

ORISSA HIGH COURT: CUTTACK

W.P.(C) No. 7281 OF 2018

And

W.P.(C) NO. 4848 OF 2021

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

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W.P.(C) No. 7281 of 2018

State of Odisha and others Petitioners

-Versus-

Saraswati Bhoi and others Opp. Parties

For Petitioners : Mr. S. Jena, Standing Counsel,
School & Mass Education
Department.

For Opp. Parties : Mr. Asok Mohanty,
Senior Advocate along with
M/s. S.B. Jena, S. Behera and
A. Mishra, Advocates.

W.P.(C) No. 4848 of 2021

State of Odisha and others Petitioners

-Versus-

Nilamani Behera and others Opp. Parties

For Petitioners : Mr. S. Jena, Standing Counsel,
School & Mass Education
Department.

For Opp. Parties : Mr. Asok Mohanty,

Senior Advocate along with
M/s. G.M. Rath and
L.M. Pradhan, Advocates.

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
THE HON'BLE MR. JUSTICE SANJAY KUMAR MISHRA**

Date of hearing & judgment : 24.06.2022

DR. B.R. SARANGI, J. The State of Odisha and its functionaries have filed both the Writ Petitions seeking to quash the Order dated 24.10.2017 passed by the Odisha Administrative Tribunal, Principal Bench, Bhubaneswar, in O.A. No. 2576 of 2016 and batch, as well as the Order dated 09.11.2017 passed in O.A. No. 2499 of 2016 and batch, whereby the Tribunal, by holding that the private Opposite Parties are entitled to the Grade Pay of Rs.4200/- after completion of 20 years in a single Cadre towards 2nd Revised Assured Career Progression Scheme (RACPS) benefit, has quashed the impugned Orders of the Original Applications, by which the Grade Pay of the private Opposite Parties had been reduced to Rs.2800/- and Order of recovery had been passed for excess amount drawn by them and directed the State-Petitioners to allow

the private Opposite Parties to continue in the Grade Pay of Rs.4200/- towards 2nd RACPS benefit.

2. The factual matrix, as borne out from both the cases, in a nutshell, is that the private Opposite Parties, who were the Applicants before the Tribunal, were initially appointed as Asst. Teacher in different Schools having their qualification as Matric C.T, I.AC.T and B.A C.T and continuing as per their qualification in Level-V post. During their service period, they had been duly considered under the provision of various Revised Scale of Pay Rules introduced by the State of Odisha in Finance Department from time to time. On introduction of ORSP Rules, 2008, which were notified to be applicable w.e.f 01.01.2006, the Govt. of Odisha in Finance Department, keeping in view the introduction of MACP (Modified Assured Career Progression) Scheme by the Govt. of India, introduced the RACP Scheme in supersession of earlier ACP Scheme with a further stipulation that the said RACP Scheme is applicable w.e.f. 01.01.2013 and on coming into force the RACP Scheme, the earlier Scheme,

i.e., ACP, will cease to operate. The private Opposite Parties were enjoying the scale of pay as against the Level-V post in the Pay Band (PB-1) of Rs.5200-Rs.20,200/- with Grade Pay of Rs.2200/-. On completion of 10 years of service in one Grade, i.e., in the Grade of Asst. Teacher, their Pay Bands were enhanced to the next higher stage, i.e., Rs.5200-20,200/- with Grade Pay of Rs.2400/-, which is meant for the Level-IV post, as they were having the requisite qualification to get promotion to the Level-IV post, but could not be promoted due to certain exigencies. The private Opposite Parties, after completion of 20 years of service against the post, were extended with the benefit of 2nd RACP Scheme by allowing Grade Pay of Rs.4200/-, which was applicable to Level- III post.

