

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION NO 682 OF 2022**

**DISTRICT :**

Smt Meena B Sonawane )  
Professor at Institute of Nursing )  
Education, J.J Hospital Campus, )  
Byculla, Mumbai 400 008. )  
R/o: A-401, Garden CHS Ltd, )  
Greet Complex, Ghatkopar-Mankhurd )  
Link Road, Govandi, Mumbai 400 043. )...**Applicant**

**Versus**

1. The Government Maharashtra )  
Through Secretary, )  
Medical Education & Drugs Dept, )  
G.T Hospital Campus, )  
9<sup>th</sup> floor, Mantralaya, )  
Mumbai 400 021. )
2. The Director of Medical Education )  
& Research, St. Georges Hospital )  
Campus Dental College Building, )
3. The Government of Maharashtra, )  
Through Chief Secretary, )  
General Administration Department,)  
Mantralaya, Mumbai 400 032. )
4. The Principal of Institute of Nursing )  
Education, J.J Hospital Campus, )  
Byculla, Mumbai 400 008. )...**Respondents**

Shri Sanjay Kulkarni, learned advocate for the Applicant.

Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

**CORAM : Justice Mridula Bhatkar (Chairperson)  
Shri Debashish Chakarbarty (Member)(A)**

**RESERVED ON : 11.09.2023**

**PRONOUNCED ON : 06.12.2023**

### **J U D G M E N T**

1. The applicant, B. Sc & M. Sc (Nursing), prays that she is entitled to get the U.G.C pay scale w.e.f 1.1.2006 and is covered by G.Rs dated 10.11.2009, 30.4.2010, 29.4.2014, 28.7.2014 & 5.03.2015 of Medical Education and Drugs Department. It is also prayed that she is entitled to get the benefits as per G.R dated 12.8.2009, 20.8.2010, 25.2.2011, 5.3.2011, and 5.3.2015 of Higher & Technical Education Department.

2. The applicant has filed O.A 917/2016 with same prayer for entitlements of both U.G.C pay scale from 1.1.2006 and superannuation age of 64/65 years as per G.R dated 5.3.2015. The prayer clause of O.A No. 917/2016 is not attached to the present O.A. Learned counsel has further submitted that subsequently O.A 588/2019 was filed by the applicant with same prayer. However, during the pendency of the said O.A, the Respondents by order dated 26.3.2021 rejected the prayer of the applicant for extension of superannuation age to 65 years and also entitlement of U.G.C pay scale. The applicant sought permission to withdraw the O.A 588/2019 with liberty to file fresh O.A to challenge the order dated 26.3.2021. The said O.A was disposed of by order dated 17.6.2022 with liberty to file fresh O.A. Thereafter, the present O.A was filed on 14.7.2022.

3. Learned counsel stated that “Health Science” is covered under the Maharashtra University of Health Sciences Act 1998 and “Nursing” is included under Health Science. Learned counsel has submitted that the applicant being a “Professor” in Institute of Nursing Education, Mumbai, she is covered under the “Health Sciences” and therefore, as all the other Professors who are working under the said law are entitled to get the benefits of U.G.C pay scale the applicant should not be singled out and should be entitled for benefits of the U.G.C pay scale. Alternatively, it is further submitted that the Higher & Technical Education Department has issued G.R on 5.3.2011, which pertains to implementation of the recommendations of the All India Technical Education Conference and also of U.G.C. Learned counsel further submitted that Institute of Nursing Education, Mumbai, was earlier affiliated with the then Bombay University which is Non-Agricultural University under the Higher & Technical Education Department. Subsequently, it was covered under the Maharashtra University of Health Science Act, 1998. Learned counsel has submitted that U.G.C pay scale was never given to anybody from this Institute of Nursing Education, Mumbai, even before 1998. Learned counsel has submitted that the applicant retired on 31.8.2019 and she claims that as per the U.G.C recommendation, she would have retired on 31.8.2026, by way of extension of superannuation age up to 65 years. In the present O.A, as per prayer clause (f), the applicant has challenged the impugned order dated 26.3.2021 of Medical Education and Drugs Department and also letter issued by the Respondent no. 4, I/C Principal dated 16.4.2019.

4. Learned counsel for the applicant referred to relevant provisions of Maharashtra University of Health Sciences Act, 1998

and further to the definition of the term “Teachers” in Section 2(35) which reads as under:-

“2(35) ‘Teachers’ means full time approved Demonstrators, Tutors, Assistant Lecturers, Lecturers, Readers, Associate Professors and other persons ‘teaching or giving instructions on full time basis in affiliated colleges or approved institutions in the University.’”

5. Learned counsel has submitted that admittedly, the applicant being “Professor” is a “Teacher”. Learned counsel further referred to the definition of the term ‘Health Sciences’ which reads as under:-

“2(17) ‘Health Sciences’ means modern scientific medicine in all its branches concerning preventing, promotive, curative and rehabilitative services and included surgery, obstetrics and gynecology, dental science, nursing and other allied subjects including the Indian Systems of Medicine in all their branches.”

