

ORISSA HIGH COURT: CUTTACK

W.P(C) No. 13167 of 2012,
W.P(C) No.13045 of 2012,
W.P(C) No.13168 of 2012,
W.P(C) No.13169 of 2012,
W.P(C) No.13170 of 2012,
W.P(C) No.13171 of 2012

And

W.P(C) No.11321 of 2012

In the matter of applications under Articles 226 & 227
of the Constitution of India.

AFR

In W.P.(C) No.13167 of 2012

(Arising out of order dated 16.11.2011 passed in O.A.
No.4203(C) of 1997)

State of Odisha & Ors. Petitioners

-Versus-

Banchanidhi Das Opp. Party

For Petitioners : Mr. S. Jena, Standing
Counsel, S & ME Deptt.

For Opp. Party : Mr. P.K. Chand, Advocate

In W.P.(C) No.13045 of 2012

(Arising out of order dated 16.11.2011 passed in O.A.
No.4200(C) of 1997)

State of Odisha & Ors. Petitioners

-Versus-

Kondala Dinabandhu Opp. Party

For Petitioners : Mr. S. Jena, Standing
Counsel, S & ME Deptt.

For Opp. Party : Mr. P.K. Chand, Advocate

In W.P.(C) No.13168 of 2012

(Arising out of order dated 16.11.2011 passed in O.A. No.4205(C) of 1997)

State of Odisha & Ors. Petitioners

-Versus-

Bagati Appa Rao Opp. Party

For Petitioners : Mr. S. Jena, Standing Counsel, S & ME Deptt.

For Opp. Party : Mr. P.K. Chand, Advocate

In W.P.(C) No.13169 of 2012

(Arising out of order dated 16.11.2011 passed in O.A. No.4202(C) of 1997)

State of Odisha & Ors. Petitioners

-Versus-

Simanchala Brahma Opp. Party

For Petitioners : Mr. S. Jena, Standing Counsel, S&ME Deptt.

For Opp. Party : Mr. P.K. Chand, Advocate

In W.P.(C) No.13170 of 2012

(Arising out of order dated 16.11.2011 passed in O.A. No.4204(C) of 1997)

State of Odisha & Ors. Petitioners

-Versus-

Kali Prasad Hotta Opp. Party

For Petitioners : Mr. S. Jena, Standing
Counsel, S&ME Deptt.

For Opp. Party : Mr. P.K. Chand, Advocate

In W.P.(C) No.13171 of 2012

(Arising out of order dated 16.11.2011 passed in O.A.
No.4201(C) of 1997)

State of Odisha & Ors. Petitioners

-Versus-

Ananda Chandra Panda Opp. Party

For Petitioners : Mr. S. Jena, Standing
Counsel, S&ME Deptt.

For Opp. Party : Mr. P.K. Chand, Advocate

In W.P.(C) No.11321 of 2012

(Arising out of order dated 14.09.2010 passed in O.A.
No.2633(C) of 1997 and order dated 05.3.2012 passed
in R.P. No. 337(C) of 2012)

State of Odisha & Ors. Petitioners

-Versus-

Mochiram Jena Opp. Party

For Petitioners : Mr. S. Jena, Standing
Counsel, S&ME Deptt.

For Opp. Party : M/s. K.K. Swain & S.C.D.
Dash, Advocates

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
THE HONOURABLE MISS JUSTICE SAVITRI RATHO**

DECIDED ON :: 28.03.2022

DR. B.R. SARANGI, J. This batch of writ petitions have been preferred by the State Government through its School & Mass Education Department impugning the orders passed by the Orissa Administrative Tribunal, Cuttack Bench, Cuttack in the Original Applications mentioned against each of them. Since all the writ petitions involve common questions of law and facts, they are heard together and disposed of by this common judgment which will govern all the cases.

2. For the sake of convenience and for just and proper adjudication of the cases, the factual matrix of W.P.(C) No.13167 of 2012 is referred to in a nut shell.

