

IN THE HIGH COURT OF ORISSA AT CUTTACK

F.A.O No.312 OF 2017

In the matter of an application under Section 19
of the Administrative Tribunals' Act, 1985.

Renuprava Panda

....

Appellant

-versus-

State of Odisha & Others

....

Respondents

For Petitioner : M/s. Sameer Ku. Das, S.K. Mishra,
P.K. Behera, Advocate

For Opp. Parties : M/s. R.N. Mishra,
Additional Government Advocate
(For State-Opp. Parties)

M/s. Mahendra Ku. Sahoo, S.K. Rath
(for Opp. Party No.4))

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 08.07.2022 and Date of Judgment: 14.09.2022

Biraja Prasanna Satapathy, J.

1. Heard Mr. Samir Kumar Das, learned counsel for the
appellant and Mr. R.N. Mishra, learned A.G.A on behalf of

Respondents No.1 & 2 and Mr. M.K. Sahoo, learned counsel appearing for the private respondent No.4.

2. This appeal has been filed by the appellant challenging the order dated 24.8.2017 passed by the State Education Tribunal (in short, "The Tribunal") in G.I.A Case No.87 of 2014 under Annexure-13 and also with a prayer to quash the letter dated 26.10.2013 along with its memorandum dated 24.10.2013 of Respondent No.2 under Annexure-9 as well as Government letter dated 20.2.2014 under Annexure-10 and order dated 19.6.2014 of Respondent No.2 under Annexure-11

3. Mr. Das, learned counsel for the appellant submitted that G.I.A Case No.87 of 2014 was filed by the appellant with a prayer to quash the order dated 20.2.2014 passed by Respondent Nos.1 and 2 and for direction to approve the appointment of the appellant and release Block Grant in her favour from 20.1.2009 under the provisions of Grand In Aid Order, 2008. It is submitted that the appellant was appointed as a Lecturer in Sanskrit vide order dated 30.8.1992 under Annexure-7. It is submitted that the college in question Lakheswar Women's

College, Phulnakhar was established in 1993 and the said college was brought into the Block Grant scheme of the Government w.e.f 20.1.2009 and accordingly it became an aided educational institution within the meaning of Section 3(b) of the Orissa Education Act, 1969.

4. It is submitted that on the opening of the college, it applied for grant of permission and recognition in five optional subject i.e. History, Political Science, Economics, Education and Sanskrit with two compulsory subject i.e. English and Oriya. It is submitted that even though the application for permission and recognition was made in respect of the aforesaid five optional subject, but the concerned authority while granting the recognition, instead of allowing Sanskrit as an optional subject, wrongly allowed the subject Oriya in its place. But it is submitted that the College after being communicated with such order and recognition immediately brought the said fact to the notice of the authority for necessary correction in the order of permission and recognition. Even though the college came into existence from the academic session 1993-94, but the college was granted permission vide order dated 30.5.1996

from the academic session 1994-95 and recognition was also granted vide order dated 30.10.1998 retrospectively from the said academic session 1994-95. It is also submitted that since the college while applying the permission and recognition applied for five optional subjects which includes Sanskrit, the college not only admitted students in Sanskrit subject, but also those students were allowed to appear in the Council Examination along with other subjects right from the beginning. It is also submitted that subsequent to the temporary recognition granted vide order dated 30.10.1998, the college when was extended with such recognition, Sanskrit was allowed as an optional subject in place of Oriya. It is also submitted that while issuing the permanent recognition vide order dated 9.7.2004 under Annexure-4, Sanskrit was allowed as an optional subject. It is also submitted that subsequently vide order dated 26.8.2010, under Annexure-5, Sanskrit was allowed as an optional subject right from the very beginning i.e. from the academic session 1994-95 and the affiliation of the council

was also made vide order dated 25.1.2011 under Annexure-6.

5. It is submitted that since the petitioner was appointed as against the post of Lecturer in Sanskrit vide order dated 30.8.1993 under Annexure-7 and the appellant joined in the said post on 3.9.1993 with having the required percentage of marks in M.A(Sanskrit), the college when was brought into the fold of grant-in-aid under G.I.A order, 2008 vide notification dated 7.1.2009, the appellant became eligible to get the benefit of such grant w.e.f 20.1.2009. Mr. Das, learned counsel for the appellant also submitted that Para 10 of the GIA Order, 2008 provides the eligibility criteria for grant of Block Grant in favour of eligible Lecturers. Para 10 of the G.I.A Order, 2008 is quoted hereunder.

