheme is violative of Article 14 of the Constitution of India or unreasonable and arbitrary".

45. The petitioner is also right in her contention that the State Government has formulated a policy under the Government Resolution dated 12 August, 1999, by which the non-teaching employees would become entitled to the pension as issued in pursuance of the directions of the Division Bench of this Court, Nagpur Bench in Writ Petition No. 2632 of 1985, the following conditions for award of pension were prescribed in the said Government Resolution:

(Official Translation)

"Regarding extending pension scheme benefits to full-time teaching and non-teaching staff of universities and affiliated non-government aided colleges.

Government of Maharashtra
Higher and Technical Education Department
Government Resolution NO. NGC/1299/(4837)
Dated 12 August, 1999

1. ….
2. The benefit of the Pension and Gratuity Scheme shall be admissible to the employees in Universities and affiliated aided colleges shall be subject to the below-mentioned conditions.
A) …..
B) Teaching and non-teaching staff must be appointed in accordance

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with the norms approved by the Government or the University.
C) ….

3. For the purpose of retirement and gratuity scheme, the service rendered in the following posts will be included:

1. ….
…...
6. In the cases where an individual has served in any post under Government service covered by the Government's Pension Scheme or where the teaching or non-teaching staff from Universities and Colleges join Government service in any capacity, then, as regards their prior service, any break in service will be condoned and the benefit of their prior service will be granted only if the conditions stipulated in Rule 48(1) of the Maharashtra Civil Services (Pension) Rules are fulfilled.

46. In this view of the matter, we are of the considered opinion that the approach of the State Government in issuing the impugned communication is certainly arbitrary, inasmuch as it denies to the petitioner the benefit of the services rendered by her on the post of Law Officer for a very long period and more particularly when such services were duly recognized while effecting the fixation of her pay of the post of Senior Law Officer as also in granting her condonation of the age bar.

47. In any event, at all material times, the petitioner was in the service of the University, which itself is a statutory University at the relevant time, governed under the Maharashtra Universities Act, 1994 and now the Maharashtra Public Universities Act, 2016. The denial of pension to the petitioner in fact amounts to non-recognition of public service as rendered by the petitioner with the University from the year 1997 on the post of Law Officer and thereafter discharging duties on the post of Senior Law Officer from 1 August, 2010. In such context, in a recent decision of this Court in **Ratnamala Anilkumar Swami vs. State of Maharashtra & Anr.**[8] in regard to the entitlement of an employee to

8 Writ Petition No. 7684 of 2025 dated 10 August, 2026

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pension considering the long years of service rendered by an employee, the Court has made the following observations:

> "19. Further, we cannot be oblivious to the jurisprudence surrounding entitlement and grant of pension which by now is firmly established. It is well settled that pension is neither a charity, nor a gratuitous payment, nor a bounty to be distributed at the sweet will of the executive. It has been conceptualized as an enforceable legal right, grounded in constitutional and socio-economic principles. Pension is also regarded as a deferred wages compensation earned by an employee through long, continuous and faithful service rather than paying the full value of labour during active employment. It has been held that the right to receive pension constitutes 'property', earlier under Article 31(1), which was a fundamental right and after its repeal, a constitutional protection guaranteed under Article 300A. Consequently, a pensionary entitlement, once vested in an employee, cannot be taken away merely by an executive order or administrative action. Deprivation of such property must have the authority of law, and therefore requires express statutory sanction or other valid legal authority. From a social welfare perspective in relation to pension, it is held that three main socio-economic objectives are met, namely, to ensure economic independence and dignity in old age, when physical capacity to earn diminishes. It protects the employee against economic insecurity and post-retirement destitution as also it serves as a reward for past unblemished service. Pension is hence held to be a legal right flowing from statutory service rules, and not an act of grace. The government has no discretionary power to arbitrarily withhold, delay or modify it. Any culpable delay in paying retirement benefits attracts an interest penalty as a matter of statutory right.
>
> 20. In the aforesaid context, we may usefully refer to the following decisions:-
>
> 20.1 In Deokinandan Prasad v. State of Bihar, the Supreme Court was confronted with the question as to whether the right to receive pension could be withheld by the State in the absence of statutory authority. The Court held that the right to receive pension flows from the applicable service rules and does not depend upon any order granting such pension. It further held that the right to pension constitutes "property" and cannot be taken away by a mere executive order. The relevant observations read thus:
>
>> "15. The questions that arise for consideration are whether the orders, dated August 5, 1966 and June 12, 1968, are legal and valid. Before we consider that aspect, it is necessary to state that in order to sustain this petition under Article 32, the petitioner will have to establish that either the order, dated August 5, 1966 or June 12, 1968, or both of them affect his fundamental rights guaranteed to him. The order of August 5, 1966, according to the petitioner, is one removing him from service and it has been passed in violation of Article 311. That the said order is one removing the petitioner from service is also admitted by the respondents in para 11 of the counter-affidavit filed on their behalf by the Assistant Director of Education. Assuming that the said order has been passed in violation of Article 311, the said circumstance will not give a right to the petitioner to approach this Court under Article 32. The stand taken by the petitioner is that his right to get pension is property and it does not cease to be property on the mere denial or cancellation by the respondents. The order, dated June 12, 1968, is one withholding the payment of pension or at any rate amounts to a denial by the respondents