6. Learned counsel has referred to the definition of the term ‘Higher Education’ as per Maharashtra Universities Act, 1994, which reads as under.

“Higher education” – means the pursuit of knowledge beyond learning at the stage of school education.

7. Learned counsel also relied to the Schedule of the Maharashtra University of Health Science Act, 1998 particularly to Sr. No. 6, Smt Nathibai Damodar Thakersey Women’s University, Mumbai. Learned counsel submitted that the persons working in

Leelabai Thakersey College of Nursing are given the benefits of U.G.C pay scale and also their age of superannuation is up to 65 years and the applicant is denied the same. Learned counsel for the applicant has contended the same in Ground-P of the O.A and there is no denial to the same by the Respondents. Learned counsel further submitted that when U.G.C pay scale is granted to those who are teaching in the faculty in B.A, B. Com and B. Sc then why the “Teachers” who are teaching in faculty in B. Sc (Nursing) and M. Sc (Nursing) are excluded from the same. Learned counsel for the applicant argued that the Institute of Nursing Education, Mumbai, was a Non-Agriculture Institution when under the Bombay University till 1998. It is also now covered under the “Health Sciences” and therefore the UGC pay scale should be made applicable to their “Teachers”. He submitted that the “Teachers” from, the Leelabai Thakersey College of Nursing are getting the UGC pay scale and also they retire on superannuation age upto 65 years which is the age fixed by the UGC for superannuation of “Teachers” working for the Colleges/Institutions covered under the Maharashtra University of Health Sciences Act,1998. Learned counsel submitted that on parity the applicant is entitled to get the U.G.C pay scale.

8. Learned counsel has submitted that O.A No. 416/2018 was filed by one Ms Reshma Desai. It was decided by this Tribunal by order dated 28.11.2018. The said order was challenged before the Hon’ble Bombay High Court by filing W.P 13533/2018. The said Writ Petition was disposed of on 23.1.2020 with liberty to file separate proceedings. Learned counsel relied on the G.R dated 27.3.1989 issued by the Medical Education and Drugs Department, pertaining to the revisions of pay scale to full time “Teachers” and “Librarians” in Medical/Dental/Ayurved Colleges in the State and also to full time “Teachers” in PT/OT School and

Centre, Nagpur. As per the above referred G.R dated 27.3.1989, under the “Budget Head” the Code No of Colleges are given and the then College of Nursing Bombay now known as Institute of Nursing Education, Mumbai, is given Code – 105-3(E). Learned counsel submitted that Affidavit in Reply is silent on this point. Learned counsel for the applicant referred to G.R dated 27.1.2000, issued by the Medical Education and Drugs Department. This also pertains to the revision of pay scales for the Government Medical, Dental and Ayurved College teachers w.e.f 1<sup>st</sup> January, 1996. The said G.R dated 27.1.2000 refers to the G.R dated 27.3.1989 with Corrigendum dated 29.6.1989. Learned counsel also referred to G.R dated 10.11.2009 of Medical Education and Drugs Department. This G.R also pertains to the revision of pay scale of Teachers in Government Medical/Dental and Ayurved Colleges. Learned counsel submitted that clause 1.2 states that the Government of Maharashtra has decided to implement the revised pay scales of all the teachers and equivalent cadres w.e.f 1.1.2006 as per the Central Government (UGC) scheme and that this does not extend to the cadres of Registrar, Finance Officer and Controller of Examination, Accompanists, Coaches, Tutor, Part Time Teachers and Demonstrators, System Analysts, Senior Analysts, Research Officers etc.

9. Learned counsel submitted that it does not state about the scarcity of the students or teachers. Learned counsel for the applicant referred to the definition of the term ‘College’ as per the Maharashtra University of Health Sciences Act, 1998.

(11). “College” means a college imparting education in Health Sciences conducted by the University or affiliated to the University situated in the State of Maharashtra.

Learned counsel submitted that the applicant was working as Professor with the Institute of Nursing, Education, Mumbai, which

was earlier affiliated with the Bombay University upto 1998, till the coming into force of Maharashtra University of Health Sciences Act, 1998. Learned counsel argued that had the Institute of Nursing Education, Mumbai, continued to have been affiliated with Bombay University even after 1998, then all the Teachers would have got the benefits of the revised U.G.C pay scale.

10. Learned counsel for the applicant, on the point of U.G.C pay scale relied on the G.R dated 12.8.2009. The said G.R has been issued by Higher & Technical Education Department, for revision of the pay scales of 'Teachers' and equivalent cadres in the Central Universities. Learned counsel also referred to G.R dated 20.8.2010. The said G.R issued by Higher & Technical Education Department is regarding, revision of pay scale of Teachers and equivalent cadre in Degree/Diploma level Technical Education as per AICTE Scheme as per 6<sup>th</sup> Pay Commission. Learned counsel then relied on the G.R dated 13.9.2019 issued by Medical Education and Drugs Department, in respect of revision of pay scale of 'Teachers' of Medical Education and Drugs Department in Government Medical/Dental and Ayurved College. Learned counsel further referred to the letter dated 26.3.2021 addressed to the applicant rejecting the claim of the applicant for pay scale as per UGC scale and retirement age from 58 to 65 years, wherein reference to prayers in O.A 588/2019.