Eligibility of posts for Block Grant—(1)
A post in a Non-Government Educational Institution for which no Grant-in-aid has been sanctioned prior to commencement of this order shall be eligible for Grant-in-aid in shape of Block Grant if, —
(a) the post is admissible as per workload and yardstick prescribed in this Order as at Annexure-II; and
(b) it has completed qualifying period of 5 years or more from the date of its admissibility or of 3 years or more in the case of an educational institution situated in an Educationally

Backward District or is a Women's Educational Institution.

(2) The workload for determining admissibility of a post shall be computed by taking into account the total workload on account of Degree course and Higher Secondary course in all streams conducted in that institution. If a question arises as to whether a post is admissible on the basis of workload or yardstick, the decision of the Director thereon shall be final.

(3) The workload shall be determined with reference to the actual enrolment during the academic year in which the post is admissible, limited to the strength of students for which recognition and affiliation has been received and the number of candidates presented at the Higher Secondary or the Degree examination, as the case may be, from the same batch of students.

(4) (i) A post shall not be deemed to have completed the qualifying period unless,—

(a) the post has been filled up on full time basis during the entire qualifying period;

(b) the post has not been filled up on Honorary or Part-time basis at any time during the entire qualifying period;

(c) the post has been filled up by a person/persons recruited in accordance with the procedure laid down in the Act, Rules and instructions as applicable at the relevant time;
(d) the post has been filled up at all times during the qualifying period by a person duly qualified to hold such a post.

(ii) If any post admissible on the basis of workload and yardstick has not been filled up in the manner indicated in Clause (i), the period during which the post was not filled up in such manner shall not count towards computation of the qualifying period.

(5) Application for approval of posts, which are eligible for approval, and application for notification of that educational institution as an Aided Educational institution shall be made simultaneously in the prescribed Form-A as at Annexure-I. Where the Director is satisfied that a post is eligible for approval he shall issue an order to that effect with prior concurrence of the

State Government indicating the date from which the post has been approved.

(6) The date of eligibility of a post for which Grant-in-aid in shape of Block Grant has not been sanctioned shall be the first day of the academic year following the date on which an approved post completes the qualifying period as applicable to the post

Provided that the date of eligibility in respect of a post in an educational institution shall in no case be a date prior to the 1st June 2003."

6. Mr. Das also brought to the notice of the Court the provision contained under Para-4 and 16 of the GIA Order, 2008. Para 4 and 16 of the order are quoted hereunder:

4. Eligibility criteria for consideration for Block Grant— (1) The educational institutions described in Para. 3 which have been established with recognition of Government and affiliation of the Council or the Universities as the case may be on or before the 1st June 1998 in respect of Educationally Advanced Districts, on or before the 1st June 2000 in respect of Educationally Backward Districts and Women's Educational Institutions established with such recognition and affiliation on or before the 1st June 2000 in both Educationally Advanced Districts and Educationally Backward Districts are eligible for Block Grant to be determined in the manner specified in Paragraph-16. (2) The educational institution to be considered for Block Grant in accordance with this order shall have received recognition and affiliation for each course, stream and subject taught in that institution for each academic year for a continuous period of minimum 5 years in respect of 3 Educationally Advanced District and 3 years in respect of Educationally Backward District and a Women's Educational Institution without any break or discontinuity from the date of establishment subject to the provisions of sub-Para. (1) : Provided that in case of break or discontinuity, to acquire eligibility, the said

qualifying period shall be computed from the date of revival.

16. Components and admissibility of Block Grant—(1) The Block Grant payable to the Non-Government Educational Institution under paragraph 9 shall be a fixed sum of Grant-in-aid, which shall be determined at the rate of 40% of the emoluments calculated at the initial of the existing time scale of pay applicable to the employees including existing. Dearness Pay and existing Dearness Allowance as admissible prospectively from the date of Notification of the Grant-in-Aid Order, 2008 in favour of the teaching and non-teaching employees of the educational institution who have become eligible to receive Grant-in-aid by 1st day of June, 2003. (2) The balance emoluments including Dearness Pay and Dearness Allowance after payment under sub-Para. (1) shall be borne by the concerned Governing Body of the Aided Education Institution.”

