



**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C) No.2062 of 2024**

In the matter of an application under Articles 226 & 227 of the Constitution of India

**Lokanath Behera**

....

**Petitioner**

**-Versus-**

**State of Odisha & others**

....

**Opp. Parties**

**Advocates appeared in this case:**

For Petitioner : M/s.Kunal Kumar Swain,  
K. Swain & J.R. Khuntia,  
Advocates

For Opp. Parties : Mr. D.N. Lenka,  
Addl. Government Advocate  
[O.P.Nos.1 to 4]  
Mr. Mahendra Kumar Sahoo,  
Advocate  
[O.P.No.5]

**CORAM:**

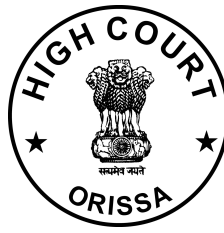
**THE HON'BLE MR. JUSTICE DIXIT KRISHNA SHRIPAD**

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

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Date of hearing : 12.08.2025 : Date of judgment : 13.08.2025  
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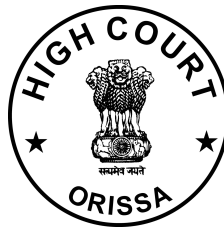
**PER DIXIT KRISHNA SHRIPAD,J.**

Petitioner, a Lecturer in Mathematics in a Non-Government Aided Junior College, is knocking at the doors of Writ Court grieving against the order dated 30.12.2023 made by Opposite Party No.1-Commissioner-Cum-Secretary to Government,



Department of Higher Education, a copy whereof avails at Annexure-10, whereby his claim *inter alia* for the grant of promotion to the post of Senior Lecturer and Reader has been negatived. He has also prayed for a Writ of Mandamus to the Opposite Parties to extend the benefit of Lecturer (Group-A) scale with effect from 2010 and Reader (State Scale) with effect from 2020 on the ground that he satisfies the eligibility conditions enumerated under Rule-3 of the Orissa Non-Government Aided College Lecturers' Placement Rules, 2014.

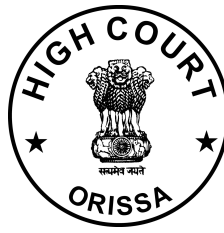
2. After service of notice, official Opposite Parties, having entered appearance through the learned Additional Government Advocate, have filed their Counter resisting the petition. However, the Opposite Party-Institution, being represented by its Panel Counsel, does not oppose petition prayers. After the filing of Counter, petitioner has filed Rejoinder seeking leave of the Court. Both the sides have also supplied their respective Date-Charts, which are not much in variance with each other, barring a few differences.



### **3. Brief facts of the case:**

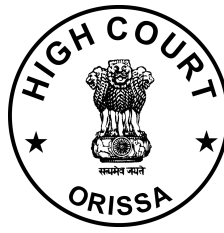
**3.1.** Petitioner joined the Opposite Party-Institution on 01.08.1993 pursuant to the appointment order dated 20.07.1993 as Lecturer in Mathematics (First Post). The Institution has been receiving Grant-in-Aid and it figures at Serial No.220 in the list of 255 Non-Government Aided Junior Colleges, as has been reflected in Annexure-A to Odisha (Aided Colleges, Aided Junior Colleges and Aided Higher Secondary Schools) Grant-in-Aid Order, 2009 (hereafter "GIA Order, 2009"). Petitioner's appointment came to be approved against the 1<sup>st</sup> Post of Lecturer in Mathematics and he was allowed to avail Block Grant with effect from 01.02.2009 vide Office Order No.5920 Dated 17.02.2010 issued by the Director of Higher Education at Annexure-3. Accordingly, petitioner received the Block Grant with effect from 01.02.2009.

**3.2.** GIA Order, 2009 was modified by virtue of Orissa Non-Government Aided College Lecturers' Placement Rules, 2014 (hereafter '2014 Placement Rules') promulgated under section 10(1) of the Orissa Education Act, 1969 vide Notification Dated 04.06.2014 with effect from 01.01.2014. They provide for placement of the Lecturers to the higher grade with (Group-A) Pay



Scale, if the candidates satisfy the eligibility criteria as prescribed under Rule-4. These Rules apply *inter alia* to the Lecturers in Non-Government Aided Colleges, who are in the pay scale of Rs.9,300/- to Rs.34,800 with Grade Pay of Rs.4600/- under O.R.S.P. Rules, 2008. As on the date the said Rules came into force, petitioner claims to be in this Pay Band.