2.1 One Benudhar Rout and 16 others having not been extended with the benefit of 2nd RACP Scheme, approached the Odisha Administrative Tribunal, Principal Bench, Bhubaneswar, in O.A No.1904/2016, which was disposed of vide Order dated 11.08.2016 and in compliance thereto, it was ascertained that in view of the

clarification issued by the Govt. of Odisha in School & Mass Education Department, vide its Letter No.16070/SME dated 11.08.2016, that in view of the amendments of the Elementary Cadre Rules, 2014, which came into effect from 01.07.2014, the Level-V and IV Teachers, who are otherwise eligible to the post of Level-III Teachers, can only be extended with 2nd financial up-gradation with Grade Pay of Rs.4200/- and remaining other Teachers, who do not possess requisite qualification to hold Level-III post, can be extended with financial up-gradation of Grade Pay of Rs.2800/- as per First Schedule of ORSP Rules, 2008. Accordingly, the claim of said Benudhar Rout and others was rejected vide Office Order No. 2003/SME dated 03.10.2016 and it was decided to take appropriate action to modify the Order passed by the respective B.E.Os. granting Grade Pay of Rs.4200/- in favour of those categories of Asst. Teachers, as the same was contrary to the Finance Department Circular dated 20.01.2014.

2.2 Aggrieved by the above Office Order dated 03.10.2016, the private Opposite Parties approached the

Tribunal by filing batch of Original Applications, including the ones involved in these Writ Petitions. Pursuant to the notice, the present Petitioners appeared and filed their Counter Affidavits contending that the private Opposite Parties are not eligible for promotion to Level-III post and, as such, the benefit of financial up-gradation under RACP Scheme with Grade Pay of Rs.4200/- was granted in their favour wrongly. Consequentially, such excess payment made are liable to be recovered and the Orders granting Grade Pay of Rs.4200/- in their favour were required to be modified to the extent that they are entitled to get the Grade Pay of Rs.2800/-. But, the Tribunal did not accede to the objection raised by the Petitioners, who were Respondents before the Tribunal, and allowed all the Original Applications by holding that the private Opposite Parties are entitled to Grade Pay of Rs.4200/- under the 2nd RACP Scheme by quashing the reduction of Grade Pay to Rs.2800/- and Order of recovery of excess payment drawn by them. Hence, these Writ Petitions.

3. Mr. S. Jena, learned Standing Counsel for School & Mass Education Department vehemently

contended that the Govt. of Odisha, in exercise of the powers conferred by the Proviso to Article 309 of Constitution of India, brought ORSP Rules, 2008, vide Finance Department Notification No.55244/PCC(F)/51/08 dated 24.12.2008, w.e.f 01.01.2006. Under Rule-14 of the ORSP Rules, 2008, it has been provided that all State Govt. employees up to Group-A category can avail ACP in 3 stages, i.e., 1st ACP on completion of 15 years, 2nd after 25 years and 3rd after 30 years of service in their original Post or Grade and such benefit of ACP will be given only after screening in each case by a Screening Committee to be constituted by the Department. All the norms for the promotion shall also be applicable for allowing ACP at different stages. Under First Schedule of ORSP Rules, 2008, the existing scale of pay under ORSP Rules, 1998, such as, Rs.3600-100-5600/-, Rs.4000-100-6000/- and Rs.4500-125-7000/- were brought under one Pay Band (PB-1) with scale of Rs.5200-20,200/- with Grade Pay of Rs.2200/-, Rs.2400/- and Rs.2800/- respectively.

3.1 The Govt. of India has introduced Modified Assured Career Progression (MACP) for Central Govt. civilian employees in supersession of the provision of ACP Scheme. Accordingly, the State Govt. in Finance Department Resolution No.3560 dated 6.2.2013 also decided to implement Career Advancement Scheme to be known as Revised Assured Career Progression Scheme (in short RACPS) with a stipulation that such Scheme is to be effective from 01.01.2013. Under the new Scheme there shall be three financial up-gradation counted in direct entry on completion of 10, 20 and 30 years of service in a single Cadre in absence of promotion. It also provided that the employee of the Cadre having promotional hierarchy will get the Grade Pay of promotional post. The employees not having a promotional hierarchy will get next higher Grade Pay as per his Schedule of ORSP Rules, 2008. The private Opposite Parties did not have the requisite eligibility criteria to be promoted to the next promotional Cadre, for which, they were not entitled to claim grant of 2nd financial up-gradation under the RACP Scheme. In view

