



**KARNATAKA LEGISLATIVE ASSEMBLY
FIFTEENTH LEGISLATIVE ASSEMBLY
SIXTH SESSION**

**THE KARNATAKA REGULATION OF PAY AND PENSION OF TEACHER IN HIGHER
EDUCATIONAL INSTITUTIONS BILL, 2020
(LA Bill No. 10 of 2020)**

A Bill to regulate pay, pension and pensionary benefits admissible to the teacher working in Government Colleges, Universities established by law and in Government aided Higher Educational Institutions under the control of the State Government.

Whereas under the provisions of Article 309 of the Constitution of India and under Entries 14, 32 and 41 of List II and under Entry 25 of List III of the Seventh Schedule to the Constitution of India, the Legislature of the State may by law regulate the conditions of service of persons appointed to public services and posts in connection with the instrumentalities of the State of Karnataka:

Whereas a teacher in Higher Educational Institutions drawing UGC/AICTE/ICAR or modified AICTE pay scales are employed by the State Government or aided Colleges or institutions appointed to officiate in a post is entitled to draw the presumptive pay of that post and the pension and pensionary benefits of such teacher is determined with reference to the applicable Rules / orders governing grant of pension at the time of retirement or superannuation or death as the case may be.

Whereas the retired teacher of UGC/ICAR/AICTE or modified AICTE Pay Scales are on par with the rest of the State Government pensioners for the purpose of pension and pensionary benefits. Further, it is also an established policy of the State Government that the pension and pensionary benefits of teachers and equivalent cadre staff on UGC/ICAR/AICTE or modified AICTE scales of pay working in institutions maintained and aided by State Government shall be determined as per the Rules of the State Government. The cut-off date in respect of revision of pay and pension is decided taking into consideration the huge financial implications of pay revision and other relevant factors like Central Government financial assistance, if any, etc.,

Whereas, as a matter of precedent policy the pension of the retired teachers who retired prior to the cut-off date of the subsequent pay revision is subjected to further revision, as and when the corresponding revision of pay scales are effected as per decision of the State Government.

Whereas, the Karnataka State Higher Education Council is an Advisory body to the State Government regarding Academic matter pertaining to Higher Education and no power is given to the said Council under the Karnataka State Higher Education Council Act, 2010 (Karnataka Act No.26 of 2010) to recommend or advice on revision of pay or pension to teachers of Higher Educational Institutions. Any adviseor suggestion by the council is not binding on the State Government.

Whereas the Government in Order dated: 24.07.2015 rejected the recommendation of the Karnataka State Higher Education Council to extend the 2006 UGC pay scale prior to 01.01.2006 retirees. This was challenged in the Hon'ble High Court of Karnataka in Writ Petition No. 775-787/2015 (S-R). Allowing the said writ petition, the Hon'ble High Court of Karnataka has observed as follows,namely;-

“The State is required to demonstrate that the case of the petitioners falls under Category II as enunciated by their Lordships in V.Kasturi (supra). The meaning of the words “permissible in law” in this context means the inherently differentiable separate classification in law, projected as Category II in V. Kasturi (supra). The State has failed to point out that the fixing of cut-off date was inherently permissible under a specific provision of Law. No justifiable reason or rationale in fixing the cut-off date is provided by the State, except pointing out to the effective date fixed in the Government Order dated: 24.12.2009 of Government of India and communicated dated: 11.03.2010, issued by the Ministry of Human Resources Development. The artificial classification by fixing a cut-off date is nothing but creating a class with a class, which is not permissible. The law laid down in Nakara (supra) that the object sought to be achieved was not to create a class within a class, but to ensure that the benefits of pension were made available to all persons of the same class, continues to hold the field even to this date. The artificial classification sought to be made by the State does not satisfy the test of Article 14.”

Whereas, the Hon'ble Supreme Court of India in the matter of B.J.Akkara and Ors. V/s GOI&Ors. [(2006) 11 SCC 709] has enunciated certain well settled principles of fixation of pension and grant of pension, accordingly all retirees retiring with a particular rank do not form a single class for all purposes. Pensioners who retired with same rank need not be given identical pension where the average reckonable emoluments at the time of retirement were different in view of the difference in pay or in view of different pay scales being in force. The principles enunciated by the Hon'ble Apex Court in the above case is in accordance with the policy of the State as well.

