

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.5480 of 2021

and

batch of Writ Petitions

(In the matter of applications under Articles 226 and 227 of the Constitution of India, 1950).

In W.P.(C) No.5480 of 2021

Akshya Kumar Nayak

....

Petitioner

-versus-

State of Orissa and Ors.

....

Opp. Parties

Advocates appeared in the case through Hybrid Mode:

For Petitioner

:

Mr. Kunal Kumar Swain, Adv.

Mr. B.K. Pattanaik, Adv.

-versus-

For Opp. Parties

:

Mr. Sonak Mishra, SC

(for S & ME Deptt.)

CORAM:

DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-26.04.2022

DATE OF JUDGMENT:-04.08.2022

W.P.(C) No.5480 of 2021 along with W.P.(C). Nos.7563 of 2022, WP(C) Nos.7565 & 7566 of 2022, WP(C) No.32699 of 2021, WP(C) No.36075 of 2020, WP(C) Nos.37953 & 37955 of 2020,

and

WP(C) Nos.28, 30, 31, 33, 34, 36, 37, 39, 40, 42, 79, 134, 353, 357, 359, 363, 389, 392, 396, 398, 400, 678, 679, 682, 684, 688, 689, 691, 692, 1160, 1164, 1576, 1579, 1582, 1587, 1589, 1592, 1634, 1637, 1916, 1918, 2531, 2675, 2676, 3283, 3285, 3287, 3381, 3383, 3384, 3386, 3387, 3389, 3390, 3391, 3393, 3684,

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and

W.P.(C) Nos. 2221, 211, 215, 628, 882, 884, 886, 888, 1110, 1112, 2252, 2254, 2257, 2259, 2261, 2264, 2514, 2515, 2587, 2589, 2591, 3113, 4063, 4064, 4065, 4066, 4121, 4518, 4798, 4812, 4815, 4817, 5133, 5139, 5142, 5144, 5148, 5224, 5412, 5414, 5553, 5556, 5557, 5560, 5562, 5563, 5565, 6539, 6909, 7074, 7338, 7339, 7340, 7342, 7345, 7346, 7347, 7348, 7349, 7353, 7508, 7509, 7510, 7601, 7692, 7693, 7694, 7695, 8012, 8283, 8357, 8361, 8628, 8629, 8726, 8729, 8733, 8737, 8741, 8745, 8748, 8751, 8754, 8756, 8759, 8762, 8764, 8820, 8821, 8928, 8934, 8941, 9264, 9266, 9269, 9271, 9442, 9578, 10106, 10340, 10341, 11794, 11934, 12521, 12523, 13006, 13059, 13273, 13275, 13686, 13688, 14604, 14611, 15018, 15025, 15122, 16061, 17455, 18677, 18995, 18998, 19432, 20155, 23573, 23575, 23577, 26101, 26351, 26901, 27964, 27965, 29131, 29141, 29706, 29707, 37508, 40617, 41373, 41375, 41845 & 41889 of 2021,

and

WP(C) Nos.139, 2569, 6043, 6538, 6583, 8397, 9207, 9963, 10169, 10170, 10172, 10173, 10175, 10176, 10178, 10179, 10180, 10183, 10184, 10186, 10188 & 10189 of 2022.

Dr. S.K. Panigrahi, J.

1. Since similar questions of law or facts are involved in all the above writ petitions, all the matters were heard together. However, this Court felt it appropriate to decide W.P.(C) No.5480 of 2021 first and whatever the outcome of the said Writ Petition, the same will be covered to other similar writ petitions mentioned above.

I. Facts of the case:

2. The petitioner who is working as Hindi Teacher has filed W.P.(C) No.5480 of 2021 (hereinafter referred to as “the present writ petition” for brevity) challenging, *inter alia*, the order passed by the authority rejecting his claim for grant of Trained Graduate Scale of Pay on attaining the age of 48 years on the ground that the qualification possessed by him is not similar to the case of *Radharani Samal v. State of Orissa*¹, and, therefore, he is not entitled to get the benefit as has been made available to said *Radharani Samal*(supra) who is the petitioner in W.P. (C) No.18908 of 2013 disposed of on 24.11.2016. Therefore, the petitioner has approached this Court for seeking the aforesaid relief as extended in *Radharani Samal (supra)*.

¹ 2017(1) ILR-CUT-546

3. The averments made in the writ petition are that the school of the petitioner was notified to receive block grant with effect from 01.01.2004 as per Grant-in-Aid Order of 2004 read with Section 3(b) of Odisha Education Act, 1969 (hereinafter referred to as “the Act” for brevity). Therefore, the school of the petitioner is an aided educational institution within the meaning of Section 3(b) of the Act and as such the institution of the petitioner and its employees governed under the various rules framed under the Act and rules framed thereunder from time to time.
4. The petitioner after facing due process of selection having requisite qualification was appointed as Hindi Teacher by the Managing Committee of the school. Pursuant to the order of appointment, the petitioner joined the said post. After the school in question was notified to receive grant-in-aid from the State Government, his appointment was approved against the post of Hindi Teacher along with other members of the staff and he was allowed to avail block grant as per the Grant-in-Aid Order, 2004. Subsequently, the petitioner received grant-in-aid as per the Grant-in-Aid Order of 2017. So far as the qualification of the petitioner is concerned, he has passed B.A., Shastri, M.A (Hindi) examination.