of Clause-14 of the ORSP Rules, 2008 and Clause-10 of the RACP Scheme dated 06.02.2013, the financial up-gradation cannot, ipso facto, be applied merely on completion 10 and 20 years of regular service, as the case may be. A candidate has to fulfill the eligibility of achieving either the benchmark or fitness as per the promotion norms. Therefore, the benefit had been extended to the private Opposite Parties erroneously. Consequently, the Petitioners are well justified by passing the Order impugned to withdraw such benefit from them. Thus, the Tribunal has committed a gross error apparent on the face of record by quashing such letters, by which the benefit of Grade Pay of Rs.4200/-, which was granted to the private Opposite Parties, were withdrawn and allowed them to continue as per the said Grade Pay of Rs.4200/- on the ground that they had been deprived of getting promotional avenue even after 20 years of their service in a particular Grade. Thereby, the Order so passed by the Tribunal is liable to be quashed.

3.2 It is further contended that while ordering so, much reliance was placed on Proviso to Rule-9(2) of the of

the Elementary Cadre Amendment Rules, 2014, issued vide Government Notification dated 01.07.2014 to extend such benefit to the private Opposite Parties. But, on perusal of the said Rules, it is evident that in Order to be eligible for promotion to Level-III Cadre, an employee must have not only possessed the Bachelor Degree in any discipline, but also possessed the B.Ed Degree or its equivalent training course from a recognized Institution and also served continuously for a period of two years in Level-IV Cadre. But the Tribunal fell into error in not relying upon the aforesaid principal provision of Rule 9 (2) and only relying upon the Proviso thereto, erroneously held that there is no complete bar for promotion of Level-V and Level-IV Teachers to Level-III Teacher and they can be promoted, as per Proviso to Rule-9(2), to the next higher rank.

3.3 It is further contended that Proviso to Rule-9(2) is not applicable independently to the case of the private Opposite Parties excluding the main provision and, thereby, the finding of the Tribunal suffers from wrong interpretation of the provisions of the Statute. It is also

contended that relying upon the judgment dated 27.06.2016 of this Court in the case of **State of Odisha v. Bihari Lal Barik** (W.P.(C) No. 2831 of 2016), the Tribunal has directed for continuance of the benefit of Grade Pay of Rs.4200/- to the private Opposite Parties, which cannot sustain in the eye of law. It was also contended that the Elementary Cadre Rules, 2014 was amended in the year 2019, by virtue of the Government Notification dated 08.03.2019, where benefit has been extended to the employees against the Cadre of Level-III, but in the amended Rules, 2019, the provision of Rule-9 (2) has not been deleted or substituted. Rather, in the said amended Rules, 2019, the Odisha Elementary Education Service Level-V Cadre has been restructured into two parts in Rule-3, which provides level-V Cadre consists of Level-V(A) and Level-V(B) and moreover such amended Rules, 2019 came into force much after the impugned Order passed by the Tribunal. Therefore, the same was not an issue before the Tribunal. As a result, the amended Rules, 2019 is in no way helpful to the private Opposite Parties.

3.4 To substantiate his contention, reliance has been placed on the cases of **Dwarka Prasad v. Dwarka Das Saraf**, 1976 (1) SCC 128, **Abdul Jabar Butt v. State of Jammu & Kashmir**, (1957) SCR 51, **Tribhovandas Haribhai Tamboli v. Gujarat Revenue Tribunal**, 1991 (3) SCC 442, **Sidharth Vyas and another v. Ravi Nath Misra and others**, 2015 (2) SCC 701, **Ali M.K. v. State of Kerala**, 2003 (11) SCC 632, and **Bijay Kumar Singh and others v. Amit Kumar Chamaria and another**, 2019 (10) SCC 660.