Whereas, in Jagdish Prasad Sharma and others v/s State of Bihar and others reported in (2013) 8 SCC 633, the Apex Court has categorically held that UGC regulations are not automatically binding on the State since the plenary power of the State cannot be curtailed by such regulations even though the UGC regulations have statutory force. In the present fact situation comes within the ambit of State policy and the policy decision of the State Government not to extend the revised pensionary benefits to teachers who have retired prior to 01.01.2006 is in compliance with the dicta in Jagdish Prasad Sharma.

Whereas, the Central Government in the letter dated:11.03.2010 had indicated that, it was not mandatory for State Government to give the benefit of revision of pension structure as contemplated in letter dated:11.03.2010 to the teachers of State Universities and Colleges on UGC pay scales, who retired prior to 01.01.2006 and as such, as per the discretionary powers vested in State Government it was decided not to give benefit vide letter dated:11.03.2010 of Government of India.

Whereas, the Hon'ble Supreme Court of India in the matter of Union of India v/s S.Thakur [(2009) (1) SCC (L&S)329] has held that 'it is the function of the executive to decide on the admissible revised pay scale and scope of judicial review of such an administrative decision is very limited'. Further, the Hon'ble Apex Court in the case of Union of India V/s Maniklal Banerjee [2006 SCC (L&S) 1959] has held 'that fixation of cutoff date based upon the financial implication is relevant factor while revising the pay scale'.

Whereas, grant of pension or determination of pension retrospectively based on the subsequent revision of pay scales is against the policy of the State and against the rules framed by the State Government. Any decision to grant enhanced pension retrospectively based on the subsequent revision of pay scale is not the policy of the State Government. Teachers ceased to be in service as on the date of subsequent revision of pay scale constitute a separate class by themselves. They cannot be equated with teachers whose pay has been revised subsequently. Further, it involves payment of large sums of money and it will be a huge financial burden to the State Exchequer.

And whereas it is necessary and expedient to clear the ambiguity in fixation of pension and grant of pensionary benefits to the teacher, who has retired before revision of UGC/ICAR/AICTE or modified AICTE scales of pay:

Be it enacted by the Karnataka State Legislature in the seventy first year of the Republic of India, as follows:-

1. Short title and Commencement.-(1) This Act may be called the Karnataka Regulation of Pay and Pension of Teachers in Higher Educational Institutions Act, 2020.

(2) Section 2,3,4,5,6 and 12 shall be deemed to have come into force with effect from 1st January 1986 and remaining provisions shall come into force with effect from 17th January, 2020.

2. Definitions.-(1) In this Act unless the context otherwise requires;-

- (i) **“AICTE”** means the All India Council for Technical Education constituted under All India Council for Technical Education Act, 1987 (Central Act 52 of 1987);
- (ii) **“College”** means any college or an institution maintained or approved by or affiliated to any University or constituent college of the University and providing courses of study for admission to the examination of the University and includes Autonomous College either under the control of State or funded either substantially or partially by the State Government and includes Government/Aided Colleges and Polytechnic Institutions;
- (iii) **“Competent Authority”** means the State Government or any other authority competent to make orders as to regulation of pay and pension of the teachers in Government Colleges, Universities or aided institutions;
- (iv) **“Government”** means the Government of Karnataka;
- (v) **“Higher Educational Institutions”** means an Academic Institution of Higher Education and Research Associated with and admitted to privileges of a University or maintained by a University; whether professional, technical or otherwise and includes research studies or an institution or a collegeaffiliated to the University,aided institutions and State funded institutions;
- (vi) **“ICAR”** means Indian Council of Agricultural Research;
- (vii) **“Pay”** means the basic pay attached to the post and carries the same meaning assigned in clause (32) ofrule 8 of the Karnataka Civil Services Rules but does not include Non-Pension Allowance(NPA) and other special allowance granted under relevant provisions of UGC/ICAR/AICTE or modified AICTE as the case may be;
- (viii) **“Pension”** means the pension as defined in clause (33) ofrule 8 of the Karnataka Civil Services Rules or respectiverules or orders governing grant of pension issued by the Competent Authority;
- (ix) **“Prescribed”** means prescribed by rules made bythe Government;