**3.3.** The provisions of GIA Order, 2009 came to be amended by the State Government, vide Notification Dated 24.02.2014, as Odisha (Aided College, Aided Junior Colleges and Aided Higher Secondary Schools) Grant-in-Aid Order, 2014 (hereafter, “GIA Amendment Order, 2014”) with effect from 01.01.2014, whereby sub-para (1) of paragraph-5 of GIA Order, 2009 came to be substituted to the effect that the eligible employees of Institutions of the kind shall be paid initial pay + Grade Pay with five increments in the revised scale of pay of O.R.S.P. Rules, 2008. Pursuant to the same, the Director of Higher Education issued Office Order Dated 28.11.2019 granting approval *inter alia* to the petitioner for payment of Grant-in-Aid with effect from 01.01.2018. In this regard, amount of GIA admissible to him came to be fixed at

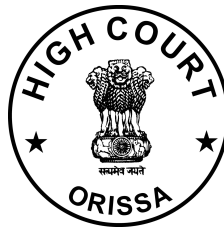


Rs.38,067/-, the prescribed Pay Scale being Rs.9,300/- to Rs.34,800/- + Grade Pay of Rs.4600/-.

**3.4.** Claim of the petitioner for placement in terms of 2014 Placement Rules was not examined on merits in the Lok Adalat vide Additional Chief Secretary's Note drawn in Promotion Adalat held on 1.2.2023. He directed Administrative Department to examine the claim as per the existing Rules within a period of four (4) weeks after giving an opportunity of hearing to the petitioner. This exercise having been undertaken by the Commissioner-Cum-Secretary, the impugned order came to be made negating his claim. The grounds of rejection of petitioner's claim succinctly stated as under:

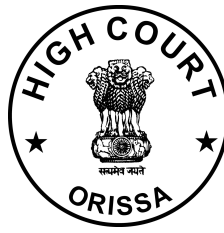
- i) Benefit of Placement Rules, 2014 does not avail to employees of Aided Educational Institution, who are not under Direct Payment System;
- ii) The Institution concerned should be fully aided by the Government by way of general or special orders and, that is not the case with the Institution in which petitioner is employed; and
- iii) Petitioner is not a member of a Common Cadre in relation to class of employees of Aided Educational Institutions.

**4.** Learned counsel appearing for the petitioner vehemently argued that the impugned order is ex facie unsustainable, inasmuch as the three specific reasons assigned therein belie the



records generated at the hands of the official opposite parties themselves; demonstrably the Institution is in full Grant-in-Aid; petitioner has been in the prescribed Pay Band and, therefore, Rule-3 of 2014 Placement Rules is attracted; there is no requirement of an employee being a member of Common Cadre and even otherwise petitioner is deemed to be a member of such Cadre; Rules in question have to be construed to serve the interest of employees of the Educational Institutions. In support of his submission, he presses into service the rule position and a few rulings. Learned AGA, per contra, resisted the petition passionately contending to sustain the impugned order. He makes submission in justification of the reasons, on which the impugned order has been structured. He too drew attention of the Court to the Rule position and banked upon a ruling of this Court in support of his stand. He also added that should relief be granted to the petitioner, as is sought in the petition, it will have far reaching implications on the State Exchequer, and that it would also open up flood gates of litigations.

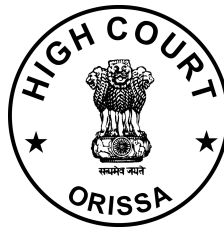
**5.** Having heard learned counsel for the parties and having perused the petition papers and also having adverted to relevant of



the rulings cited at the Bar, this Court is inclined to grant indulgence in the matter as under and for the following reasons:

**5.1.** The first submission of petitioner's counsel that the Opposite Party-Institution is admitted to full Grant-in-Aid, as contra distinguished from Block Grant, gains sustenance for the simple reason that the said Institution is enlisted at Serial No.220 of Annexure-A to GIA Order, 2009 with effect from 6.6.2009, which is referable to Paragraph-3 Clause (a) of the said Order, which reads "255 Non-Government Aided Junior Colleges receiving full Grant-in-Aid prior to commencement of the Odisha Education (Amendment) Act, 1994 as at Annexure-A". Therefore, contra contention of learned AGA running counter to the Statutory Scheme, is liable to be rejected.