4. Per contra, Mr. Asok Mohanty, learned Senior Advocate appearing along with Mr. B.S. Tripathy-1, Mr. S.B. Jena and Mr. G.M. Rath, learned Counsels for the private Opposite Parties, contended that the stand of the Petitioners is contrary to the RACP Scheme. In view of Clause-10 of the Scheme, there must be a promotional hierarchy from the Cadre to which the employee belongs. Once it is found that the Cadre in which the employee is serving has got a promotional hierarchy, then the Grade Pay ought to be of the promotional post. Applying the same, in the instant case, the Level-III is the promotional

post of Level-IV. Since the private Opposite Parties were serving as Level-IV, they got promotional hierarchy of Level-III. As such, individual eligibility is not contemplated under RACP Scheme. The Petitioners, however, placing reliance upon the clarification dated 20.01.2014 issued by the Finance Department, have resorted to the impugned action. The said clarification has been considered by this Court in the case of **Bihari Lal Barik** (supra), wherein it has been held that the Scheme is clear that RACP is available to an employee having promotional hierarchy. Against the said judgment of this Court, the State had preferred an SLP bearing Diary No (s) 20358 of 2017 and the apex Court dismissed the said case vide Order dated 23.08.2017. Thereby, the judgment of this Court in the case of **Bihari Lal Barik** (supra) has reached its finality. In view of that, if the benefit has been extended to the private Opposite Parties, no error has been committed by the Tribunal so as to cause interference by this Court.

4.1 It is further contended that in the case of **State of Odisha. v. Sujata Rani Sahu** [W.P.(C) No.s 4819 &

4486 of 2018 disposed of on 17.03.2022], this Court upheld the decision of the Odisha Administrative Tribunal and approved that the clarification dated 20.01.2014 of the Finance Department has no legal force and RACP benefits are to be decided on the basis of RACP Scheme of 2013 and taking aid of ORSP Rules, 2008. Therefore, in consonance with the said judgment, the private Opposite Parties are entitled to get the RACP benefits as had been granted by the State. More so, the stand taken by the Petitioners is contrary to the decision of the Screening Committee so also to the provisions of ORSP Rules, 2008 and the retrospective application of amended Rules, 2019 to take away the accrued right, cannot sustain in the eye of law. More so, the entire action of the Authorities was discriminatory one. Consequentially, he contended that the Tribunal has not committed any error apparent on the face of the record so as to cause interference by this Court at this stage.

5. This Court heard Mr. S. Jena, learned Standing Counsel for School & Mass Education Department appearing for the State-Petitioners, and Mr. Asok

Mohanty, learned Senior Advocate appearing along with Mr. B.S. Tripathy-1, Mr. S.B. Jena and Mr. G.M. Rath, learned Counsels for the private Opposite Parties by hybrid mode and perused the records. Pleadings having been exchanged between the parties, with the consent of learned counsel for the parties this writ petition is being disposed of finally at the stage of admission.

6. The admitted facts are that the private Opposite Parties, who were Applicants before the Tribunal, are Primary School Teachers having qualification of Matric/I.A./+2 with C.T. training and are coming under the administrative control of the Directorate of Elementary Education. They joined service between 1990 and 1995 as Assistant Teachers of Government Primary Schools and Assistant Teachers of Government Upper Primary Schools in Level-V and their service condition was governed by the Orissa Elementary Education (Method of Recruitment and Conditions of Service of Teachers and officers) Rules, 1997 (hereinafter to be referred as “1997 Rules”). In the 1997 Rules the posts have been categorically divided into five levels i.e.,

Level-V, IV, III, II and I. The 1997 Rules mandates that the Level-V post shall consist of Assistant Teachers of Government Primary and Upper Primary Schools, which shall be filled up through direct recruitment only. The next higher level is Level-IV which shall consist of Headmaster/Headmistress of Government Primary Schools. Rule-6(1)(b) of the 1997 Rules further mandates that vacancy to Level-IV, III, II & I shall be filled up only through promotion. The comparative position in the entry level is at Level-V and the promotional level is far too less, as a result of which, notwithstanding many Teachers, even after completion of minimum service period and having the basic eligibility criteria for promotion, could not be promoted to Level-IV & III, for which their service got stagnated. Considering the uncertain promotional avenue and career stagnation, the Government of India introduced Assured Career Progression (ACP) Scheme, which was subsequently re-introduced with modified terms and was renamed as Modified Assured Career Progression (MACP) Scheme. The Government of Odisha in the line of the Central Government Scheme also revised