5. The School and Mass Education Department, Government of Odisha issued resolution No.3424/S & ME dated 18.02.2008, wherein the post of Hindi Teacher has been upgraded to the status and scale of pay of Trained Graduate Teacher of Fully Aided, Block Grant and Recognized High Schools of the State with one identical scale of pay. Paragraphs 10, 11, 12 and 13 of the said Resolution dated 18.02.2008 which provide qualification, equivalency, up-gradation of existing posts of Hindi Teacher and fixation of pay for the post of Hindi Teacher in a High School irrespective of Government, Fully-Aided, Block Grant and recognized read as follows:

“10. The Government after careful consideration, have been pleased to decide as follows:-

The minimum educational qualification for the post of Hindi Teacher in a High School Irrespective of Government, Fully Aided, Block Grant and recognized shall be as below.

A Bachelor's Degree from a Recognized University with Hindi as one of the elective subject or with Rastrabhasa Ratna from Rastrabhasa Prachar Samiti, Wardha or an equivalent Degree from a Recognized Institution and Hindi Shikshyan Parangat from Kendriya Hindi Sansthan; Agra/Hindi Teachers Training Certificate Course from Hindi Training Institutes, Cuttack, Bhubaneswar and Sambalpur.

11. The Hindi Teachers Training Certificate Course conducted by the Hindi Training

Institute, Cuttack, Bhubaneswar and Sambalpur is declared as equivalent to Hindi Shikshyan Parangat vis-a-vis B. Ed. Degree of an Indian University for the purpose of employment.

12. Consequent upon fixation of revised qualification, etc. for the post of Hindi Teachers as mentioned above, the post of Hindi Teachers in Government Aided and Block Grant High Schools upgraded to the status and scale of pay of Trained Graduate Teachers.

13. The Hindi Teachers possessing the revised common qualification shall be entitled Scale of Pay at par with Trained Graduate Teacher Scale of Pay. The Pay of such Hindi Teachers shall be fixed notionally as per Rule 74(b) of Orissa Service Code.

The pay of Hindi Teachers, who have availed T. B. A. Scale of pay Rs.5,000-150-8000 shall be fixed under Rule 74(d) of Orissa Service Code.

The quantum of Block grant of Hindi Teachers continuing with the revised qualifications in Block Grant High Schools shall be determined at par with T.G. Teachers of same Schools G.I.A. Order, 2004, read with Amendment Order, 2007 with effect from the date of issue of this Resolution."

Subsequently, another resolution dated 29.03.2011 was issued by the School and Mass Education Department, Government of Orissa prescribing a common qualification for the post of Hindi Teacher in a High School irrespective of Government, fully Aided, Block Grant and recognized

Schools. Relevant portion of resolution dated 29.03.2011 is quoted below:

“A Bachelor’s Degree from a Recognized University with Hindi as one of the elective subject or with Rastrabhasa Ratna from Rastrabhasa Prachar Samiti, Wardha or with Shastri from Orissa Rastra Bhasa Parishad, Puri or with Snatak (acquired by June 2005, the date up to which temporary recognition had been granted) from Hindi Sikshya Samiti, Orissa, Cuttack or an equivalent Degree from a Recognized Institution and Hindi Shikshyan Parangat from Kendriya Hindi Sansthan, Agra & B.H.Ed. from Hindi Teachers Training Institute, Cuttack/Hindi Teachers Training Certificate Course from Hindi Training Institute, Cuttack, Bhubaneswar and Sambalpur.”

Paragraph 11 of the Resolution dated 18.02.2008 further provides that Hindi Teacher training certificate course conducted by the Hindi Training Institute, Cuttack, Bhubaneswar and Sambalpur is declared as equal to Hindi Shikshyan Parangat vis-à-vis B.Ed. degree of Indian University for the purpose of employment. Paragraph 12 of the said Resolution dated 18.02.2008 further provides that consequent upon fixation of revised qualification for the post of Hindi Teacher in Government, Aided and Block Grant High Schools shall be upgraded to the status and scale of pay of Trained Graduate teacher. Therefore, after

coming into force the aforesaid resolution dated 18.02.2008, the post of Hindi Teacher has been upgraded to the status and scale of pay of Trained Graduate teachers.

II. Submissions advanced on behalf of the petitioners:

6. Learned counsel for the petitioner submitted that in spite of the common qualification of Hindi Teachers in Government, Fully Aided and Block Grant High Schools as prescribed in the Resolutions dated 18.02.2008 and 29.03.2011, the Government of Orissa, School and Mass Education Department noticed that required numbers of candidates having the above qualification in Hindi were not available in the State. As a result, large numbers of posts of Hindi Teachers were lying vacant in such institutions. Therefore, School and Mass Education Department, Government of Orissa, decided to prescribe the qualification of Hindi Teachers for providing quality and better education to the students and passed Resolution dated 27.10.2014. The prescribed qualification as enunciated in the Resolution dated 27.10.2014 is quoted as follows:

“Bachelor’s degree from a recognized University with Hindi as one of the elective subject with minimum 50% marks in aggregate (45% for SC/ST/PH/OBC/SEBC candidates) or with Rastrabhasa Ratna from Rastrabhasa Prachar Samiti, Wardha or with Sastri from Orissa

Rastrabhasa Parisada, Puri or with Snataka (Acquired by June-2005, the date up to which the temporary recognition has been granted) from Hindi Sikshaya Samiti, Orissa, Cuttack or an equivalent degree from a recognized institution with at least 50% marks in aggregate (45% for SC/ST/PH/OBC/SEBC candidates) and Hindi Sikshyan Parangat from Kendriya Hindi Sansthan, Agra/B.H.Ed. (a course prescribed by NCTE) from a Institution recognized by NCTE and affiliated to a recognized university/B.Ed. in Hindi (a course prescribed by NCTE) from Dakhin Bharat Hindi Prachar Sabha, Madras, a institution recognized by NCTE and affiliated to a recognized university.