- (x) **“Principal”** means the head of a college or institution by whatever name he is called;
- (xi) **“Teacher”** means a person appointed to any of the category of teaching posts such as Professor, Associate Professor, Assistant Professor, Lecturer, Librarians, Reader or Physical Education Personnel by whatever name called and includes all personnel including Principal or Head of the Institution holding post carrying pay scale of UGC/ICAR/AICTE or modified AICTE respectively in Higher educational Institutions.
- (xii) **“UGC”** means University Grants Commission established under University Grants Commission Act, 1956 (Central Act 03 of 1956); and
- (xiii) **“University”** means an University established by law of the State Legislature.

(2) Words and expressions used in this Act but not defined hereinabove shall have the same meanings as respectively assigned to them under the Karnataka Civil Services Rules and applicable Pension rules or Orders.

3. Regulation of pay and allowances of a teacher.-(1) Subject to such rules as may be prescribed a teacher is entitled to draw the pay and allowances attached to a post to which he is regularly appointed.

(2) The pay of a teacher shall be so regulated as per the Service rules or Orders of the Competent Authority regulating the pay and allowances as the case may be, but not under the provisions of regulations issued by the Government of India or any other Central Government Institution established by an Act of Parliament of India:

Provided that, the pay and allowances of any retired teacher, if he is reappointed or appointed on consolidated pay or contractual agreement etc., shall be determined in accordance with the provisions of the applicable Service Rules or Orders of the State Government and Statutes or rules made by the respective Universities/Higher Educational Institutions governing contractual appointment or under any agreement entered either by the State Government or Higher Educational Institutions as the case may be.

4.Regulation of pension and pensionary benefits of a teacher.- (1) Subject to such rules as may be prescribed the pension and pensionary benefits of a teacher shall be determined with reference to the last pay drawn immediately prior to the date of retirement or superannuation or death, as the case may be,subject to maximum limit, if any, in accordance with the provisions of the Karnataka Civil Services Rules or Triple Benefit Scheme Rules read with the applicable Pension Rules and Orders as the case may be,if any, issued by the Competent Authority from time to time.

(2) The pension and pensionary benefits once determined shall not be subject to revision unless the pay of the retired teacher is revised retrospectively either by a rule or order of the Competent Authority extending the benefit of revised pay scales retrospectively subject to the conditions imposed in the said Order or rules:

Provided that, a retired teacher is entitled, to get revision of pension or pensionary benefits as per section 5.

5. Revision of Pension of a Teacher.-(1) A teacher shall be entitled for revision of pension corresponding to which has been already settled, as and when State Government revises pension as per recommendation of the Pay Commission or Committee from time to time and same is adopted by the Higher Educational institutions.

(2) On revision of pay scale, a retired teacher whose pension is settled as per sub-section (1) of section 4 shall not be entitled for revision of his last pay drawn, in new revised pay scale, which is extended only to a teacher retired after implementation of revised scales of pay.

6. Validation of Proceedings and extinguishment of claims.- Notwithstanding anything contained in any judgment, decree or order of any Court, Tribunal or Authority or any Law for the time being in force,-

(a) any rule, order or notification made or issued by the Competent Authority regulating pay, pension and pensionary benefits of a teacher regarding UGC/ICAR/AICTE or modified AICTE scale of pay before the commencement of this Act to the extent they are not contrary to the provisions of this Act; or any action done or taken by the Competent Authority in accordance with the provisions of said rules, order or notification shall be deemed to have been validly done or taken under the provisions of this Act; and

(b) any relief regarding pension or pensionary benefits granted to any person by any court contrary to the provisions of this Act shall stand extinguished and any claim of a teacher for revision of pension, which has already been settled by reckoning last pay drawn in pay scale prevailing at time of superannuation or death for extending new revised pay scale shall stand extinguished and accordingly,-

- (i) no suit or other proceedings shall be maintained or continued in any court against the Government by any teacher claiming revision of pension on basis of new revision in pay scales; and
- (ii) no Court shall enforce any decree or order directing revision of pay scales of a teacher and revision in pension retrospectively.