its Scheme with effect from 01.01.2013 which is known as Revised Assured Career Progression (RACP) Scheme. As per the said Scheme, 3 financial up-gradations have been provided from the direct entry Grade on completion of 10, 20 and 30 years of service in a single Grade in absence of promotion. Meaning thereby, an employee, if completed 10 years of service in the entry Grade, will be considered for 1st up-gradation under RACP. An employee completing 20 years of service and has got only one up-gradation either by way of promotion or by RACP, will be considered for 2nd up-gradation. Similarly, upon completion of 30 years of service there will be the 3rd up-gradation. The financial up-gradation under RACP would be admissible up to the highest Grade Pay of Rs.7600/- in Pay Band (PB)-3 under Orissa Revised Pay Scale Rules.

7. All the private Opposite Parties have completed more than 20 years of service either in the entry level, i.e. at Level-V or Level-IV, which is the next higher promotional level. Therefore they are entitled to the 2nd up-gradation under the RACP Scheme, 2013. Under the RACP Scheme, there shall be a Screening Committee to

decide the eligibility of the persons for up-gradation. Regulation-10 of the RACP Scheme mandates that the employee of the Cadre having promotional hierarchy will get the Grade Pay of the promotional post. The employee in isolated/ex-Cadre post, not having promotional hierarchy, will get the next higher Grade Pay in the First Schedule of ORSP Rule. Applying the said principle, admittedly, as per 1997 Rules, all Teachers entered in Level-V have minimum promotional avenue up to Level-III, subject to fulfillment of basic eligibility criteria. Therefore, under Regulation-10 of the RACP Scheme, they are entitled to Grade Pay of the promotional post, as the Cadre in which they are born in service has promotional avenue and is not an ex-Cadre post. As per the 1997 Rules, a Teacher at the entry level i.e. at Level-V is eligible for promotion to the next higher Cadre, i.e., post of Headmaster of Government Primary School in Level-IV after completion of continuous period of 8 years of service in Level-V. Similarly, an employee in Level-IV is eligible for promotion to Level-III, i.e., to the post of Headmaster of Government Upper Primary School, after serving for a

period of 5 years in the Level-IV Cadre. To become eligible for promotion to Level-II, i.e., the Deputy Inspector of Schools, an employee must have served for a period of 3 years in Level-III. In Order to be eligible to be promoted to Level-I post, i.e., District Inspector of Schools, an employee must have served for a continuous period of 3 years and must possess a Degree in B.A./B.Sc./B.Com. with Bachelor's Degree in Education or an equivalent Degree. Therefore, a Teacher entered in Level-V, has promotional avenue up to Level-I as per the 1997 Rules.

8. As has been already stated, the private Opp. Parties have joined the service in between 1990 to 1995. Applying the 1997 Rules, there was no bar for their promotion to the post of Level-IV as well as Level-III as because they have completed 13 years of service by 2008. Thus, not only the promotional avenue exists from their entry Cadre but also they were eligible for promotion subject to availability of post in the promotional avenue. In the year 2009, the State Government brought an amendment to the existing 1997 Rules and prescribed the following changes

- i. For direct recruits to the level V post of Asst. Teachers 60% vacancies would be filled up by Matric or +2 C.T. candidates and rest 40% vacancies would be filled up by B .Ed. candidates in Arts or Science or Commerce;*
- ii. Promotion to level -IV post from Level V post after 8 years, 60% of Level-IV posts by way of promotion shall be filled up from candidates possessing Matric or +2 C.T. and rest 40% vacancies will be filled up through promotion by candidates with B.Ed. in Arts or Science or Commerce;*
- iii. Similarly, promotion to Level-III from level IV post after 5 years, 50% vacancies would be filled by candidates with Matric or +2 C.T. and rest 50% vacancies will be filled up by B.Ed. in Arts or Science or Commerce.”*

9. Although the private Opp. parties are eligible for promotion prior to coming into force of 2009 Rules, yet they could not be promoted because of lack of vacancy in the promotional posts. Even in the 2009 Rules, as would be evident from the above quoted provision, the private Opposite Parties with their Matric & CT or +2 & CT qualification, are eligible for promotion to the post of Level-III. In the meantime, they have completed 20 years of service by 2015. Therefore, applying the provisions of RACP Scheme, 2013 as well as ORSP Rule, 2008, the private Opposite Parties are eligible for 2nd RACP benefit upon completion of 20 years of service.