OR

Bachelor's degree with Hindi as one of the optional / Hons subject with minimum 50% of marks in aggregate (45% for SC/ST/PH/OBC/SEBC candidates) from a recognized University and M.A. in Hindi with Minimum 50% marks in aggregate from a recognized University."

7. Learned counsel for the petitioner further submitted that in pursuance of the aforesaid Resolution dated 18.02.2008; Hindi Teachers having lesser qualification got Trained Graduate scale of pay immediately after fixation of the common revised qualification in terms of the resolution dated 18.02.2008. Rule-16(2) of the Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 (hereinafter referred to as "the Rules, 1974" for

brevity) also clearly provides that an untrained teacher on attaining the age of 48 years shall be exempted from undergoing the training and shall be entitled to financial benefits of a trained teacher. For better appreciation of facts, Rule-16(2) of the Rules, 1974 is quoted below.

“16. Probation and confirmation-

(1) Xx xx

Xx xx

(2) No teacher who has not undergone the training prescribed for the post shall hold the post substantively.

Provided that an untrained teacher having not less than ten years of service shall undergo condensed in-service training provided by the Government and after successful completion of such training shall be eligible for confirmation and shall be entitled to draw salary of a trained teacher.

Provided further that a teacher attaining the age of 48 years shall be exempted from undergoing the training and shall be entitled to financial benefits of a trained teacher.”

Therefore, as the petitioner's qualification is B.A., Shastri and M.A. (Hindi), and the petitioner is not in a position to acquire training qualification as provided under resolution dated 18.02.2008, as Hindi Sikshyan Parangat or Hindi Teacher's training certificate course, which is equivalent to B.Ed. degree is entitled to get Trained Graduate scale on and from the date he attained 48 years of age as per the

proviso to Rule 16(2) of the Rules, 1974. The law is well-settled in the *Radharani Samal* (supra). It is pertinent to mention that in the said case, this Court while relying on the 2nd proviso to Rule-16(2) of the Rules, 1974 has directed for grant of Trained Graduate Scale of pay in favour of *Radharani Samal(supra)* with effect from the date she attained 48 years of age.

8. Learned counsel for the petitioner further contended that since the aforesaid benefit of Trained Graduate scale of pay was not made available to the petitioner with effect from the date of attaining 48 years of age, as the petitioner attained 48 years of age on 11.07.2016, since his date of birth was 10.07.1969, he had approached this Hon'ble Court by filing W.P.(C) No.10888 of 2019. This Hon'ble Court vide order dated 28.06.2019 disposed of the aforesaid writ petition with the following orders:

"Order dated. 28.06.2019.

XX XX xx

Considering the contentions raised by learned counsel for the parties and after going through the records, the court disposed of the writ petition directing the opposite parties to consider the case of the petitioner in the light of the ratio decided by this Court in Radharani Samal (Supra) as expeditiously as possible preferably within a period of four months from the date of production of this order".

Despite the aforesaid order dated 28.6.2019 passed in W.P.(C) No.10888 of 2019, the District Education Officer, Kendrapara, vide his office order dated 27.11.2020 rejected the case of the petitioner to avail Trained Graduate Scale of pay on attaining age of 48 years. Therefore, he submits that the impugned order dated 27.11.2020 passed by the District Education Officer, Kendrapara is not only illegal and arbitrary but also the same is contrary to all cannon of justice, fair play and equity for which the same is liable to be quashed/set aside. It was also submitted that in order to get an escape from the clutches of the contempt, the authority has passed the office order No.11728 dated 27.11.2020 rejecting the prayer of the petitioner for giving him financial and Trained Teacher benefit as per 2nd Proviso to Rule-16(2) of the Rules, 1974. The order dated 27.11.2020 creates discrimination between the petitioner and other 144 and 53 teachers who have been given the benefit of Trained Graduate Hindi Teacher for having attained the 48 years of age. However, the petitioner has been deliberately and willfully deprived of the same for the reasons best known to the authority and it has created needless confusion and endless problem.