**5.2.** The second submission of learned counsel for the petitioner that Rule 3 of 2014 Placement Rules is attracted, cannot be disputed, inasmuch as admittedly he was in the Pay Scale of Rs.9300/- to Rs.34,800/- with Grade Pay of Rs.4600/- as on the cutoff date, i.e., 01.01.2014 with effect from these Rules came into force. Petitioner has produced the order dated 28.11.2019 issued



by the Director of Higher Education at Annexure-7, wherein the following particulars are stated in a tabular form:

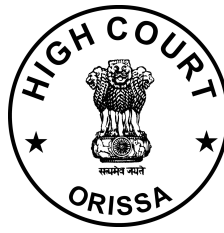
Name/Designation of the Incumbent/DOB/Scale of Pay	Post held	Date of release of Block Grant as per GIA Order, 2009	Govt. Order No. & date with erstwhile DHE (O) Office Release order No. & Date	Amount of GIA admissible w.e.f. 1.1.18	Date of increment
Lokanath Behera, Lecturer in Mathematics, DOB-16.5.1968, Pay-9300-34,800-GP-4600/-	1 <sup>st</sup> Post	1.2.2009	1854/HE dt. 10.02.10. 5920 dt. 17.2.10	Rs.38,067/-	1.1.2019

The above apart, petitioner has produced the salary slips for the relevant period duly authenticated by the competent authorities as to the pay scale and the grade pay in which he was drawing the salary, the same having been approved by the Higher Education Department Notification dated 22.2.2013 referable to ORSP Rules, 2008. It is a case of full Grant-in-Aid.

**5.3.** The vehement submission of learned AGA that the Institution in question having the facility of Block Grant and that the petitioner has not been in the Direct Payment System, is difficult to agree with and reasons for this are not far to seek:

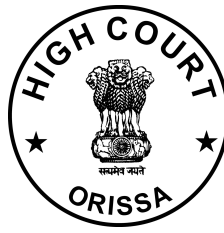
(i) 1969 Act has been amended vide Amendment Act, 1994 whereby section 7(c) has been introduced containing nine sub-sections. Sub-section (7) has enacted the policy of Direct Payment System which becomes obvious by its following text:



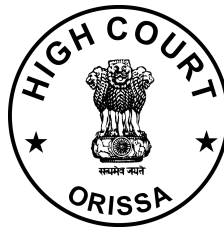


*“A Governing Body or Managing Committee desirous of availing the facility of grant-in-aid shall make an application for the purpose within such period and shall furnish such information and documents including audited statement of accounts of the institutions as may be prescribed. It shall furnish with the application an undertaking to the effect that grant-in-aid sanctioned for the purpose or meeting part or whole of the salary costs shall be disbursed directly to employees concerned and to refund any excess inadmissible payment that may have been made.”*

(ii) It is not the case of Opposite Parties in their pleadings that even after introduction of this new provision, the Institution in question is not following the Direct Payment System. In fact, petitioner has produced the very order dated 18.06.2020 issued by the Deputy Secretary to Government, Department of Higher Education addressed to the Principal of Opposite Party-Institution wherein Direct Payment Scheme is mentioned. Petitioner has been in the pay scale of Rs.9300/- to Rs.34,800/- with Grade Pay of Rs.4600/- by virtue of approval vide G.O. No.1854/HE dated 10.02.2010 followed by DHE (O) Order No.5920 dated 17.02.2010 and Order No.27371 dated 28.11.2019, as has been reflected in the pay slip dated 18.06.2020, which also mentions that the Institution is under Direct Payment Scheme. This document is not disputed by the Opposite Parties.

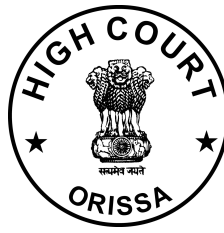


5.4. The passionate contention of learned AGA that for availing the benefit under Placement Order, 2014, an employee being a member of Common Cadre, is not demonstrated. Section 10-C of 1969 Act provides for constitution of a Common Cadre *inter alia* in relation to any category of aided Institutions, is true. Sub-section (1) of this provision employs the terminology '*The State Government may, by order, constitute a common cadre*' and, therefore, it cannot be treated as a mandatory requirement, the word 'may' implying abundant discretion with the Government. His reliance on a Full Bench decision of this Court in ***Patras Soreng v. State of Orissa***; 1993 SCC OnLine Ori 347, which discussed certain aspects of common cadre would not come to the rescue of the Opposite Parties, inasmuch as the said decision having been rendered on 18.06.1993, section 7-C of the Act was not there on the Statute Book. Much discussion in this regard is not warranted. A decision is an authority for the proposition in the light of the statute obtaining at the relevant period and that cannot be cited, when there is material change by way of amendment to the statute, the said amendment having happened about a year after the decision.