10. The 1997 Rules, again underwent an amendment in the year 2014 and as per the said amendment in Order to be eligible for promotion to the posts of Level-IV, a Candidate must have served for a continuous period of four years in the post of Level-V, i.e., entry level post provided that -

(i) *50% of the vacancies shall be filled up by the candidates having passed High School Certificate or Higher Secondary (10+2) Examination with Secondary Teachers Training/Certified Teachers Course from any recognized Board or University or equivalent thereof.*

(ii) *50% of the vacancies shall be filled up by the candidates possessing a Bachelor Degree in Education or an equivalent examination and training course from a recognized Board or University .*

(b) for sub rule (2), the following sub-rule shall be substituted, namely:

In Order to be eligible for promotion to Level-III of the service a candidate must have possessed a Bachelor Degree in any discipline with a Bachelor Degree in Education or an equivalent examination and training course from a recognised Board or University and have served for a continuous period of two years in the posts belonging to Level-IV of the service.

Provided that in case of non-availability of adequate number of persons for promotion to Level-III of the service, six years of service in Level-IV and V shall be taken together for consideration of promotion but must have rendered at least one year of service in Level-IV."

11. Therefore, admittedly, by the time 2009 Rules came into force, most of the private Opposite Parties

either in Level-IV or Level-V, had completed a period of service required for promotion to Level-III and possessed the requisite qualification. They could not be promoted to the post of Level-III for want of sufficient number of posts. Therefore, admittedly, as per the 1997 Rules or the amended Rules of 2009, the Opposite Parties are eligible to be considered for promotion to the post of Level-III.

12. At this point of time, in the year 2013, the State Government introduced the RACP Scheme. In Order to implement the recommendations of the 6th pay Commission, the State Government formulated Odisha Revised Scale of Pay (ORSP) Rules, 2008. As per the ORSP Rules, 2008, the fitment principle is provided in Rule-4, which reads as follows:-

“4. Fitment principle

(i) The pay in the pay band/ pay scale will be determined by multiplying the existing basic pay without special pay as on 1st January, 2006 by a factor of 1.86 and rounding off the resultant figures to the next multiple of 10. Grade Pay corresponding to the pay band will then be added to be shown distinctly.

(ii) If the minimum of the revised pay band/ pay scale is more than the amount arrived at as per the above fitment principle, the pay shall be fixed at the minimum of revised pay band/ pay scale with corresponding Grade Pay. ”

13. The pre-revised pay scale of trained Level-V Teachers was Rs.3600-100-5600/-. The pre-revised pay scale of trained Level-IV Teachers was Rs.4000-100-6000/- and the pre-revised pay scale of trained Level-III Teachers was Rs.5000-150-8000/-. Applying the above fitment principle by multiplying the basic pay by a factor of 1.86, the pay in the Pay Band of Level-V Teachers comes to Rs.6700/- and the corresponding Grade Pay is Rs.2200/-. Similarly, the pay in the Pay Band of Level-IV Teachers comes to Rs.7440/- and the corresponding Grade Pay is Rs.2400/- and pay in the Pay Band of Level-III Teachers comes to Rs.9300/- and the corresponding Grade Pay is Rs.4200/-. The Screening Committee constituted under RACPS has in fact applied the above principle and since the Opposite Parties have completed 20 years of service on 01.04.2015, the Committee fixed the Grade Pay at Rs.4200/-, as would be evident from the Service Book of the private Opposite Parties. With eyes wide open and knowing fully well, the benefit of Grade Pay of Rs.4200/- had been extended to the private

Opposite Parties. Thereby, no error has been committed by the Tribunal by granting such benefit to the private Opposite Parties.