2.1 In the said writ petition, i.e., W.P.(C) No.13167 of 2012, the opposite party-Banchanidhi Das, while working as Headmaster-in-charge in Khariaguda M.E. School in the district of Ganjam under the administrative control of the District Inspector of Schools, Berhampur Education District, approached

the Orissa Administrative Tribunal, Cuttack Bench, Cuttack by filing O.A. No.4203(C) of 1997 seeking direction to the State-petitioners to confirm and regularize him as against the post of Headmaster with effect from 30.10.1995 and release the trained graduate scale of pay in his favour, as revised from time to time, with effect from the date of acquiring the trained graduate qualification, i.e. 1982, in pursuance of Annexure-3 dated 26.10.1995, and release his legitimate revised arrear dues outstanding since 1982 so also treat the date of joining to be 30.10.1995 for the purpose of counting seniority of Headmaster.

2.2 The relief sought before the tribunal is based on the fact that the opposite party, having I.A. qualification, was engaged as an Assistant Teacher in Turubudi M.E School as against Matric C.T. post on 20.01.1974. While working as such, after passing B.A., he acquired B.Ed. qualification in the year 1982, but he continued as against the post of Matric C.T. The school in question was taken over by the Government w.e.f.

01.04.1991. Since there were large number of vacancies in the post of Headmaster in taken over UP (ME) Schools, the Government in the Department of School and Mass Education took a decision to fill up those posts of Headmasters in UP (ME) on ad hoc basis. The opposite party, on the basis of his seniority, was duly selected and was allowed to discharge the duty of Acting Headmaster (In-charge Headmaster) of Khariaguda M.E. School, vide office order dated 26.10.1995, pursuant to which he continued as Headmaster-in-charge till the date of his retirement on 31.01.2008. It is claimed that since by the time he was discharging the duty of Headmaster on ad hoc basis, he was having requisite qualification and seniority to be appointed as Headmaster on regular basis, he was entitled for the salary at least for the period he had discharged his duties as against the post of Headmaster, may be on ad hoc basis, till the date of his retirement.

2.3 The tribunal, relying upon the judgment of the apex Court in **Selva Raj v. Lt. Governor of**

Island, Port Blair, AIR 1999 SC 838 and the judgment of this Court in **Murari Mohan Pattanaik v. State of Orissa** (W.P.(C) No.11295 of 2010, disposed of on 17.01.2011), directed the State-petitioners to disburse higher salary in favour of the opposite party, who was appointed as Headmaster-in-charge and to take immediate steps to extend the benefit of scale of pay applicable to the post of Headmaster in favour of the opposite party from the date of his engagement as against the said post and fix his pay accordingly for the period he has discharged the duties as in-charge Headmaster of UPME School till the date he was promoted on regular basis, and from the date of his regular promotion till the date of his retirement, he shall be paid regular salary along with his service and financial benefit and disburse the differential arrear salary in his favour within a period of four months from the date of communication of the order.

3. Mr. S. Jena, learned Standing Counsel for School and Mass Education Department appearing for

the State-petitioners vehemently contended that the tribunal, while passing the order granting Headmaster's scale of pay to the opposite party in W.P.(C) No. 13167 of 2012, who was allowed to discharge the duty of Headmaster-in-charge, has not taken into consideration the policy decision dated 20.04.1995 at Annexure-1 taken by the Government of Orissa, Department of School and Mass Education, and the conditional order of appointment issued, vide office order dated 26.10.1995, under Annexure-3. Without taking into consideration such conditions, issuance of direction to grant Headmaster's scale of pay to the opposite party from the date of his appointment as Headmaster-in-charge cannot sustain in the eye of law. It is further contended that the opposite party was not a government servant till the school in question was taken over on 01.04.1991 and after that for all practical purposes from that date onwards the opposite party was a holder of a civil post as per the policy decision of the Government taken on 20.04.1995, to engage senior

teachers, who are having requisite qualification of B.Ed. to be promoted to the post of Headmaster, as in-charge Headmasters, till the posts are filled up by regular selection process on promotion. Not only that, in the order dated 26.10.1995, whereby the opposite party was allowed to work as Acting Headmaster, it was categorically mentioned that no additional benefit would be extended to the teachers, who were engaged as Headmaster-in-charge, except their regular salary as Matric C.T. teacher. Accepting such terms and conditions since the opposite party had joined and continued to work as in-charge Headmaster, at a later stage he cannot claim the benefit of higher scale of pay which is applicable to regular Headmasters. To substantiate his contentions, he has relied upon the judgment of the apex Court in **Ramakant Shripad Sinai Advalpalkar v. Union of India**, 1991 Supp (2) SCC 733.