9. Learned counsel for the petitioner further urged that Rules cannot be overruled by Administrative instruction either by resolution or by administrative or instruction. The Rules, 1974 cannot be misinterpreted in the matter of appointment. 2nd proviso to Rule 16(2) of the Rules, 1974 clearly says that the Teacher who attained the age of 48 years is entitled to get the benefit of trained graduate teacher. Therefore, the impugned order dated 27.11.2020 passed by the District Education Officer, Kendrapara on the reasons indicated in the said order is not legally tenable. One of the reasons indicated in the impugned order is that the petitioner does not stand on the same footing like that of *Radharani Samal (supra)*, therefore, he is not entitled to get Trained Graduate Scale of pay on attaining the age of 48 years which is not at all correct. In this context, it was humbly submitted that the right of the petitioner flows from 2nd proviso to Rule-16(2) of the Rules, 1974, which is a statutory Rule. The said provision clearly provides that in case of un-trained teacher on attaining the age of 48 years shall be exempted from undergoing training and he/she will be entitled to get the benefit of Trained Graduate Teacher. Admittedly, the petitioner is working as a Hindi Teacher in an aided High School, the Rules, 1974 fully applies to the case of the petitioner as the said Rules governs the service conditions

of the employees of all categories of aided High Schools. Therefore, simply because some qualifications having been fixed by the State Government in letter No.9270/SME dated 06.05.2014 issued by the Under-Secretary to Government, the same cannot override the statutory Rules, i.e., the Rules, 1974, more particularly 2nd proviso to Rule-16(2) of the Rules, 1974. Besides that law is also well-settled by this Court in the case of *Sabitri Das Vs. State of Odisha and others* that as and when the status of the School is changed from aided to un-aided, the erstwhile employees of the said institution *ipso facto* is made applicable to them with effect from the date the School acquires the status of aided educational institution. Therefore, the proposition made in the Circular dated 06.05.2014 issued by the Under Secretary to Government that 2nd proviso to Rule-16(2) of the Rules, 1974 is only applicable to teachers who are recruited under the Rules, 1974 is not at all correct. Be that as it may, when the 2nd proviso to Rule 16(2) of the Rules, 1974 in clearer terms provides exemption of training in respect of un-trained teachers on attaining the age of 48 years, the petitioner is entitled to get the benefit of the same as the post of Hindi Teacher has been upgraded to the status of Trained Graduate scale of pay.

10. Moreover, learned counsel for the petitioner submitted that the statutory Rules cannot be clarified by an Under-Secretary to Government, who has no authority to issue such letter dated 06.05.2014, which runs contrary to 2nd proviso to Rule-16(2) of the Rules, 1974 and, therefore, the said letter dated 06.05.2014 is *non est* in the eye of law and based upon said letter dated 06.05.2014 the petitioner's claim to avail Trained Graduate scale of pay cannot be rejected. The grounds indicated in the impugned order on the fact that the petitioner does not possess the same qualification as has been held by *Radharani Samal* (supra) is also liable to be rejected. In fact, the petitioner's entitlement to avail Trained Graduate Scale of pay flows from the Government resolution dated 18.02.2008, wherein in para-10 of the said resolution, it has been clearly prescribed that a minimum qualification for the post of Hindi teacher is a Bachelor's Degree from a recognized University with Hindi as one of the elective subject or with Rastrabhasa Ratna from Rastrabhasa Prachar Samiti, Wardha till or with Shastri from Orissa Rastra Bhasa Parishad, Puri or with Snatak (acquired by June 2005, the date up to which temporary recognition had been grant) from Hindi Sikshya Samiti, Orissa, Cuttack or an equivalent Degree from a Recognized Institution with training qualification. So, Sastri

is equivalent to B.A. in Hindi and Rastra Bhasa Ratna, and the petitioner being in possession of the aforesaid qualification, he is entitled to Trained Graduate Scale of pay on attaining the age of 48 years. Therefore, the reasons assigned in the impugned order that since the qualification of *Radharani Samal* was B.A. with Ratna and the petitioner is not in possession of the aforesaid qualification, he is not entitled to get Trained Graduate Scale of pay, is not at all correct. On this score alone the impugned order is liable to be quashed.

11. It was also submitted that one of the reasons assigned in the impugned order passed by the District Education Officer, Kendrapara is that although the petitioner attained 48 years of age on 11.07.2016, he did not agitate his claim after issuance of clarificatory order/letter dated 06.05.2014. Therefore, he is not entitled to get the benefit of Trained Graduate Scale of pay, is also not correct. In this context, it was submitted that undisputedly the petitioner attained 48 years of age as on 11.07.2016, after the clarificatory order of the State Government dated 06.05.2014. Therefore, by no stretch of imagination the clarificatory order dated 06.05.2014 would be applicable to the case of the petitioner. Be that as it may, the clarificatory order dated 06.05.2014 having been issued by the Under Secretary, who has no

authority/ jurisdiction to issue any clarification/ amendment/ modification of the statutory Rules, i.e., more particularly 2nd proviso to Rule 16(2) of the Rules, 1974, therefore, the clarificatory letter dated 06.05.2014 would not stand on the way of the petitioner to avail Trained Graduate scale of pay on attaining the age of 48 years in consonance with Government resolution dated 18.02.2008. Therefore, in this view of the matter, the impugned order may be quashed and necessary direction may be made to the opposite parties to allow the petitioner to avail the benefit of Trained Graduate Scale of pay with effect from the date he attained 48 years of age and differential arrear may be calculated and paid to him.