7. Review.- The State Government may review the fixation of pay and pension contrary to the provisions of the Service Rules applicable to the teacher including cases of mistake of fact or law or ignorance of law, either on its own or by an application and may direct the competent authority to re-fix the pay or pension or both in accordance with law. However, no arrears shall be recovered if the fixation of pension relates back to five years or more or if the State Government is satisfied that recovery causes undue hardship to the pensioner.

8. Delegation of powers.- The State Government, may by notification, delegate all or any of the powers conferred on it by or under this Act, to such officer or authority subordinate to it except the power to make rules under section 13.

9. Powers of the Government to give directions:-The Government, subject to the provisions of this Act read with the applicable provisions of the Service Rules governing regulation of pay and pension may issue directions from time to time after ascertaining the legality of fixation of pay and pension as it deems necessary.

10. Protection of action taken in good faith.- No suit, prosecution or other legal proceeding shall lie against any officer of the Government for anything done in good faith or intended to be done under this Act.

11. Power to remove difficulties.- (1) If any difficulty arises, in giving effect to the provisions of this Act, the Government may, by order published in the official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to be necessary or expedient for removing the difficulty:

Provided that, no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before both houses of the State Legislature.

12. Over riding effect.-The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or decree or order of a Court or other authority.

13. Power to make rules.- (1) The Government may make rules, after previous publication by notification, to carry out the purposes of this Act.

(2) Every rule made under this Act shall be laid as soon as may be after it is made before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions

aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

14. Transitory provisions.-Any rule, order or notification issued by the Competent Authority governing pay, allowances and pension of a teacher before commencement of this Act, shall be deemed to have been issued under this Act to the extent they are not repugnant to the provisions of this Act and they shall continue until they are modified or rescinded by rules made under provisions of this Act.

15. Repeal and Savings.- (1) The Karnataka Regulation of Pay and Pension of Teachers in Higher Educational Institutions Ordinance, 2020 (Karnataka Ordinance No.1 of 2020) is hereby repealed.

(2) Notwithstanding such repeal anything done or any action taken under said Ordinance shall be deemed to have been done or taken under this Act.

STATEMENT OF OBJECTS AND REASONS

It is considered necessary to regulate pay, pension and pensionary benefits admissible to the teacher working in Government Colleges, Universities established by law and in Government aided Higher Educational Institutions under the control of the State Government.

Whereas under the provisions of Article 309 of the Constitution of India and under Entries 14, 32 and 41 of List II and under Entry 25 of List III of the Seventh Schedule to the Constitution of India, the Legislature of the State may by law regulate the conditions of service of persons appointed to public services and posts in connection with the instrumentalities of the State of Karnataka:

Whereas a teacher in Higher Educational Institutions drawing UGC/AICTE/ICAR or modified AICTE pay scales are employed by the State Government or aided Colleges or institutions appointed to officiate in a post is entitled to draw the presumptive pay of that post and the pension and pensionary benefits of such teacher is determined with reference to the applicable Rules / orders governing grant of pension at the time of retirement or superannuation or death as the case may be.

Whereas the retired teacher of UGC/ICAR/AICTE or modified AICTE Pay Scales are on par with the rest of the State Government pensioners for the purpose of pension and pensionary benefits. Further, it is also an established policy of the State Government that the pension and pensionary benefits of teachers and equivalent cadre staff on UGC/ICAR/AICTE or modified AICTE scales of pay working in institutions maintained and aided by State Government shall be determined as per the Rules of the State Government. The cut-off date in respect of revision of pay and pension is decided taking into consideration the huge financial implications of pay revision and other relevant factors like Central Government financial assistance, if any, etc.,

Whereas, as a matter of precedent policy the pension of the retired teachers who retired prior to the cut-off date of the subsequent pay revision is subjected to further revision, as and when the corresponding revision of pay scales are effected as per decision of the State Government.

Whereas, the Karnataka State Higher Education Council is an Advisory body to the State Government regarding Academic matter pertaining to Higher Education and no power is given to the said Council under the Karnataka State Higher Education Council Act, 2010 (Karnataka Act No.26 of 2010) to recommend or advice on revision of pay or pension to teachers of Higher Educational Institutions. Any advise or suggestion by the council is not binding on the State Government.