14. As it appears, the Petitioners have unilaterally revised the Grade Pay and arbitrarily fixed it at Rs.2800/- which has been challenged by the private Opposite Parties before the Tribunal. The Tribunal, taking into consideration the fixation of Grade Pay by the Screening Committee at Rs.4200/- and considering the corresponding Rules and also the stand taken in the Counter Affidavits filed by the Petitioners herein, decided that the private Opposite Parties are entitled to Grade Pay of Rs.4200/- and, thereby, no illegality and irregularity has been committed by the Tribunal by holding that the private Opposite Parties are entitled to the Grade Pay of Rs.4200/-.

15. In the counter affidavits filed by the Petitioners before the Tribunal, a stand was taken that in view of 2014 Rules, the private Opposite Parties had no promotional avenue and, thereby, they are not entitled to

Grade Pay of Level-III post. The Tribunal, after examining such contention, found that since the promotional avenues exist from Level-IV to Level-III and the Screening Committee has approved the Grade Pay of Rs.4200/-, and accordingly quashed the Orders dated 30.10.2016 & 21.10.2016 revising the Grade Pay from Rs.4200/- to Rs.2800/-. As such, this Court does not find any error apparent on the face of record to interfere with the same.

16. The Petitioners in their Counter Affidavits before the Tribunal had urged that on the basis of the amendment made to the Odisha Elementary Education (Methods of Recruitment and Conditions of Service of Teachers and Officers) Amendment Rules, 2019, which were notified in the Gazette on 08.03.2019, much after passing of the impugned judgment of the Tribunal dated 24.10.2017, the private Opposite Parties, who have either Matric CT or I.A. CT qualification, do not have promotional avenue to the post of Level-III. Under 2019 Rules, the previous Level-V Post has been divided into two categories, i.e., Level-V(A) and Level-V(B) of which Level-V(A) is the feeder post and Level-V(B) is the 1st

promotional post and Level-IV is the 2nd promotional post. On the basis of the aforesaid, it is contended that by virtue of this amendment, the private Opposite Parties, having their 2nd promotional avenue to Level-IV, which corresponds to a Grade Pay of Rs.2400/-, are not entitled to Grade Pay of Rs.4200/-. But fact remains, the amended Rules, 2019 debarring the privates Opposite Parties from getting their legitimate Grade Pay of Rs.4200/-, having been brought into effect after 24 years of services rendered by them, may have prospective application. But, by virtue of the amendment Rules, 2019, the right which has been accrued in favour of the private Opposite Parties cannot be taken away. Further, the Teachers, who possessed C.T. training, on completion of 20 years of service within 30.06.2014, are granted Grade Pay of Rs.4200/-. But Teachers with the same C.T. training, who have completed 20 years of service after 30.06.2014, are granted Grade Pay of Rs.2800/-, instead of Rs.4200/-, which is arbitrary, unreasonable and discriminatory. Basing upon the amended Rules, 2014 Rules, the Petitioners have resorted to such

discrimination among the Teachers who possessed the same qualification, which is absurd and creates factions within the same group of Teachers. Thereby, such action of the Authorities cannot sustain in the eye of law.

17. Prior to amended Rules, 2014, the next promotional avenue was Level-III. After amended Rules, 2014, there was promotional avenue and after 2019 Rules the promotional avenue to level-V(B) was introduced. Such persons those who attained 20 years in between 2014 and 2019 Rules will be entitled to Rs.2800/- and persons after 2019 Rules will be entitled to Rs.2400/-. Thus there will be two types of Grade Pay on completion of 20 years of service at different times, which is arbitrary and illegal and cannot sustain in the eye of law.