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to his right to get pension. Either way, his rights to property are affected under Articles 19(1)(f) and 31(1) of the Constitution. His right to pension cannot be taken away by an executive order. In the counter-affidavit, the respondents do not dispute the rights of the petitioner to get pension, but they take the stand that the order, dated June 12, 1968, is justified by Rule 46 of the Pension Rules. This aspect will be dealt with by us later. There is only a bald averment in the counter-affidavit that there is no question of any fundamental right and therefore this petition is not maintainable. As to on what basis this plea is taken, has not been further clarified in the counter-affidavit. But before us Mr B.P. Jha, learned Counsel for the respondents, urged that by withholding the payment of pension by the State, no fundamental rights of the petitioner have been affected.

16. We are not inclined to accept the contention of Mr Jha that no fundamental rights of the petitioner are affected by passing the order, dated June 12, 1968. We will in due course refer to the relevant Pension Rules bearing on the matter also certain decisions. **In our opinion, the right to get pension is "property" and by withholding the same, the petitioner's fundamental rights guaranteed under Articles 19(1)(f) and 31(1) are affected**. As the matter is being discussed more fully in the latter part of the judgment, it is enough to state at this stage that the writ petition is maintainable. Even according to the respondents the order, dated June 12, 1968, has no independent existence and that order has been passed on the basis of the earlier order, dated August 5, 1966. In our opinion, if the order, dated August 5, 1966, cannot be sustained, it will follow that the order, dated June 12, 1968, will also fall to the ground. Hence we will deal, in the first instance, with the validity of the order, dated August 5, 1966. The full text of the order, dated August 5, 1966, passed by the Director of Public Instruction, Bihar, is as follows:

….

28. According to the petitioner the right to receive pension is property and the respondents by an executive order, dated June 12, 1968, have wrongfully withheld his pension. That order affects his fundamental rights under Articles 19(1)(f) and 31(1) of the Constitution. The respondents, as we have already indicated, do not dispute the right of the petitioner to get pension, but for the order passed on August 5, 1966. There is only a bald averment in the counter-affidavit that no question of any fundamental right arises for consideration. Mr Jha, learned Counsel for the respondents, was not prepared to take up the position that the right to receive pension cannot be considered to be property under any circumstances. According to him, in this case, no order has been passed by the State granting pension. We understood the learned Counsel to urge that if the State had passed an order granting pension and later on resiles from that order, the latter order may be considered to affect the petitioner's right regarding property so as to attract Articles 19(1)(f) and 31(1) of the Constitution.

29. We are not inclined to accept the contention of the learned Counsel for the respondents. By a reference to the material provisions in the Pension Rules, we have already indicated that the grant of pension does not depend upon an order being passed by the authorities to that effect. It may be that for the purposes of qualifying the amount having regard to the period of service and other allied matters, it may be necessary for the authorities to pass an order to that effect, but the right to receive pension

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flows to an officer not because of the said order but by virtue of the Rules. The Rules, we have already pointed out, clearly recognise the right of persons like the petitioners to receive pension under the circumstances mentioned therein.

****

33. Having due regard to the above decisions, we are of the opinion that the right of the petitioner to receive pension is property under Article 31(1) and by a mere executive order the State had no power to withhold the same. Similarly, the said claim is also property under Article 19(1)(f) and it is not saved by sub-article (5) of Article 19. Therefore, it follows that the order, dated June 12, 1968, denying the petitioner right to receive pension affects the fundamental right of the petitioner under Articles 19(1)(f) and 31(1) of the Constitution, and as such the writ petition under Article 32 is maintainable. It may be that under the Pension Act (Act 23 of 1871) there is a bar against a civil court entertaining any suit relating to the matters mentioned therein. That does not stand in the way of writ of mandamus being issued to the State to properly consider the claim of the petitioner for payment of pension according to law."

[emphasis supplied]

20.2 In D.S. Nakara v. Union of India 7 , the Supreme Court dealt with an issue, as to the nature and significance of pension payable to a retired employee. The Court held that pension is not merely compensation for past service, but is also a measure of socio-economic justice intended to provide economic security in old age, particularly when the physical and mental capacity to earn diminishes, and represents deferred compensation for the service rendered. The relevant observations read thus:

"20. The antequated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deokinandan Prasad v. State of Bihar wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab v. Iqbal Singh.

…..