11. Learned counsel for the applicant on the point of extension of age of superannuation from 58 to 62 years has relied on the G.R dated 30.4.2010 issued by Medical Education and Drugs. Learned counsel further relied on G.R dated 5.3.2015 issued by the Medical Education and Drugs Department for increasing the age of superannuation of "Teachers" from 62 years to 64 years. The age of superannuation for the Principal, Dean, Director or Teacher in

an affiliated college or recognized Institution shall be 64 years. Learned counsel relied on the G.R dated 25.2.2011, issued by Higher and Technical Education Department, regarding increasing the age of superannuation from 58 years to 65 years.

12. Learned counsel placed reliance on the judgment of this Tribunal dated 25.7.2014 in O.A 72/2011, Smt Vijayalakshmi S. Mone Vs. The State of Maharashtra & Ors. The O.A was allowed by the Tribunal. The matter was carried before the Hon'ble High Court by the Respondents by filing W.P 7440/2015, State of Maharashtra & Anr Vs. Smt Vijayalakshmi S. Mone. The said W.P was decided on 28.2.2017. As the applicant was allowed to continue till the age of 64 years, therefore the W.P was dismissed. Learned counsel has produced copy of representations dated 6.8.2016 and 3.9.2016 addressed to the Addl. Chief Secretary, Medical Education and Drugs Department and the same is referred to in Para 6 & 7 of the Original Application.

13. Learned counsel for the applicant relied on the following judgments:-

(i) Judgment of the Hon'ble Bombay High Court dated 23.4.2010 in **W.P 618/2002, Sahil D. Rasane & Ors Vs. The State of Maharashtra & Ors** and refers to para 7.2.1 of the said judgment.

(ii) Judgment of the Hon'ble Bombay High Court dated 25.2.2003 in **W.P 295/2003, Anandkumar N. Patil Vs. Maharashtra University of Health Science.**

(iii) Judgment of the Hon'ble Bombay High Court dated 6.11.2017 in **W.P 585/2017, DR Goraksha V. Pargaonkar Vs. State of Maharashtra & Ors.**



In this case, the Petitioner has approached the Hon'ble Bombay High Court with a prayer that he is a Teacher in Physical Education, seeks extension of age from 62 years to 65 years in terms of G.R dated 5.3.2011 and 12.7.2016 of Higher & Technical Education Department. The Division Bench held that the provisions of G.R dated 5.3.2011 are squarely applicable to the petitioner being "Teacher" working in the Bombay Physical Culture Education College of Physical Education run by the Respondent No. 5.

14. Learned P.O relied on the Affidavit in Reply dated 17.2.2023 filed on behalf of Respondents No 1 & 2 by Smt Vaishali Sule, Deputy Secretary in the office of Medical Education and Drugs Department. Learned P.O submits that U.G.C pay scale is not applicable to Nursing Colleges. Learned P.O points out to the G.R dated 29.3.1989 of Medical Education and Drugs Department on the point of revision of pay scale as per U.G.C recommendations. However, this G.R dated 29.3.1989 is to be read with G.R dated 27.1.2000 also issued by the Medical Education and Drugs Department. Learned P.O further relies on G.R dated 10.11.2009 regarding revision of pay scale of U.G.C. Learned P.O relied on the definition of "College" under Sec 2(11) of the Maharashtra University of Health Sciences Act, 1998. Learned P.O has submitted that there are only three types of colleges, i.e., Government Medical, Dental and Ayurveda, which is covered for the pay revision as per the G.R of 27.1.2000 and 10.11.2009 of Medical Education and Drugs Department. Learned P.O relies on G.R dated 10.11.2009 regarding revision of pay scale issued by Medical Education and Drugs Department to submit that "Nursing College" is not mentioned in G.R as specifically like three types of colleges. Hence, the claim be denied.

15. Learned P.O submits that unless there is amendment in applicable Maharashtra Civil Service Rules, the superannuation age cannot be extended. Learned P.O submits that not a single representation is received from the Nursing faculty for claiming UGC pay scale. Learned P.O submits that Ms Reshma Desai has filed representation dated 21.4.2018. Learned P.O then stated that pursuant to the queries made by this Tribunal by order dated 30.8.2023, Affidavit in Reply dated 11.9.2023, is filed by yMs Vaishali M. Sule, Deputy Secretary in the office of Secretary, Medical Education and Drugs Department, Mantralay, Mumbai.