4. Per contra, Mr. P.K. Chand, learned counsel appearing for the opposite party in W.P.(C)

No.13167 of 2012 and other connected writ petitions and Mr. K. Swain, learned counsel on behalf of Mr. K.K. Swain, learned counsel for the opposite party in W.P.(C) No.11321 of 2012 vehemently contended that in view of judgment of the apex court in **Selva Raj** (supra), as the opposite party has already discharged his duty as Headmaster-in-charge carrying higher responsibility, he is entitled to get the scale of pay admissible to the post of Headmaster on promotion from the date he was holding such post of Headmaster-in-charge till the date of his retirement along with consequential benefits as due and admissible to him. It is further contended that the opposite party was engaged as in-charge Headmaster, vide office order dated 26.10.1995, with certain terms and conditions that he shall continue to work as such till the date the said post is filled up by regularly selected/promoted candidates. Since no selection process was conducted for engagement of regular Headmaster in the school, the opposite party was allowed to continue as such in the school till his

regular promotion/retirement. As the opposite party continued as in-charge Headmaster as against the post of regular Headmaster on ad hoc basis for more than 10 years and thereafter continued as such till the date of his retirement, he is entitled for the benefit of scale of pay which is applicable to the post of Headmaster. It is further contended that had the opposite party been reverted back to his former post on engagement of regular Headmaster in the school, then, clause-3 of the office order dated 26.10.1995 under Annexure-3 could have been applicable in his case. But in this case, the opposite party was allowed to continue as Headmaster-in-charge till the date of his retirement. To substantiate their contentions, they have relied upon **Arindam Chattopadhyay v. State of West Bengal**, AIR 2013 SC 1535; **Dillip Kumar Sahoo v. State of Orissa**, 2008 (I) OLR 162 (Single Bench judgment of this Court) and **Dibakar Naik v. State of Orissa** (WPC (OAC) No.40 of 2010 disposed of on 28.02.2022).

5. This Court heard Mr. S. Jena, learned Standing Counsel for School and Mass Education Department appearing for State-petitioners; Mr. P.K. Chand, learned counsel for the opposite party in W.P.(C) No.13167 of 2012 & other connected writ petitions and Mr. K. Swain, learned counsel for the opposite party in W.P.(C) No.11321 of 2012 by hybrid mode. Pleadings having been exchanged between the parties, with the consent of learned counsel for the parties, the writ petitions are being disposed of finally at the stage of admission.

6. Undisputedly, the opposite party, having I.A. qualification, was appointed as an Asst. Teacher against Matric C.T. post. While working as such, on acquisition of trained graduate qualification, he became eligible for promotion to the post of Headmaster, as per Rule-9 of the Orissa Elementary Education (Method of Recruitment and Conditions of Service of Teachers and Officers) Rules, 1997 (hereinafter referred to as "Rules, 1997"), which is extracted below:

“9. Promotion: –

(1) *The committees within their respective power shall draw up lists of all eligible candidates suitable for promotion as the case may be from Level-V to Level-IV, to Level-III, Level III to Level-II and Level-II to Level-I of the service.*

(2) *The list containing the names of eligible candidates for promotion to the posts belonging to Level-I from Level-II of the service, Prepared by its respective Committee shall be sent to the Government for referring the same to the Orissa Public Service Commission and after concurrence of the Commission the said list shall be treated as final select list and appointment shall be made by Government from that list.*

(3) *After preparation of the lists, the Director shall issue appointment orders to suitable candidates prepared by it in respect of promotion to the posts belonging to Level-II.*

(4) *The Committee at District Level shall recommend the list containing the names of eligible candidates, prepared by it to the Director, Elementary Education for approval.*