5.5. The next contention of learned AGA that under Rule-9 of Odisha Education (RCSTMSAEI) Rules, 1974, the benefit by way of pay scale or otherwise cannot be availed by an employee of aided institution in excess of what is payable to an employee of the Government Educational Institution and, therefore, petitioner cannot claim the placement benefits under the Placement Order, 2014, is difficult to countenance. Nothing has been stated in the counter giving particulars of the drawls of employees of the Government Institutions, working in the comparable cadre to demonstrate that the claim of the petitioner, if allowed, would exceed what is payable to employee of the corresponding cadre in such Institutions. Secondly, Rule 9 intends as a matter of policy that what is payable to an employee in an aided Institution shall not be less than what is being paid to corresponding class of employees in the Government Institutions. The Rule 9(1) reads as under:

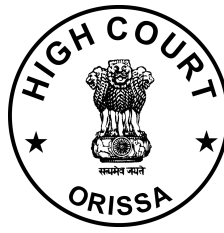
*“Every employees of an Aided Educational Institution shall draw the same pay, dearness allowance and subsistence allowance in case of suspension as is admissible to counterpart in the Government institutions under the relevant rules applicable to him and shall ordinarily be paid in the month following the month the month to which the claim relates directly by Government or by any Officer or by any Agency authorized by Government”*



Going by the text, context, intent and policy content of this provision, one can safely state that this rule is not intended to curtail the statutory benefits otherwise available to employees in the private aided institutions. An argument to the contrary would defeat the Placement Order, 2014 and, therefore, does not merit acceptance.

**5.6.** The last contention of the learned AGA that if relief is granted to the petitioner in terms of the prayer, the State Exchequer has to bleed inasmuch as it would open up flood gates of claims, is not a legal argument. Even otherwise, it does not merit acceptance because:

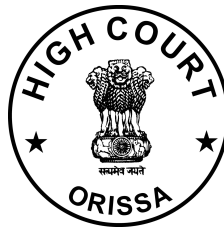
(i) It is the State, which evolves the policy by enacting law or by promulgating rules, taking into account a host of factors and in the light of accumulated experience. The laudable object of the policy in question is to boost the morale *inter alia* of teaching staff and to attract meritorious candidates to the noble profession of teaching. It is teachers, who play a pivotal role in building nations & civilizations. The British Government did not downwardly revise the



pay scales of teachers during the World War-II, although it did, in all other employment sectors.

(ii) What is legitimately held out to the citizen, as a matter of right, cannot be defeated by *argument in terrorem*. When a policy is evolved by the State in its competence, a Writ Court cannot deny relief to the worthy litigant by holding something in variance of such Policy. The State and its instrumentalities under Article 12 of the Constitution of India cannot be heard to say that they will face difficulty if their Policies are implemented through the medium of Court. The Government should celebrate citizen's victory against it, secured in due process of law. *More is not necessary to specify and less is insufficient to leave the things unsaid.*

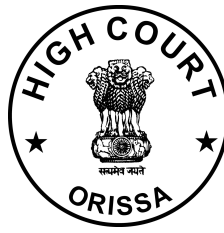
(iii) Even the argument of 'opening of floodgates of litigations' is not acceptable. Our system operates on the maxim *ubi jus ibi remedium*. Rule of law requires State to abide by law, more particularly while treating the worthy claims of its employees. It was Marcus Tullius Cicero, who reiterated "*law should be obeyed even if heavens fall down*". It is open to the State to pre-empt the opening of floodgates of litigations by extending the benefit of the



policy on its own without avoidably driving other similarly circumstanced employees to litigation process. The Apex Court in ***State of Karnataka v. C. Lalitha***; (2006) 2 SCC 747 has observed that all persons similarly situated should be treated similarly irrespective of the fact that only one person has approached the Court for relief. That is how, the State, as a Model Employer, is expected to conduct itself.

(iv) All the above being said in this paragraph, there is some force in the argument that the Courts have to ensure that the Public Exchequer should not be hurt. It is one of the considerations. This can be ensured by directing the payment of benefits with the prospective effect so that economic hardship of the State is minimized.

In the above circumstances, this writ petition succeeds. A Writ of Certiorari issues quashing the impugned order. The OPs are directed to grant the benefits of Placement Order 2014 to the petitioner with prospective effect, within a period of eight (8) weeks keeping in view the observations hereinabove made. Default or



delay shall be viewed seriously, if petitioner is driven to another legal battle.

Now, no costs.

Web copy of this judgment to be acted upon by all concerned.

***Dixit Krishna Shripad,  
Judge***

***Orissa High Court, Cuttack  
The 13<sup>th</sup> day of August, 2025/Basu***