16. Learned P.O relied on the following judgments:-

(i) Judgment of the Hon'ble Bombay High Court, Aurangabad Bench dated 30/11/2018, in **W.P 3344/2017, The State of Maharashtra & Ors Vs. Dr Girish H. Thitte.**

(ii) Judgment of the Hon'ble Supreme Court in **Dr J. Vijayan & Ors Vs. The State of Kerala & Ors, Civil Appeal No. 5037/2022 (Arising out of S.L.P (C) No. 24287/2018).**

(iii) Judgment of the Hon'ble Supreme Court in **Dr Prakasan M.P & Ors Vs. State of Kerala and Anr, Civil Appeal No. 7580/2012.**

(iv) Judgment of the Hon'ble Bombay High Court, Aurangabad Bench, in **W.P 3344/2017, The State of Maharashtra & Ors Vs. Dr Girish H. Thitte.**

(v) Judgment of Hon'ble Bombay High Court, Aurangabad Bench dated 20.3.2022 in **W.P 5402/2018, Dr Sanjay R. Kadam Vs. The State of Maharashtra & Ors.**

17. Let us first advert to provisions of "Coverage" in Para 2(1) of the G.R dated 10.11.2009 of Medical Education and Drugs Department.

2(1) Coverage:-

(i) The revised pay scales and other measures for the improvement of standards in Medical Education are applicable only to all categories of full time teachers and librarians in the Government Medical, Dental and Ayurved Colleges in the State and also full time teachers in Government AT/OT Schools and Centre, Nagpur. The revised scales are not applicable to teachers and librarians who retired on or before 31.12.2005 and who were on re-employment was extended after that date.

The coverage as relied in para 2 of the G.R dated 10.11.2009 states that only three types of colleges from the Health Sciences i.e., Government Medical, Dental and Ayurved are given the benefits of the pay scale as per UGC recommendations. However, if at all the Coverage is compared with the G.R dated 27.3.1989, there is also a clause of "Coverage" which also states about three types of colleges, Government Medical, Dental and Ayurved. The clause is mutatis mutandis. However, in the G.R dated 27.3.1989 further mentions about the specific Budget Heads, which is reproduced below:-

Budget Heads:-

The expenditure on this account should be debited to the following sub-heads and detailed heads of accounts under the budget head as under:-

05	-	<u>Medical Education, Training &amp; Research</u>
105	-	<u>Allopathy</u>
105-3 (A)		Grant Medical College, Bombay (2210-2336)
105-3 (B)		B.J Medical College, Pune (2210-2345)
105-3 (C)		Govt. Dental College, Nagpur (2210-2354)
105-3 (D)		Govt. Dental College & Hospital, Bombay (2210-2363)

- 105-3 (E) College of Nursing, Bombay (2210-2372)  
 105-3 (F) Medical College, Aurangabad (2210-2381)  
 105-3 (J) Medical College, Nagpur (2210-2392)  
 105-3 (H) Medical College, Miraj (2210-2400)  
 105-3 (L) Dr V.M Medical College, Solapur (2210-2443)  
 105-3 (M) Swami Ramanand T.R Medical College,  
 Ambejogai (2210-2452)  
 105-3 (N) Indira Gandhi Medical College, Nagpur  
 (2210-24761)  
 105-4 (2)(M) Govt. Medical College, Nanded.

101 Ayurvedic

- 101-5(i) R.A Podar College, Bombay (2210-19660)  
 101-5 (ii) Ayurvedic College, Nanded (2210-1975)  
 101-5 (iii) Ayurvedic College, Nagpur (2210-1984)  
 101-(8) 2 (D) Ayurvedic College, Osmanabad (2200-2069)  
 101-(8) 9 Upgradation of Department of P.G Training and  
 Research in Indian Systems of Medicines (2210-  
 2102)  
 101-4 Grant in Aid contribution, donations etc. for  
 Ayurvedic and Unani Institutions (2210-1975)

18. In **Dr J. Vijayan & Ors (supra)**, the affiliated colleges to the University are not bound to give the U.G.C pay scales or the pay formula to their teachers. The Ministry of Human Resources Development of the Government of India on the basis of Section 26 of the University Grants Commission Act, 1956, framed the U.G.C Regulations, 2010 and as per the Regulations the pay scales and service conditions including the age of superannuation were revised for the University and other Institutions who are funded by the U.G.C. A particular pay fixation and pay scale was mandatory for all those Colleges and Universities. However, the scheme was not made mandatory while extending to Universities, Colleges and other Educational Institutions coming under the purview of the

State Legislatures provided the State Government wish to adopt and implement the scheme subject to certain terms and conditions. The Hon'ble Supreme Court observed as under:-

“6. The UGC Regulations provided that the revised scale of pay and other service conditions shall be in accordance with Appendix-I, the relevant extract whereof is reproduced hereinbelow :

#### APPENDIX I

8. Other terms and conditions :

(f) Age of Superannuation:

(i) In order to meet the situation arising out of shortage of teachers in universities and other teaching institutions and the consequent vacant positions therein, the age of superannuation for teachers in Central Educational Institutions has already been enhanced to sixty five years, vide the Department of Higher Education letter No.F.No.119/2006/U.II dated 23.3.2007, for those involved in class room teaching in order to attract eligible persons to the teaching career and to retain teachers in service for a longer period. Consequent on upward revision of the age of superannuation of teachers, the Central Government has already authorized the Central Universities, vide Department of Higher Education D.O. letter No. F.I-24/2006-Desk(U) dated 30.03.2007 to enhance the age of superannuation of Vice-Chancellors of Central Universities from 65 years to 70 years, subject to amendments in the respective statutes, with the approval of the competent authority (Visitor in the case of Central Universities).