(5) *The District Inspector of Schools shall issue appointment orders to candidates, selected by the Committee after its approval by the Director for promotion from Level-V to Level-IV and from Level-IV to Level-III of the Service.*

(6) *The select list prepared by the Committees shall remain valid for a period of one year from the date of its preparation.”*

The above rule has been framed by the Governor of Orissa in exercise of power conferred by the proviso to Article 309 of the Constitution of India to regulate the method of recruitment and conditions of service of Teachers and Officers of Elementary Education. In the above rule, the mode has been prescribed for grant of promotion to the Assistant Teachers taking into account

the eligibility for promotion prescribed in Rule-11 provided they come within the zone of consideration envisaged under Rule-10. It is nobody's case that the opposite party was given promotion in terms of Rule-9 of the Rules, 1997. Rather, it is the admitted case of both the parties that, without giving regular promotion by following Rules, 1997, pursuant to policy decision of the Government in Annexure-1, transfer and promotion of Asst. Teachers of taken over U.P (M.E) schools, including the opposite party, have been made, vide office order dated 26.10.1995 under Annexure-3. In the policy decision, referred to above, it was specifically mentioned that after careful consideration, the Government have decided that teachers and other employees of the taken over U.P. Schools may be transferred within each education district by the District Inspector of Schools in the interest of public administration. In the event of any transfer sought outside the educational district involving change of cadre on the application of the teacher or the employees

concerned, such transfers and change of cadre can be made with the approval of the Committee constituted by the Government for the purpose. It was also provided in the said policy decision that-

“Secondly the vacant posts of Headmasters in such taken over Upper Primary Schools may be filled up on adhoc basis on the basis of seniority and qualification to man the post of “Headmaster subject to the following conditions.

(I) Transfer of teacher with a view to enable them to work as acting Headmasters shall be without prejudice to the claim of suitable persons, which can be determined after the combined gradation lists are finalized.

(II) Such postings shall not confer any right on a teacher discharging the duties of a Headmaster to be a regular Headmaster.

(III) No additional financial benefit shall accrue to a teacher who is discharging the duties as acting Headmaster.”

7. In terms of such policy decision, a gradation list of Assistant Teachers having B.Ed. qualification under Berhampur Education District was prepared vide Annexure-2, which was circulated among the staff inviting errors and commissions, if any found, to be brought to the notice of the District Inspector of Schools, Berhampur within 15 days from the date of its

receipt, and request was also made to furnish the information of Assistant Teachers having B.Ed. qualification immediately. As a consequence thereof, vide office order dated 26.10.1995, the Assistant Teachers having B.Ed. qualification, including the opposite party, were transferred to work as Acting Headmaster of the Schools noted against each until further orders subject to conditions, which read as follows:

"1. Transfer of these teachers with a view to enable them to work as acting Headmasters shall be without prejudice to the claim of suitable person which cannot be determined after the combined gradation list are finalised.

2. Such positioning shall not confer any right on teacher discharging the duties of a Headmaster to be a regular Headmaster or to claim promotion to the post of Headmaster; rather he will continue to be a asst. teacher.

3. No additional financial benefits shall accrue to a teacher who is discharging the duties as acting Headmaster."

8. On perusal of the aforementioned conditions, it is made clear that transfer of the opposite party was made with a view to enable him to work as Acting Headmaster without prejudice to the claim of

suitable person, which cannot be determined after the combined gradation list is finalized and, as such, such posting shall not confer any right on the opposite party discharging the duties of a Headmaster to be a regular Headmaster or to claim promotion to the post of Headmaster, rather he will continue to be an Asst. Teacher. It was also further stated that no additional financial benefits shall be accrued to the opposite party, for discharging the duties of Acting Headmaster. The conditions stipulated in the office order dated 26.10.1995 under Annexure-3 are very clear. Therefore, the opposite party, with eyes wide open, had accepted such conditions and continued to discharge the duty on transfer as Headmaster-in-charge/Acting Headmaster. As such, no right had been conferred on him to be absorbed as regular Headmaster or to claim promotion to the post of Headmaster. Rather, he was to continue as an Asst. Teacher, which is a substantive post. It was also clarified that no additional financial benefits shall

be accrued to the opposite party for discharging the duties of Acting Headmaster.