III. Submissions by the Opposite Party:

12. *Per contra*, learned Standing Counsel for the Department of School and Mass Education submitted that the District Education Officer, Kendrapara having considered the claim of the petitioner in compliance with the order dated 12.11.2020 passed by this Court in W.P.(C). No.10888 of 2019, rejected the same, as the case of the petitioner is not similar to that of the case of *Radharani Samal* (supra).
13. He further submitted that after the School was notified to receive grant-in-aid in the shape of Block Grant with effect from 2004, the service of the petitioner was approved for

the purpose of release of block grant against the post of Hindi Teacher. So far as Hindi Teachers in Government, Fully Aided Private Schools and Block Grant Schools are concerned, they used to get the scale of pay as per their qualification. He further submitted that Clause-10 of Resolution dated 18.02.2008 of the Department of School and Mass Education, Government of Odisha as stated supra prescribes the minimum educational qualification for the post of Hindi Teacher in a High Schools irrespective of Government, Fully Aided, Block Grant and recognized. As per the above said Resolution, which is the basis for extending trained graduate scale to the Hindi Teachers, a Hindi Teacher possessing common qualification prescribed under Clause-10 of the above said Resolution dated 18.02.2008 will be entitled to get the T.G. Scale of pay and in respect of Hindi Teachers of Block Grant Schools, they will get the quantum of block grant as availed by the Trained Graduate Teachers in the said block grant schools. However, the present petitioner does not possess the common qualification although he possessed Bachelor's Degree with Pravina in Hindi at the time of appointment and approval. But so far as training qualification like Hindi Shikshyan Parangat from Kendriya Hindi Sansthan, Agra Hindi Teachers Training Certificate course from Hindi

Training Institutes, Cuttack, Bhubaneswar and Sambalpur are concerned, the petitioner does not possess any of such training qualification and, accordingly, the petitioner having possessed a part of the qualification prescribed under Clause-10 of the aforesaid Resolution is not entitled to get the benefit of Trained Graduate Scale of pay.

14. It was further submitted that Clause-14 of the above said resolution dated 18.02.2008 prescribes as follows:

"The Hindi Teachers continuing at present in different Government, Aided and Block Grant High Schools with lesser qualification shall continue as usual with their own scale of pay till their retirement/ resignation/ death/ acquisition of revised common qualification."

It was contended that as the present petitioner does not possess the requisite qualification as prescribed under Clause-10 of the Resolution dated 18.02.2008, he will continue with his own scale of pay until he acquires the revised common qualification.

15. It was further submitted that the present petitioner approached this Court earlier by filing a writ petition bearing W.P.(C). No.10888 of 2019 claiming Trained Graduate Scale of Pay. This Court disposed of the above said writ petition vide order dated 28.06.2019 with the following order:

"xx xx xx xx xx

Considering the contentions raised by learned counsel for the parties and after going through the records, this court disposes of the writ petition directing the opposite parties to consider the case of the petitioner in the light of the ratio decided by this court in Radharani Samal (Supra) as expeditiously as possible preferably within a period of four months from the date of communication of copy of this order by the petitioner.

xx xx xx xx xx xx "

16. Learned counsel for the State contended that this Court directed the authority to consider the case of the present petitioner in the light of ratio decided in the case of **Radharani Samal** (supra). In the case of **Radharani Samal** (supra), this Hon'ble Court held as follows:

"6. Considered the submission made by the learned counsel appearing for the respective parties. In view of the Office Order No.11340 dtd. 12.11.2008 (Annexure-3), the petitioner, having B.A., Ratna qualification since 16.7.2008, has been drawing the salary of Hindi Teacher in a block grant High School as issued by the Inspector of Schools, Jajpur Circle Jajpur. In the counter affidavit, at paragraph-7, Its clearly mentioned that vide Government Resolution No.3424/SME did. 18.2.2008, a bachelor's degree from recognized university with Hindi is one of the elective subject or with Rastrabhasa Ratna from Rastrabhasa prachar Samiti, Wardha amongst others have been

recognized as requisite qualification for the post of Hindi Teacher. In paragraph-8 of the said counter affidavit, it is admitted that the post of such Hindi teacher has been upgraded to the status and scale of pay of Trained Graduate Teachers as per the Government Resolution under Annexure-10 to the writ petition. Clause-13 of the aforesaid Resolution dtd.18.2.2008 (Annexure-10) may be reproduced below for better appreciation”

17. It was further submitted by the learned counsel for the State that pursuant to the aforesaid order dated 28.06.2019 passed in W.P.(C). No.10888 of 2019, the case of the present petitioner was considered in the light of ratio decided in the case of *Radharani Samal* and after such consideration it has been found that this Court allowed the claim of *Radharani Samal* on satisfying two conditions, wherein this Court held that said *Radharani Samal* having possessed the common qualification as prescribed vide Government Resolution No.3424/SME dated 18.02.2008 and further she agitated her claim for T.G. Scale of pay prior to issuance of clarification dated 06.05.2014, wherein it is clarified that as Hindi and Sanskrit are not compulsory subjects, the aforesaid provision is not applicable to them. However, the present petitioner possessed B.A. with Shastri qualification and besides that, he agitated his claim in the year 2019, which is

5 years after the qualification regarding non applicability of the Rules, 1974 to employees of New Aided (Ex-Block Grant) High Schools and to Hindi and Sanskrit Teachers as they are not compulsorily deputed to any training programme. Hence, the claim of the present petitioner has been rejected vide order No.11728 dated 27.11.2020 of the District Education Officer, Kendrapara which is impugned in the present writ petition.