(f) State Governments, taking into consideration other local conditions, may also decide in their discretion, to introduce scales of pay higher than those mentioned in this Scheme, and may give effect to the revised bands/scales of pay from a date on or after 1.01.2006; however, in such cases, the details of modifications proposed shall be furnished to the Central Government and Central assistance shall be restricted to the Pay Bands as approved by the Central Government and not to any higher scale of pay fixed by the State Government(s).”

In the case of **Dr J. Vijayan & Ors, (supra)** the Government of Kerala adopted and implemented the U.G.C Regulations 2010,

though the enhancement of salary was accepted, but failed to comply with the enhancement of age of teachers. So, the Petitioners approached the Hon'ble Supreme Court and prayed that the age of teachers should be enhanced to 65 years as per U.G.C scheme. In the said case, the Hon'ble Supreme Court referred to the judgment and findings given by the Single Bench of the Hon'ble High Court on this point, wherein the Single Bench held that the policy of the State Government which is evidenced by the statutory provisions mandating teachers of aided affiliated colleges to retire at the age of 65 years and that of the Universities at the age of 60 years, has been crystalized by enactments under Article 309 of the Constitution of India. Thus, the question of fixing the retirement age of teachers is a ordinarily a matter of policy and the policy can be adopted by the State Government taking into account number of factors for e.g. unemployed youths, large number of teachers, number of trainees or students, the technologies used in teaching etc. Thus, the Hon'ble Supreme Court refused relief in the case of **Dr. J. Vijayan & Ors (supra)**. We are also not inclined to consider the case of extension of age of superannuation or extension of age of retirement more than 58 years to the applicant which is for most of teachers and ors.

19. In the case of **Dr. Prakasan M.P & Ors (supra)**, the applicants are members of the teaching faculty in Homeopathic Medical Colleges in the State of Kerala and prayed for extension of age of retirement from 55 years to 60 years. At that time in the State Government issued an order dated 14.1.2010, increasing the age of retirement on account of dearth of Medical Doctors. However, the said order was not made applicable for faculties in Nursing, Dental, Pharmacy and Non-Medical categories under the Medical Education Service. Much was argued on the legitimate expectation for increasing the age of superannuation. However,

the Hon'ble Supreme Court rejected the claim of the applicants by holding that doctrine of legitimate expectations would not come into play as it is a public function which is governed by the provisions of Statute and relevant service regulations. It also held that such decision of extension of age of retirement lies exclusively within the domain of the executive and it is for the State to take a call by weighing all the pros and cons.

20. In **Dr Sanjay Kadam & Ors case (supra)**, the Hon'ble Bombay High Court, Aurangabad Bench, held that the G.R dated 30.5.2015, 30.6.2015 and 3.9.2015 of increasing the age of superannuation from 58 to 60 years as illegal. The Hon'ble High Court relied on Rule 10(1) & 12 of the Maharashtra Civil Services (Pension) Rules, 1982, wherein Rule 10(1) & 12 states the age of retirement as 58 years and the age should not go beyond the age of 60 years. Thus, held that the by issuing G.R the rules cannot be amended and hence there cannot be any extension of age of retirement.

21. We have called upon Ms Vaishali Sule, Deputy Secretary, Medical Education and Drugs Department to file affidavit on the point whether the Budget Head of College of Nursing mentioned in the G.R dated 27.3.1989, shown as 105-3(E) (2210-2372) is now in existence. She answered in the positive that it is still in existence and Budget Head relates to the revenue and expenditure of the particular Institution. She further submitted that the salaries and allowances of the officers and employees to whom the UGC pay scale is applicable and to those whom UGC pay scales are not applicable are paid from the same Budget Head. The "Teachers" in Government Medical, Ayurvedic and Dental Colleges are paid as per the UGC pay scale. But the "Teachers" in Government Nursing

Colleges are not paid as per the UGC scale. She further stated that U.G.C scales are applied to the teachers in the Institute of Nursing Education, Mumbai by decision in G.R dated 27.3.1989 of Medical Education and Drugs Department, but the U.G.C pay scales have not been given to the Teachers in Government Nursing Colleges as per the revised U.G.C pay scales from time to time. She fairly admitted that no record is found regarding representations by the "Teachers" cadre of Government Nursing Colleges before the Pay Commission Anomaly Committee or any cases in Court of Law filed at that time in this regard. It is admitted that the "Teachers" in the colleges of B.A, B. Com and B. Sc are given the UGC pay scales. However, the Government Nursing Colleges which are run as per the norms of the Indian Nursing Council they do not come under the U.G.C rules and hence the U.G.C pay scales are not binding to be given to "Teachers" of the Government Nursing Colleges. The submission that Government Nursing Colleges and Government Medical Colleges are two different Institutions, hence the UGC Pay Scales are applicable to the teaching faculty only in the Government Medical Colleges, it is not made applicable to teaching faculty in Government Nursing Colleges by default, are not convincing.