Whereas the Government in Order dated: 24.07.2015 rejected the recommendation of the Karnataka State Higher Education Council to extend the 2006 UGC pay scale prior to 01.01.2006 retirees. This was challenged in the Hon'ble High Court of Karnataka in Writ Petition No. 775-787/2015 (S-R). Allowing the said writ petition, the Hon'ble High Court of Karnataka has observed as follows namely;-

“The State is required to demonstrate that the case of the petitioners falls under Category II as enunciated by their Lordships in V.Kasturi (supra). The meaning of the words “permissible in law” in this context means the inherently differentiable separate classification in law, projected as Category II in V. Kasturi (supra). The State has failed to point out that the fixing of cut-off date was inherently permissible under a specific provision of Law. No justifiable reason or rationale in fixing the cut-off date is provided by the State, except pointing out to the effective date fixed in the Government Order dated: 24.12.2009 of Government of India and communicated dated: 11.03.2010, issued by the Ministry of Human Resources Development. The artificial classification by fixing a cut-off date is nothing but creating a class with a class, which is not permissible. The law laid down in Nakara (supra) that the object sought to be achieved was not to create a class within a class, but to ensure that the benefits of pension were made available to all persons of the same class, continues to hold the field even to this date. The artificial classification sought to be made by the State does not satisfy the test of Article 14.”

Whereas, the Hon'ble Supreme Court of India in the matter of B.J.Akkara and Ors. V/s GOI&Ors. [(2006) 11 SCC 709] has enunciated certain well settled principles of fixation of pension and grant of pension, accordingly all retirees retiring with a particular rank do not form a single class for all purposes. Pensioners who retired with same rank need not be given identical pension where the average reckonable emoluments at the time of retirement were different in view of the difference in pay or in view of different pay scales being in force. The principles enunciated by the Hon'ble Apex Court in the above case is in accordance with the policy of the State as well.

Whereas, in Jagdish Prasad Sharma and others v/s State of Bihar and others reported in (2013) 8 SCC 633, the Apex Court has categorically held that UGC regulations are not automatically binding on the State since the plenary power of the State cannot be curtailed by such regulations even though the UGC regulations have statutory force. In the present fact situation comes within the ambit of State policy and the policy decision of the State Government not to extend the revised pensionary benefits to teachers who have retired prior to 01.01.2006 is in compliance with the dicta in Jagdish Prasad Sharma.

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And whereas it is necessary and expedient to clear the ambiguity in fixation of pension and grant of pensionary benefits to the teacher, who has retired before revision of UGC/ICAR/AICTE or modified AICTE scales of pay:

Since, the matter was urgent and both the houses of the State Legislature were not in session, the Karnataka Regulation of Pay and Pension of Teachers in Higher Educational Institutions Ordinance, 2020 (Karnataka Ordinance No.1 of 2020) was promulgated to achieve the above object.

This Bill seeks to replace the said Ordinance.

Hence the Bill.

**EXPLANATORY STATEMENT AS REQUIRED BY SUB-RULE (1) OF RULE 80 OF THE
RULES OF PROCEDURE AND CONDUCT OF BUSINESS IN THE KARNATAKA
LEGISLATIVE ASSEMBLY**

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Since, the matter was urgent and both the houses of the State Legislature were not in session, the Karnataka Regulation of Pay and Pension of Teachers in Higher Educational Institutions Ordinance, 2020(Karnataka Ordinance No.1 of 2020) was promulgated to achieve the above object.

FINANCIAL MEMORANDUM

There is no extra expenditure involved in the proposed Legislative measure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3:	Sub-clause (1), empowers the State Government to make rules regarding the pay and allowances to be drawn by a teacher attached to a post to which he is regularly appointed.
Clause 4:	Sub-clause (1), empowers the State Government to make rules regarding the determination of pension and pensionary benefits of a teacher with reference to the last pay drawn immediately prior to the date of retirement or superannuation or death, as the case may be, subject to maximum limit.
Clause 13:	Sub-clause (1), empowers the State Government to make rules after previous publication for carrying out the purposes of the Act.

The proposed delegation of Legislative power is normal in character.

DR. ASHWATH NARAYAN C.N.
Deputy Chief Minister and
Minister for Higher Education,
IT & BT, Science and Technology,
Skill Development, Entrepreneurship
and livelihood.

M.K. Vishalakshi
Secretary (I/c)
Karnataka Legislative Assembly