9. The terms and conditions of appointment are to be gathered from the contract of appointment and what constitutes the contract of employment would depend upon the facts and circumstances of each case. Generally, the terms and conditions are stipulated in a letter of appointment. In public services, however, usually there are statutory service rules or administrative instructions covering the conditions of service.

10. ***In Roshanlall Tandon v. Union of India, AIR 1967 SC 1889***, the apex court held that these rules or instructions are very often expressly incorporated in the letter of appointment or the relevant appointment order. Even if there is no such express incorporation, by reason of nature of relationship between the employer and employee in the field of public services the employee will be bound by such rules and regulations or instructions.

11. ***In Om Prakash Maurya v. U.P. Co-operative Sugar Factories Federation***, 1986 (Supp) SCC 95 : AIR 1986 SC 1844, the apex court held that the provision of an appointment order or appointment letter must be read or considered in accordance with the regulations which govern the service conditions of the employee.

12. In the ordinary (or private) law of master and servant, the relationship between the two and the terms and conditions of service are governed by a contract of service. These contracts may contain certain express terms, i.e. pay, leave, superannuation etc. Apart from such express terms, the courts have recognized certain terms which are to be implied in every such relationship in the interest of both the employer and the employee, which includes pay, transfer, promotion, seniority, pre-mature retirement, retirement etc.

13. In ***Delhi Transport Corporation v. D.T.C. Majdoor Congress***, AIR 1991 SC 101, the apex

court, while approving certain principles laid down in the case of **Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguli**, (1986) 3 SCC 156 : AIR 1986 SC 1571, held that the terms and conditions, whether contained in the contract of employment expressly or incorporated in it by reference, must not be unfair and unconscionable.

14. In **Secretary-Cum-Chief Engineer, Chandigarh v. Hari Om Sharma**, (1998) 5 SCC 87 : AIR 1998 SC 2909, the apex court held that unconscionable condition, e.g. in the form of an undertaking that the employee would not claim salary of the higher post in the consideration of promoting him as a stop gap arrangement, has been held to be unenforceable as opposed to public policy and hit by Section 22 of the Contract Act.

15. In view of aforesaid settled position of law, when the opposite party, while working as Assistant Teacher against Matric C.T. post, transferred to work as Headmaster-in-charge/Acting Headmaster

with the terms and conditions as prescribed in clauses- 1 to 3 of the office order dated 26.10.1995 under Annexure-3, he was well aware of the fact that even though he was discharging the duties of a Headmaster he cannot claim promotion to the post of regular Headmaster, rather he shall have to continue as an Assistant Teacher, which will not accrue any additional financial benefits. Therefore, subsequently he cannot claim that he should be granted the regular scale of pay admissible to the post of regular Headmaster. Thereby, the claim of financial benefits by the opposite party, pursuant to his retirement as Headmaster-in charge/Acting Headmaster, is contrary to the office order dated 26.10.1995, which is binding on him. Thus, the tribunal has lost sight of such facts, i.e., the terms of contract entered into between the State-petitioners and the opposite party and has not given any finding to that extent. More so, when the argument was advanced before the tribunal, learned counsel appearing for the opposite party abandoned the relief sought to regularize

the opposite party as against the post of Headmaster, rather it was contended as follows:

“ In the course of hearing, Mr. Rath, learned counsel submits that he will confine to his relief only in respect of disbursement of salary in the scale applicable to regular Headmasters in favour of the applicant for the period he has discharged his duties as In-charge Headmaster and he does not want to press the other reliefs, as has been sought for by the applicant at paragraph 7 of the O.A.”