22. It is an admitted fact that all Government Medical Colleges and Government Nursing Colleges are now covered under the Maharashtra University of Health Science Act of 1998. Sections 2(11), 2(17) & 2(35) read thus:-

"2. Definitions:- In this Act, unless the context otherwise requires:-

(11). "College" means a college imparting education in Health Sciences conducted by the University or affiliated to the University situated in the State of Maharashtra.

"2(17) 'Health Sciences' means modern scientific medicine in all its branches concerning preventing, promotive, curative and rehabilitative services and included surgery, obstetrics



and gynaecology, dental science, nursing and other allied subjects including the Indian Systems of Medicine in all their branches.”

2(17) “Health Sciences” means modern scientific medicine in all its branches concerning preventing, promotive, curative and rehabilitative service and included surgery, obstetrics and gynaecology, dental science, nursing and other allied subjects including the Indian Systems of Medicine in all their branches.

“2(35) ‘Teachers’ means full time approved Demonstrators, Tutors, Assistant Lecturers, Lecturers, Readers, Associate Professors and other persons ‘teaching or giving instructions on full time basis in affiliated colleges or approved institutions in the University.”

23. The various Government Resolutions of Higher & Technical Education Department and Medical Education and Drugs Department regarding grant of the U.G.C pay scales have to be referred by us. By G.R dated 17.10.1977, the U.G.C pay scales were made applicable. It states that the Government of Maharashtra has approved the implementation of the U.G.C pay scale for teachers in Government Medical, Dental and Ayurvedic Colleges w.e.f 4.10.1977. The G.R dated 27.3.1989 is about the revision of pay scale of Medical Education and Drugs Department and Teachers in Government Medical, Dental and Ayurveda colleges. The U.G.C revised pay scale is also made applicable to full time teachers in PT/OT School and Centre, Nagpur by G.R dated 22.8.1988. The Ayurvedic Colleges are also given further U.G.C pay scales w.e.f 1.4.1980. Further, the G.R dated 27.1.2000 has also revised the pay scales of Government Medical, Dental and Ayurveda Colleges. In both the G.Rs, there is a clause of Coverage, which reads as under

“Coverage: The Revised pay scales are applicable to full-time teachers and Librarians in the Medical/Dental/Ayurved

Colleges in the State and also to full time teachers in PT/OT School and Centre, Nagpur. Privately run Medical Colleges will not be entitled for any financial assistance from the State Government on account of revision of pay scale of full time teachers and Librarians. The revised scales are not applicable to teachers who retired on or before 21.12.1985 and whose period of re-employment was extended after that date.”

The same clause of ‘Coverage’ is adopted in subsequent G.R dated 10.11.2009. Thus, the limited issue is whether the Nursing Education is covered under the Medical Education and the Nursing College can be taken within the ambit of Medical Colleges. As per the definition mentioned in Section 2(17) of the Maharashtra University of Health Sciences Act, 1998, the term “Health Sciences” include ‘Nursing’. “Nursing is not only restricted to patient care, but to provide assistance to the Doctors. ‘Nurses’ are the integrated part of the medical profession and their work cannot be substituted by any other, but performed only by the Nurses. It is a noble profession concerning the lives of the people, which needs competency, efficiency and dedication. It won’t be out of place to mention as it cannot be ignored that nursing services rendered to the injured soldiers in the battle field by Florence Nightingale who represents this noble profession. We would like to point out that the Government of Maharashtra had also considered the Government Nursing Colleges on par with Government Medical Colleges and therefore, has rightly made a budgetary provision under the “Budget Head” of College of Bombay Nursing 105-3(E) (2210-2372) in G.R dated 27.3.1989 of Medical Education and Drugs Department.

24. So far as the budgetary outlays made under the Budget Head of College of Nursing 105-3(E) (2210-2372) is concerned, we made query whether the UGC pay scale was given to the Nurses, Teachers or Tutors in all Government Nursing Colleges and what

were the decision taken on this issue. We were informed by the learned P.O on the basis of instructions from the Medical Education & Drugs Department that no record is available of period prior to 2012 due to accidental fire incidence which happened in Mantralaya. The old records were burnt in the fire and no back up is available today. So, the Medical Education and Drugs Department was unable to answer such queries. However, the learned P.O has submitted that no representation was made by the Nurses, Teachers, Tutors of Government Nursing Colleges for correction in their pay scale based on U.G.C pay scale either before the Government of Maharashtra or before the Pay Commission Anomaly Committee like Hakim Committee or Bakshi Committee. However, it is evident that when the Government of Maharashtra made the Budget Head for payment of Salary & Allowances to Nurses, Teachers and Tutors of Government Nursing Colleges as per U.G.C pay scale was created by G.R dated 27.3.1989 of Medical Education and Drugs Department, no U.G.C pay scale, however, were ever given to the Nurses, Teacher and Tutors in Government Nursing Colleges from 1.1.1986 and later on. We have put a query as to whether there is any policy decision of the Government of Maharashtra to withdraw or cancel the said 'Budget Head' and taking out Government Nursing Colleges from the coverage of Health Sciences under the Maharashtra University of Health Science Act, 1998.