18. It was further contended that the present petitioner is also not otherwise eligible to get the benefit of trained graduate scale of pay as introduced by the Resolution dated 18.02.2008 of Government of the Odisha, School and Mass Education Department, since he does not possess the common qualification prescribed in Clause-10 of the said Resolution.

19. It was further contended that different qualifications were also prescribed for Hindi Teachers and different scales of pay which has been considered at para-3 of Resolution dated 18.02.2008, wherein it has been mentioned as follows:

“Syllabus, courses, teachings, examination etc. in respect of Hindi subject are common irrespective of whether Government, Aided or Recognized Hindi Schools. However, different qualifications have been prescribed for the post of Hindi Teachers and different scales of pay are in vogue” and considering the demand of Hindi

Teachers Association, Orissa for prescribing one common qualification for the post of Hindi Teachers for High Schools of all categories, i.e... Graduation + Rastrabhasa Ratna with Training Qualification and to declare the status at par with that of Trained Graduate Teachers of High Schools extending consequential service benefits. Pursuant to order dtd 17.12.2002 in O.J.C. No.16180/2001 a common qualification has been prescribed vide above Resolution dtd. 18.2.2008 and it has been stipulated therein at paragraph-13 that "the Hindi Teachers possessing the revised common qualification shall be entitled Scale of Pay at par with Trained Graduate Teacher Scale of Pay."

Accordingly, those Hindi Teachers possessing the above said common qualification mentioned at paragraph-10 of the above said Resolution dated 18.02.2008 are only entitled to get the benefit of trained graduate scale of pay.

20. It was further contended by the learned counsel for the State that the contention of the learned counsel for the petitioner that as per Rule-16(2) of the Rules, 1974, the petitioner is entitled to get Trained Graduate Scale of pay on attaining the age of 48 years is not sustainable, as Rule-16(2) of the Rules, 1974 is not applicable to the category of teachers for whom acquisition of training qualification is not mandatory. For Hindi Teacher, acquisition of common qualification is not mandatory and they continue with the

qualification prescribed at different times with the said scale of pay, attached to the qualification. But the above said Rule-16(2) is only applicable to the category of teachers appointed against Trained Graduate, Trained Intermediate and Trained Matric posts without training qualification. Further second proviso of Rule-16(2) stipulates that a teacher attaining the age of 48 years shall be exempted from undergoing training and shall be entitled to financial benefit of a trained teacher, which shows a teacher for whom a compulsory training is required and appointed against a particular post on attaining the age of 48 years, will be entitled to get the trained scale of that respective post not the Training Graduate scale of pay. For kind appreciation of the Court, it was humbly submitted that an untrained teacher posted against a T.G. post will avail the T.G. scale of pay on attaining the age of 48 years, an untrained teacher appointed against a trained intermediate post will avail the scale of pay of trained intermediate on attaining the age of 48 years and, accordingly, untrained teacher appointed against a trained matric post will avail the scale of pay trained matric teacher on attaining the age of 48 years. So far as the Hindi Teachers are concerned, there is no concept of trained Hindi Teacher and untrained Hindi Teacher. Rather the Hindi Teachers are given the

scale of pay attached to their qualification under different ORSP Rules for Government teachers and under different resolutions extending benefits of scale of pay to the teachers working in the aided educational institutions. The claim of the present petitioner to avail the benefit of T.G. Scale of pay on attaining the age of 48 years is not in consonance of Rule-16(2) of the Rules, 1974.

21. The principle of trained scale of pay either on acquiring training qualification or on attaining the age of 48 years is applicable with two different scale of pay are prescribed against one post with training qualification and without training qualification. The incumbent who is appointed without training qualification will avail the untrained scale of pay attached to the post and on acquiring training qualification or on attaining the age of 48 years will avail the trained scale of pay attached to the very same post. But in case of Hindi Teachers the scale of pay prescribed is as per the qualification and the incumbent will get the scale of pay attached to a particular qualification since there is no separate scale for untrained Hindi Teacher and trained Hindi Teacher. The principle of availing trained scale of pay on attaining the age of 48 years cannot be made applicable in respect of Hindi Teachers and in order to avail the Trained Scale of Pay, a Hindi Teacher has to possess the

common qualification prescribed in para-10 of the Resolution dtd 18.02.2008. Since the present petitioner does not possess the common qualification, he is not entitled to Trained Graduate scale of pay.

22. Therefore, learned counsel for the State submitted that, in view of the above facts and circumstances, the present petitioner is not entitled to get trained graduate scale of pay in view of the ratio laid down in the case of *Radharani Samal* (supra) and he is not otherwise entitled to get the said benefits as he does not possess the common qualification prescribed under Clause-10 of Resolution dated 8.02.2008 and further the Rule-16(2) of the Rules, 1974 is not applicable in the present case. Accordingly, there is no infirmity in the impugned order dated 27.11.2020 passed by the District Education Officer, Kendrapara.