16. On the basis of the relief sought, the tribunal noted the fact as per the concession made by learned counsel for the opposite party and proceeded with the matter. Much reliance was placed on the judgment of the apex Court in **Selva Raj** (supra), which can be distinguished from the present case on the ground that the said case the order passed by the competent authority requiring the appellant therein, who was holding the post of primary teacher, to look after the duties of Secretary (Scouts), and it was specifically mentioned in the said order that pay will be drawn against the post of Secretary (Scouts) under general fundamental rules. Therefore, the apex Court came to a finding that the appellant had worked on the higher post though temporarily and in an officiating

capacity pursuant to the aforesaid order and his salary was to be drawn during that time against the post of Secretary (Scouts). It is also not in dispute that the salary attached to the post of Secretary (Scouts) was in the pay scale of 1640-2900. Consequently, on the principle of quantum merit the authorities should have paid the appellant as per the emoluments available in the aforesaid higher pay scale during the time he actually worked on the said post of Secretary (Scouts) though in an officiating capacity and not as a regular promotee. Therefore, factually the case of **Selva Raj** (supra) is absolutely not applicable to the present case. Relying upon such judgment and the judgment in **Murari Mohan Pattanaik** (supra) of this Court, the tribunal has extended the benefit to the opposite party which is not admissible to him.

17. The factual matrix clearly indicates that the opposite party was working as acting Headmaster/ Headmaster-in-charge. Coming to the meaning of the word “acting”, it means a term employed to designate

one performing the duties of an office to which he does not himself claim title; (as) acting appointment. Similarly, the words “In charge” connote the meaning that one having the care, custody or superintendence.

In ***Giridhari Lal Gupta v. D.N. Mehta***, (1971) 3 SCR 748, the apex Court has explained that “in charge of” must mean “in overall control of the day to day business of the company or the firm”.

If the above meaning is applied to the case of the opposite party, he was continuing in a substantive post of Assistant Teacher having Matric C.T. qualification. Even though he acquired higher qualification of trained graduate, but he was continuing as Acting Headmaster/in-charge Headmaster. Thereby, he is in overall control of the day to day business of the school in question. As a consequence thereof, the opposite party, having not appointed against substantive post of Headmaster, is not entitled to the scale of pay admissible to the said post.

18. Reliance has been placed on **Arindam Chattopadhyay** (supra), wherein the apex Court has taken into consideration the principle of equal pay for equal work vis-à-vis Articles-16, 39(d) of the Constitution of India. In that case the appellant was appointed as Assistant Child Development Project Officer and thereafter he was transferred temporarily to integrated child development services to work as Child Development Project Officer (CDPO) and he was working continuously for many years as full-fledged CDPO, therefore the apex court held that the appellant cannot be refused higher pay scale of CDPO on the ground that he was promoted and cannot be penalized for failure of Government to fill up the post of CDPO.

19. Similarly, in **Dillip Kumar Sahoo** (supra), learned Single Judge of this Court, while considering Orissa High Court (Conditions of Service of Staff) Rules, 1963, Rule 6(2), held that 15 posts of Bench Clerk were upgraded to that of Court Master in the rank of superintendent, Level-II and the petitioners

therein, except petitioners no.6 & 8, working as Bench Clerks were promoted as per report of the Committee constituted by the Chief Justice. Therefore, direction was given that petitioners, who have worked as Court Masters during the relevant period, be paid salary in the scale of pay of Superintendent, Level-II. It was also clarified that if an employee is ordered to work in a higher post though temporarily and in an officiating capacity, he shall be entitled to the salary attached to the higher post, as payment of higher salary shall not amount to promotion.

Factually, the above noted decision relied upon by the learned counsel for the opposite party is totally distinguishable from the present one.

20. In **Ramakant Shripad Sinai Advalpalkar** (supra), the three Judges Bench of the apex Court held that asking an officer who substantively holds a lower post merely to discharge the duties of a higher post cannot be treated as a promotion. In such a case he does not get the salary of

the higher post; but gets only what in service parlance is called a “charge allowance”. Such situations are contemplated where exigencies of public service necessitate such arrangements and even consideration of seniority do not enter into it. The person continues to hold his substantive lower post and only discharges the duties of the higher post essentially as a stop-gap arrangement. In paragraphs-5 & 9 of the said judgment, the apex Court held as follows:

“5. The arrangements contemplated by this order plainly do not amount to a promotion of the appellant to the post of Treasurer. The distinction between a situation where a government servant is promoted to a higher post and one where he is merely asked to discharge the duties of the higher post is too clear to require any reiteration. Asking an officer who substantively holds a lower post merely to discharge the duties of a higher post cannot be treated as a promotion. In such a case he does not get the salary of the higher post; but gets only what in service parlance is called a “charge allowances”. Such situation are contemplated where exigencies of public service necessitate such arrangements and even consideration of seniority do not enter into it. The person continues to hold his substantive lower post and only discharges the duties of the higher post essentially as a stop-gap arrangement.