25. Applicant's prayers have its genesis in non-implementation of the G.R of Medical Education & Drugs Department dated 27.3.1989 and subsequently Full Time Teachers of Government Nursing Colleges have been persistently kept out of 'Coverage' provided to Full Time Teachers of Government Medical, Dental & Ayurvedic Colleges and even Librarians at the time of implementation of revised UGC Pay Scales. Medical Education &

Drugs Department G.R dated 27.3.1989 was issued to implement the revised UGC Pay Scales for the Full Time “Teachers” and “Librarians” in Medical /Dental/Ayurvedic Colleges and Full Time “Teachers” in OT/PT School, Nagpur. Although, the paragraph on ‘Coverage’ used the phrase Government Medical Dental Ayurvedic Colleges; it is evident that by design, the Medical Education and Drugs Department G.R dated 27.3.1989 had not seeded exclusion and caused discrimination against Full Time Teachers working in ‘College of Nursing, Bombay’. Medical Education & Drugs Department G.R dated 27.3.1989 in fact had created ‘Major Budget Head’ ‘2210-Medical and Public Health’ and categorized them separately under two ‘Minor Budget Heads’:- (i) ‘105-Allopathy’ and (ii) ‘101-Ayurveda’. Accordingly, the ‘College of Nursing Bombay’ was assigned the ‘Sub Budget Head’ of 105-3(E) which falls under ‘Minor Budget Head: 105-Allopathy’ which included all ‘Medical & Dental Colleges’. All ‘Ayurvedic & Unani Colleges’ were similarly given individual Sub Budget Heads under 101-Ayurveda. Thus, ‘College of Nursing Bombay’ which then was probably the only institution having ‘Full Time Teachers’ unlike several other Medical & Dental Colleges and Ayurvedic & Unani Colleges, did not therefore find separate mention in the “Coverage” of Government Medical, Dental, Ayurvedic Colleges in Medical Education & Drugs Department by G.R dated 27.3.1989.

26. Significantly it was for the first time under G.R dated 10.11.2009 of Medical Education and Drugs Department ‘Coverage’ that specific categories of employees who also work in Government Medical, Dental, Ayurvedic Colleges were excluded such as Registrar, Finance Officers and Controller of Examination, Accompanists, Coaches, Tutors, Part Time Teachers and Demonstrators as well as professionals like System Analyst, Senior Analyst, Research Officers. Significantly it was also clarified that

the revised UGC Pay Scales would be applicable from 1.1.2006 only to those teachers who have been lawfully appointed, i.e., as per the Recruitment Rules. Further even in case of Lecturers, whose services has been regularized by Medical Education and Drugs Department G.R dated 22.1.2009, the revised UGC Pay Scales were granted to them from 22.1.2009. Medical Education and Drugs Department G.R of 10.11.2009 which excluded above mentioned categories of employees did not exclude the 'Teachers' in Government Nursing Colleges. Evidently from the legacy of the issue as mentioned above by this time discrimination against the 'Teachers' of Government Nursing Colleges had not only set in but became invisible as no concerted efforts were made to take remedial measures especially when Medical Education and Drugs Department G.R dated 10.11.2009 was issued for the first time after implementation of the Maharashtra University of Health Sciences Act, 1998 to give to 'Teachers' in Government Medical, Dental and Ayurvedic Colleges UGC Pay Scale from 1.1.2006

27. Medical Education and Drugs Department G.R dated 27.3.1989 undoubtedly had made UGC Pay Scales applicable to 'Teachers' of 'College of Nursing', Mumbai from 1.1.1986 and this status has remained unaltered even after issue of Medical Education and Drugs Department G.R dated 27.1.2000 & G.R dated 10.11.2009, Notwithstanding any reasons including inadequate 'Budgetary Outlays' which may have resulted in non-implementation of UGC Pay Scales in respect of 'Teachers' of Government Nursing Colleges, with effect from 1.1.1986 and 1.1.1996 but coming into effect of Maharashtra University Health Science Act, 1998, had made it a compelling case to include "Teachers" of Government Nursing Colleges for entitlement of UGC Pay Scales under Medical Education & Drugs Department G.R dated 10.11.2009.