IV. Issues for determination and Court's Reasoning:

23. In view of the argument advanced by the parties, the Petitioners mostly confined their arguments to assuage the question of requisite qualification in pursuance to the provisions of Rules, 1974 and reliance on the case of *Radharani Samal v. State of Orissa*². However, after bare perusal of the submissions of both the parties, it is

² 2017(1) ILR-CUT-546

considered apposite in the present lis to determine the following three issues which are germane to the case at hand. These issues are as follows:

- i. *Whether the petitioners possess the common qualification prescribed under Clause-10 of Resolution dated 18.02.2008?*
- ii. *Whether the Rule-16(2) of the Rules, 1974 shall be applicable in the present case overriding the qualifications fixed by the State Government in letter No.9270/SME dated 06.05.2014 issued by the Under-Secretary to Government?*
- iii. *Whether the petitioners' reliance on the case of Radharani Samal (supra) can be considered valid when they have agitated their claim after the issuance of the clarification?*

Issue I

24. Paragraph 10 of the said Resolution dated 18.02.2008 which provide qualification, equivalency, up-gradation of existing posts of Hindi Teacher and fixation of pay for the post of Hindi Teacher in a High School irrespective of Government, Fully-Aided, Block Grant and recognized read as follows:

“10. The Government after careful consideration, have been pleased to decide as follows:-

The minimum educational qualification for the post of Hindi Teacher in a High School Irrespective of Government, Fully Aided, Block Grant and recognized shall be as below.

A Bachelor's Degree from a Recognized University with Hindi as one of the elective subject or with Rastrabhasa Ratna from Rastrabhasa Prachar Samiti, Wardha or an equivalent Degree from a Recognized Institution and Hindi Shikshyan Parangat from Kendriya Hindi Sansthan; Agra/Hindi Teachers Training Certificate Course from Hindi Training Institutes, Cuttack, Bhubaneswar and Sambalpur."

25. Learned Counsel for the Opposite Party has contended that although the petitioner possessed Bachelor's Degree with Pravina in Hindi at the time of appointment and approval. However, so far as training qualification like Hindi Shikshyan Parangat from Kendriya Hindi Sansthan, Agra Hindi Teachers Training Certificate course from Hindi Training Institutes, Cuttack, Bhubaneswar and Sambalpur are concerned, the petitioner does not possess any of such training qualification and, accordingly, the petitioner having possessed a part of the qualification prescribed under Clause-10 of the aforesaid Resolution is not entitled to get the benefit of Trained Graduate Scale of pay. Per contra, learned counsel for the petitioner has submitted that Paragraph 11 of the Resolution dated 18.02.2008 further

provides that Hindi Teacher training certificate course conducted by the Hindi Training Institute, Cuttack, Bhubaneswar and Sambalpur is declared as equal to Hindi Shikshyan Parangat vis-à-vis B.Ed. degree of Indian University for the purpose of employment. Paragraph 11 reads as follows:

“11. The Hindi Teachers Training Certificate Course conducted by the Hindi Training Institute, Cuttack, Bhubaneswar and Sambalpur is declared as equivalent to Hindi Shikshyan Parangat vis-a-vis B. Ed. Degree of an Indian University for the purpose of employment.”

26. The petitioner's entitlement to avail Trained Graduate Scale of pay flows from the Government resolution dated 18.02.2008, wherein in para-10 of the said resolution, it has been clearly prescribed that a minimum qualification for the post of Hindi teacher is a Bachelor's Degree from a recognized University with Hindi as one of the elective subject or with Rastrabhasa Ratna from Rastrabhasa Prachar Samiti, Wardha till or with Shastri from Orissa Rastra Bhasa Parishad, Puri or with Snatak (acquired by June 2005, the date up to which temporary recognition had been grant) from Hindi Sikshya Samiti, Orissa, Cuttack or an equivalent Degree from a Recognized Institution with training qualification. Hence, in pursuance to the paragraph

10 and 11 of the said guidelines, the Sastri has been considered equivalent to B.A. in Hindi and Rastra Bhasa Ratna and Hindi Teacher training certificate course conducted by the Hindi Training Institute, Cuttack, Bhubaneswar and Sambalpur is declared as equal to Hindi Shikshyan Parangat vis-à-vis B.Ed. degree of Indian University for the purpose of employment and accordingly, the petitioner can be considered to be in possession of the aforesaid qualification.

Issue II

27. Learned Counsel for the petitioner has submitted that simply because some qualifications having been fixed by the State Government in letter No.9270/SME dated 06.05.2014 issued by the Under-Secretary to Government, the same cannot override the statutory Rules, i.e., the Rules, 1974, more particularly 2nd proviso to Rule-16(2) of the Rules, 1974.

28. It has been well established by law that a policy decision taken by the State in exercise of its jurisdiction under Article 162 of the Constitution of India would be subservient to the recruitment rules framed by the State in terms of a legislative act. The Apex Court in *State of Orissa & Ors vs Prasana Kumar Sahoo*³ held that:

³ Appeal (civil) 2167 of 2007.

“Even a policy decision taken by the State in exercise of its jurisdiction under Article 162 of the Constitution of India would be subservient to the recruitment rules framed by the State either in terms of a legislative act or the proviso appended to Article 309 of the Constitution of India. A purported policy decision issued by way of an executive instruction cannot override the statute or statutory rules far less the constitutional provisions.”