18. It appears that the private Opposite Parties, when entered into service, were governed by the 1997 Rules, in which promotional avenue to Level-III was all along there before amendment irrespective of qualification. As per the RACP Rules, those who completed 20 years of service, by the time the 2014 Rules

came into force, were entitled to be promoted to Level-III and thus were fitted in Grade Pay of Rs.4200/-. After amended Rules, 2014 came into force, only the persons born in the Cadre of Level-IV, having the qualification 'Graduate', were eligible for promotion to Level-III. Therefore, the contention of the Petitioners that there was no promotional avenue to Level-III from Level-IV for the private Opposite Parties and that they could not be fitted into Level-III Teachers as they had no qualification, it is too late to make such a contention before this Court at this stage, as the private Opposite Parties, after the 2019 Rules came into force, were deprived of promotion to Level-III, in view of the bifurcation of the Level-V post into Level-V(A) and Level-V(B), which has been brought only with a view to deprive the private Opposite Parties of getting the Grade Pay of Rs.4200/-. The reasons ascribed by the Petitioners is that since the private Opposite Parties did not have the requisite qualification of Bachelor's Degree, and they were having Matric CT qualification, they could not be promoted to the post of Level-III. But such stand has been taken with a view to

depriving the private Opposite Parties of the financial benefit which had already been granted to them and they were enjoying. Therefore, such action of the Petitioners is contrary to the provisions of law, smacks mala fide and creates discrimination between the same class of employees. Consequentially, the same cannot sustain in the eye of law.

19. If considered from other angle, as per Regulation-3 of RACP, it is only the Screening Committee, which can decide the entitlement of an employee to receive the Grade Pay. As such, the Screening Committee decided that the private Opposite Parties are entitled to receive Grade Pay of Rs.4200/- and the same was implemented by the Department and corresponding entries were made in the Service Book as well as payments were made. After making payment of Grade Pay of Rs.4200/-, the present Petitioners cannot unilaterally and arbitrarily revise the same to Rs.2800/-. Thereby, the entire action of the Authorities is in gross violation of the Principle of Natural Justice, as the right, which has been accrued in favour of the private Opposite Parties, has

been attempted to be taken away without affording fair chance of hearing.

20. Much reliance has been placed under Rule-9 (2) of the amended Rules, 2014 and the Tribunal relying on the Proviso thereto, has come to a finding that the private Opposite Parties are entitled to get the benefits. So far as the applicability of Proviso to the main provision is concerned, reliance has been placed on the ratios decided in **Dwaraka Prasad, Abdul Jabar Butt, Triubhovandas Haribhai Tamboli, Sidharth Vyas, Ali M.K. and Bijay Kumar Singh** (supra), which have application so far as interpretation of Statute is concerned. There is no doubt about such proposition of law. But, fact remains that once the Screening Committee has determined the benefits, which had already been extended to the private Opposite Parties, the same cannot be withdrawn or modified or cancelled by the Petitioners by arbitrary exercise of power reducing the same from Rs.4200 to Rs.2800/-, without complying the Principle of Natural Justice.

21. In some of the cases, it appears that even though the Order impugned has been passed on 09.11.2017, but the State has preferred the Writ Petition in the year 2021 and 2022. Thereby, one such case was considered by this Court in **State of Odisha v. Fanindra Gain** [W.P.(C) No. 11096 of 2022]. The said Writ Petition was dismissed by this Court on 13.05.2022 on the ground of delay and laches. Such Order was passed relying upon the earlier judgment of this Court in the case of **State of Odisha v. Surama Manjari Das** [W.P.(C) No. 15763 of 2021 dismissed on 16.07.2021]. Therefore, most of the Writ Petitions, which have been filed by the State Petitioners much after grant of the benefit to the private Opposite Parties, relying upon the judgment of the Tribunal dated 24.10.2017 in O.A. No. 2576 of 2016, are also liable to be dismissed on the ground of delay and laches, apart from the merits.

22. In view of the facts and law, as discussed above, this Court does not find any error apparent on the face of record in the impugned Order dated 24.10.2017 passed in O.A. No. 2576 of 2016 and batch, as well as the

Order dated 09.11.2017 passed in O.A. No. 2499 of 2016 and bath by the Tribunal.

23. For the foregoing reasons, the Writ Petitions merit no consideration and the same stand dismissed. In view of dismissal of these two Writ Petitions, all other connected Writ Petitions stand dismissed. No Order as to costs.

S.K. MISHRA, J.

I agree.

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DR. B.R. SARANGI,
JUDGE

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S.K. MISHRA,
JUDGE

Orissa High Court, Cuttack
The 24th June, 2022, Arun/GDS