28. Maharashtra University of Health Sciences Act, 1998 in its 'Preamble' has used interchangeably the words 'Health Science' with 'Medical Sciences'. Further, definition of "Health Science" under Section 2(17) is expansive as it states "*modern scientific medicine in all its branches concerning preventing, promotive, curative and rehabilitative services and included surgery, obstetrics and gynecology, dental science, nursing and other allied subjects including the Indian Systems of Medicine*". The term 'Nursing' under Section 2(17) has been mentioned separately but along with other "Modern Scientific Medicines" branches such as '*surgery, obstetrics and gynecology, dental science, and other allied subjects*'. Thus, the natural inference is that 'Nursing' is a branch of "Modern Scientific Medicine". Further 'Nursing' can be undisputedly placed in the broad categorization of both "Curative" & "Rehabilitative Services" under Section 2(17). Equally it is important to observe that there is no differentiation whatsoever amongst any categories of "Teachers" under Section 2(35) of the Maharashtra University of Health Sciences Act, 1998. Hence, 'Teachers' of Government Nursing Colleges could not have been treated as different class of "Teachers" under the Maharashtra University Health Sciences Act, 1998 so as to result in discrimination against them under Article 14 of the Constitution of India.

29. The order passed in O.A No. 416/2018 dated 28.11.2018 is as follows:-

"10. The plea of discrimination and treatment on parity requires adjudication, however in the background of the fact that admittedly the Government is engaged in the process of decision making, adjudication by this Tribunal may either way influence the prospects of claim of applicant and members of her class as regards their demand which is still pending favourable consideration at the level of the

Government. Therefore, this Tribunal elects to forbear from adjudication in peculiar situation, in the larger interest.

11. In the background that applicant's right / claim is in the process of formation, there are no grounds in existence, as on today, worth issue of a writ of mandamus.

12. Hence, Original Application has no merit and is disposed without orders in either way.

13. We clarify that this decision shall not in any way adversely affect consideration of applicant's claim on its own merit."

The Applicants claims proposal of increasing the age of retirement and U.G.C pay scale was rejected by the Respondents by order dated 26.3.2021.

30. Medical Education and Drugs Department in the course of Final Hearing of this O.A No. 682/2022 confided nothing about the final decision arrived at with regard to granting of UGC Pay Scales and increasing Superannuation age of Teachers of Government Nursing Colleges against the backdrop of the order in O.A No 416/2018 dated 28.11.2018. Affidavit in Reply of Medical Education & Drugs Department filed on 17.2.2023 is notably silent about what decision has been taken after Order in O.A 416/2018 dated 28.11.2018. Therefore, it has become imperative to nudge if not coerce the Medical Education and Drugs Department into action to decide without any further delay about granting UGC Pay Scales to 'Teachers' of Government Nursing Colleges so that there is no subsistence of discrimination against them under Article 14 of the Constitution of India as the Maharashtra University of Health Sciences Act, 1998 treats 'Teachers' of Government Nursing Colleges equally to all Teachers in Government Medical, Dental, Ayurvedic Colleges under Section 2(35) and 'Nursing' in no different way from those in other branches Modern Scientific

Medicine included in definition of 'Health Sciences' under Section 2(17).

31. Hon'ble Supreme Court of India in **V. Markendeya & Ors Vs. State of Andhra Pradesh, AIR 1989 SC 1308**, observed the following with respect to the application of the principle of 'Equal Pay for Equal Work':-

“If the aggrieved employees fail to demonstrate discrimination, the principle of equal pay for equal work cannot be enforced by court in abstract. The question what scale should be provided to a particular class of service must be left to the Executive and only when discrimination is practised amongst the equals, the court should intervene to undo the wrong, and to ensure equality among the similarly placed employees.”

32. Considering that the prayer of the applicant in respect of application of U.G.C pay scale is to be allowed. We make it clear that the applicant retired on 31.8.2019. The date of retirement is a statutory provision and unless the rules are amended accordingly, no such relief can be granted.

33. Medical Education & Drugs Department has evidently not taken any decision on both issues of grant of UGC Pay Scales and increase in superannuation age for the “Teachers” in Government Nursing Colleges. More than adequate time has lapsed since order was passed in O.A No. 416/2018 on 28.11.2018. Therefore, to obliterate any further subsistence of discrimination between “Teachers” and others and 'Nursing' and other branches of Modern Scientific Medicine under 'Health Sciences' as defined in Sections 2(35) and 2(17) of Maharashtra Health Science Act, 1998, we are of the considered view that suitable directions have to be given in this regard to Medical Education and Drugs Department.



34. In view of the above, we pass the following order:-

- (i) The prayer of the applicant for extension of age of retirement is rejected.
- (ii) The applicant is entitled to get the pay as per U.G.C pay scale since she became Professor.
- (iii) The Respondents are directed to fix the pay and pay arrears to the applicant within a period of three months from the date of this order.

**Sd/-**  
**(Debashish Chakrabarty)**  
**Member (A)**

**Sd/-**  
**(Mridula Bhatkar, J.)**  
**Chairperson**

**Place : Mumbai**  
**Date : 06.12.2023**  
**Dictation taken by : A.K. Nair.**