Additionally, in the case of **Gopinath Sahu v. State of Orissa**⁴, the Court observed:

“In view of the above discussed position of law, it must be held that the statutory prescription enumerated in the statutory Rules namely; Rule 51 and Rule 150 of the Rules of 2017 and Rule 3 and Rule 4 of the Certificate Rules, cannot be overridden by mere executive order issued by the Revenue & Disaster Management Department dated 02.01.2020. As a logical corollary thereto, the impugned order issued by the Excise Department dated 30.03.2020, being ultra vires of the Rules aforementioned, is wholly incompetent. Even if the Government were to suitably amend the Rules now, in so far as the present batch of petitions is concerned, such amendment cannot completely omit the provision of producing the Solvency certificate and require the production of the Bank Guarantee. Even if such provision is brought in the Rules by way of amendment, it shall obviously be applicable only prospectively and not retrospectively.”

⁴ AIR 2020 Ori 150.

Moreover, in the case of *State of Orissa v. Radharani Samal*⁵, it was held by this court that:

“The argument advanced by the learned counsel for the appellant no.1 is discriminatory and if the State has taken any such decision the same can be struck down as it violatives the principles enunciated under Sections 14 and 16 of the Constitution of India. The State Government cannot treat these two disciplines differently. Moreover, the Government Resolution cannot override the Rules, In this case, the Rules provide for grant of trained scale of pay to the untrained teacher on attaining the age of 48, without any exception.”

29. Similarly, similar view has been taken by this Court in *Santosh Kumar Sahoo vs. District Judge, Kalahandi Nuapada and another*⁶ and *Radhashyam Panigrahi vs. Registrar (Admn.), Orissa High Court*⁷. In view of the same, the petitioner's contention that the Rule-16(2) of the Rules, 1974 shall override the qualifications fixed by the State Government in letter No.9270/SME dated 06.05.2014 issued by the Under-Secretary to Government is allowed.

Issue III

30. Learned Counsel for the Opposite Party has submitted that one of the reasons assigned in the impugned order passed

⁵ 2017(1) ILR-CUT-546

⁶ 2009 (Supp.-II) OLR -757

⁷ 2009 (Supp.-I) OLR-682

by the District Education Officer, Kendrapara is that although the petitioner attained 48 years of age on 11.07.2016, he did not agitate his claim after issuance of clarificatory order/letter dated 06.05.2014. Additionally, this Court allowed the claim of *Radharani Samal* on satisfying two conditions, wherein this Court held that said Radharani Samal having possessed the common qualification as prescribed vide Government Resolution No.3424/SME dated 18.02.2008 and further she agitated her claim for T.G. Scale of pay prior to issuance of clarification dated 06.05.2014. However, the present petitioner agitated his claim in the year 2019, which is 5 years after the qualification. Therefore, he is not entitled to get the benefit of Trained Graduate Scale of pay, is also not correct. In this context, learned counsel for the petitioner contended that undisputedly the petitioner attained 48 years of age as on 11.07.2016, after the clarificatory order of the State Government dated 06.05.2014. Therefore, by no stretch of imagination the clarificatory order dated 06.05.2014 would be applicable to the case of the petitioner.

- 31.** It is well established law that where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if

such continuing wrong creates a continuing source of injury. The Supreme Court in the case of ***Union of India v. Tarsem Singh***⁸ observed hereunder:

“To summarise, normally, a belated service-related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied.”

32. The ratio of the judgment of the Apex Court in ***State of Himachal Pradesh & ors. vs. Rajesh Chander Sood***⁹, is that

⁸ CIVIL APPEAL NO.7064 OF 2019

⁹ (2016) 10 SCC 77

in service matters, delay and laches or limitation may not thwart the claim so long as it may be, however, if such claim if allowed does not have any adverse repercussions on the settled third-party rights. In the present case, the petitioners' prayer shall not have adverse repercussions on the settled third-party rights.

33. This Court is unable to accept the submission of learned Standing Counsel for the Department of School and Mass Education as the petitioner's entitlement to avail Trained Graduate Scale of pay flows from the Government resolution dated 18.02.2008 and the Petitioner possesses the minimum qualification as mandated by the said resolution. It is also submitted that the petitioner attained 48 years of age as on 11.07.2016, after the clarificatory order of the State Government dated 06.05.2014 and therefore, the agitation of claim could not have been done in the same timeline as the issuance of the clarificatory order. Hence, it cannot be said that the claim of the petitioner is hopelessly barred by limitation and stale.

34. This Court is of the view that the grievance voiced by the petitioner appears to be well founded and he would be entitled to re-fixation of scale of pay. Since, there are statutory rules occupying the field, the petitioner is entitled to requisite remedy by relying on such rules. Moreover,

where a service-related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. In the case at hand, the issue was in relation to refixation of pay and in such circumstances, relief may be granted in spite of delay as it does not affect the rights of third parties.

35. In the service jurisprudence evolved by this Court from time-to-time, it is postulated that all persons similarly situated should be treated similarly and only because one person has approached the Court would not mean that persons similarly situated should be treated differently. Justice demands that a person should not be allowed to derive any undue advantage over other employees; the normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit; not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India.

36. In the light of above discussions and guided by the precedents narrated hereinabove, this Court hereby allows the present Writ Petition as well as the connected batch of Writ Petitions.

37. Accordingly, this Writ Petition along with the connected batch of Writ Petitions are disposed of. No order as to cost.

(Dr. S.K. Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 4th August, 2022/B. Jhankar