9. *The third contention is that appellant’s ‘in-charge’ arrangements in the higher post had continued for so long a period that a determination of equivalence on the basis of his lower substantive*

post would become arbitrary. This contention ignores the fact that an 'in-charge' arrangement is not a recognition of or is necessarily based on seniority and that, therefore, no rights, 'equities or expectation could be built upon it.' The third contention is also unmeritorious."

21. In **Dibakar Naik** (supra), learned Single Judge of this Court, relying upon the ratio decided on **Selva Raj** (supra), directed the competent authorities to calculate the differential wages/salary for the period the petitioner was discharging the Headmaster-in-charge post and pay the same along with at least @ 5% interest all through by completing the calculation as well as the payment at least within a period of two months from the date of communication of the order by the petitioner.

22. In view of law laid down by the apex Court in the case of **Ramakant Shripad Sinai Advalpalkar** (supra), it is made clear that asking an officer, who substantively holds a lower post, merely to discharge the duties of a higher post cannot be treated as a promotion and the person continues to hold his substantive lower post and only discharges the duties of the higher post essentially as a stop-gap arrangement.

More so, the contention raised by learned counsel for the opposite party ignores the fact that an 'in-charge' arrangement is not a recognition of or is necessarily based on seniority and that, therefore, no rights, equities or expectations could be built upon it.

23. Evidently, the judgment of **Ramakant Shripad Sinai Advalpalakar** (supra) rendered by three Judges Bench of the apex Court has not been referred to in **Arindam Chattopdhyay** (supra), **Dillip Kumar Sahoo** (supra) and also **Dibakar Naik** (supra). Thereby, the said judgments have no application to the present case, Rather this case will govern by the ratio decided in **Ramakant Shripad Sinai Advalpalakar** (supra). Consequentially, the direction issued by the tribunal to take immediate steps to extend the benefit of scale of pay applicable to the post of Headmaster in favour of the opposite party from the date of his engagement as against the said post and fix his pay accordingly for the period he has discharged his duties as in-charge Headmaster of UP (ME) School till the date

he was promoted on regular basis and from the date of his regular promotion till the date of his retirement, he shall be paid regular salary along with his service and financial benefit and disburse the differential arrear salary in his favour, cannot sustain in the eye of law.

24. In view of the foregoing discussions, the order dated 16.11.2011 passed by the Orissa Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.4203 (C) of 1997, O.A. No.4200 (C) of 1997, O.A. No.4205 (C) of 1997, O.A. No.4202 (C) of 1997, O.A. No.4204 (C) of 1997 and O.A. No.4201 (C) of 1997, as well as order dated 14.09.2010 passed in O.A. No. 2633(C) of 1997 and order dated 05.03.2012 passed in R.P. No. 337(C) of 2012 (arising out of O.A. No. 2633(C) of 1997) are liable to be quashed and hereby quashed.

25. As the opposite parties, in addition to their substantive posts of Assistant Teacher, were carrying on higher responsibility by discharging the duty of Headmaster-in-charge/Acting Headmaster, they may be entitled to “charge allowance”. Therefore, this

Court directs the State-petitioners to consider and release “charge allowance” in favour of the opposite parties for having discharged higher responsibility remaining in the substantive post of Assistant Teacher, which is admissible in the service law applicable to the opposite parties, as expeditiously as possible preferably within a period of three months from the date communication/ production of the order.

26. With the above observation and direction, all the writ petitions stand disposed of. There shall be no order as to costs.

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DR. B.R. SARANGI,
JUDGE

SAVITRI RATHO, J. I agree.

.....
SAVITRI RATHO,
JUDGE

Orissa High Court, Cuttack
The 28th March, 2022, Alok