29. Summing up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings. One such saving in kind is when you give your best in the hey-day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in

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> consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to a government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation or for service rendered. In one sentence one can say that the most practical raison d'etre for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon.
>
> 30. The discernible purpose thus underlying pension scheme or a statute introducing the pension scheme must inform interpretative process and accordingly it should receive a liberal construction and the courts may not so interpret such statute as to render them inane (see American Jurisprudence, 2d, 881).
>
> 31. From the discussion three things emerge: (i) that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to 1972 Rules which are statutory in character because they are enacted in exercise of powers conferred by the proviso to Article 309 and clause (5) of Article 148 of the Constitution; (ii) that the pension is not an ex gratia payment but it is a payment for the past service rendered; and (iii) it is a social welfare measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. It must also be noticed that the quantum of pension is a certain percentage correlated to the average emoluments drawn during last three years of service reduced to 10 months under liberalised pension scheme. Its payment is dependent upon an additional condition of impeccable behaviour even subsequent to retirement, that is, since the cessation of the contract of service and that it can be reduced or withdrawn as a disciplinary measure."
>
> [emphasis supplied]

20.3 Similarly, in State of Kerala v. M. Padmanabhan Nair 8 , the Supreme Court was confronted with the issue of delay in the settlement and disbursement of pensionary and other retiral benefits. The Court held that pension and gratuity are valuable rights and property in the hands of the employee and that any culpable delay in their settlement and disbursement must be visited with the payment of interest at the current market rate. The relevant observations of the Supreme Court read thus:

> "1. Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment.
>
> 2. Usually the delay occurs by reason of non-production of the L.P.C. (last pay certificate) and the N.L.C. (no liability certificate) from the concerned Departments but both these documents pertain to matters, records whereof would be with the concerned Government Departments. Since the date of retirement of every Government servant is very much known in advance we fail to appreciate why the process of collecting the requisite information and issuance of these two documents should not be

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> completed at least a week before the date of retirement so that the payment of gratuity amount could be made to the Government servant on the date he retires or on the following day and pension at the expiry of the following month. The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be over-emphasised and it would not be unreasonable to direct that the liability to pay penal interest on these dues at the current market rate should commence at the expiry of two months from the date of retirement.

20.4 Further, in State of Jharkhand v. Jitendra Kumar Srivastava, the Supreme Court was confronted with the issue as to whether pension and gratuity could be withheld during the pendency of departmental or criminal proceedings in the absence of any provision in the applicable Pension Rules. The Court, while holding that pension and gratuity constitute "property" within the meaning of Article 300A of the Constitution, observed thus:

> "8. It is an accepted position that gratuity and pension are not bounties. An employee earns these benefits by dint of his long, continuous, faithful and unblemished service. Conceptually it is so lucidly described in D.S. Nakara v. Union of India by D.A. Desai, J. who spoke for the Bench, in his inimitable style, in the following words: (SCC pp.319-20, paras 18-20)
>
> > "18. The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service?
> >
> > 19. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.
> >
> > 20. The antiquated notion of pension being a bounty a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through court has been swept under the carpet by the decision of the Constitution Bench in Deokinandan Prasad v. State of Bihar [(1971) 2 SCC 330 : 1971 Supp SCR 634] wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab v. Iqbal Singh."

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> It is thus a hard earned benefit which accrues to an employee and is in the nature of "property". This right to property cannot be taken away without the due process of law as per the provisions of Article 300-A of the Constitution of India.
>
> ……
>
> 15. In State of W.B. v. Haresh C. Banerjee this Court recognised that even when, after the repeal of Article 19(1)(f) and Article 31(1) of the Constitution vide Constitution (Forty-fourth Amendment) Act, 1978 w.e.f. 20-6-1979, the right to property no longer remained a fundamental right, it was still a constitutional right, as provided in Article 300-A of the Constitution. Right to receive pension was treated as right to property. Otherwise, challenge in that case was to the vires of Rule 10(1) of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 which conferred the right upon the Governor to withhold or withdraw a pension or any part thereof under certain circumstances and the said challenge was repelled by this Court.
>
> 16. The fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognised as a right in "property". Article 300-A of the Constitution of India reads as under:
>
>> "300-A. Persons not to be deprived of property save by authority of law.—No person shall be deprived of his property save by authority of law."
>
> Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the constitutional mandate enshrined in Article 300-A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced."
>
> [emphasis supplied]

48. Considering the aforesaid settled principles of law, even otherwise, it is quite unimaginable that the petitioner could at all be deprived of the benefit of pension which has become statutorily payable to the petitioner.

49. We are also not inclined to accept the contention as urged on behalf of the State that merely because the petitioner was foisted with making contributions under National Pension Scheme, the petitioner would be required to be denied the legitimate entitlement of pension by discarding her continuous service to the

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University from 1997, in the absence of any option exercised by the petitioner opting for the NPS or the Contributory Pension Scheme. If any amounts were deposited by her in that regard and/or deposited by the University/State as part of the contribution, the same would be required to be refunded to the petitioner as also to the State Government/University along with accrued interest. This for the reason that such contribution would not in any manner be an estoppel against the petitioner's statutory rights to receive pension as recognized by law, considering the principle that there cannot be any estoppel against law.

50. In the light of the aforesaid discussion, looked from any angle, in our opinion, the petitioner deserves to be granted the reliefs as prayed for. The respondents were neither justified in law to initiate any recovery from the petitioner nor was it permissible and legal for the respondents to deny the grant of pension to the petitioner. The petition is accordingly allowed in terms of prayer clauses (a) and (b).

51. Rule is made absolute in the aforesaid terms. No costs.

(DR. NEELA GOKHALE, J.) **(G. S. KULKARNI, J.)**

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