7. Mr. Das also brought to the notice of this Court the provision in Annexure-II, of the GIA Order, 2008, Annexure-II prescribes as follows:

YARDSTICK FOR APPROVAL OF POSTS IN AIDED EDUCATIONAL INSTITUTIONS FOR PURPOSES OF BLOCK GRANT

(See Para. 10)

1. (i) Maximum number of subjects other than compulsory subjects in which admissible post of teachers will be eligible for approval for purposes of Grant-in-aid in shape of Block grant shall be as indicated in the Table below. :—

Type of Institution	Stream	Actual enrollment (subject to maximum of recognized and affiliated strength students)	Maximum number of subjects other than compulsory subjects permissible
(1)	(2)	(3)	(4)
Junior College/ Higher Secondary School	Arts	64	4
		128	6
		256	8
		384	11
	Science	128	4
		256	6
		256	3
	Commerce	256	3
Degree College	Arts	64	3
		128	4

		256	7
	Science	128	5
		256	7
	Commerce	256	4

Similarly, Clause-1 (III) provides that

(iii) Where an Aided Educational Institution has received recognition and affiliation for more optional subjects as admissible on the basis of Column, 4 of the Table in Para. 1 the number of optional subjects for which teachers will be admissible shall be limited to the number indicated in Column, 4 and teachers in remaining subjects shall not be eligible for approval. In these circumstances the subjects in which posts of teachers shall be approved shall be based on the number of students presented at the Final Degree Examination conducted by the University or the Higher Secondary Examination conducted by the Council on the average during the three consecutive years preceding the date of eligibility of the institution to be notified as an Aided Educational Institution. 20 Illustration: A College has received recognition and affiliation for 128 Students and 6 optional subjects. The actual enrolment in the College is 64. it would therefore be eligible for approval of teachers in four subjects and not in six subjects. The average enrolment in each of the six subjects during the 5 years preceding the date of its eligibility in notification as an Aided Educational Institution was as follows:—

Subject	Enrolment of students
A	16
B	66
C	48
D	64
E	32
F	30

In this example subjects like B,C,D, and E having the highest enrolment will be selected as the 4 optional subjects in which teaching posts will be eligible for approval No post of teacher for subject like A, F, will be eligible for approval.”

8. Mr. Das, accordingly submitted that the subject which will be entitled for block grant

depends upon the appearance of the students in the examination conducted by the council as per the eligibility three years after the recognition. In the case in hand, the college got recognition from the academic session 1994-95 and thereby it became eligible to receive grant in aid in shape of block grant after three years i.e. from the academic year 1998-99. It is also submitted that in the subject Sanskrit during the academic year 1996-1997 to 1998-99, 13,15 & 19 students appeared in the examination conducted by the council. But it is submitted that private Opp. Party No.4, who was appointed as a lecturer in Economics approached learned Tribunal in GIA Case No.32 of 2011 with a prayer to approve her appointment as against the said post of lecturer in Economics and release grant in aid w.e.f 1.4.2008 in place of the subject Sanskrit. It is submitted that the said G.I.A case was disposed by the learned Tribunal with a direction on Respondent No.2 to verify the admissibility of the said post and refer to the Government for final decision. It is submitted

that for the year 1996-97, 1997-98 and 1998-99 in the subject Economics, only 4, 8 & 16 students appeared in the council examination respectively. But basing on the order passed by the learned Tribunal in G.I.A case No.32 of 2011, Respondent No.2 issued a notice to the present appellant on 13.3.2013 with a direction to appear before him on 2.5.2013. It is submitted that pursuant to the said notice, the appellant though duly appeared before respondent No.2, but no hearing could take place on that date due to absence of Respondent No.2. Mr. Das submitted that thereafter without intimating any further date of hearing of the matter, Respondent No.2 prepared a memorandum on 24.10.2013 under Annexure-9 and submitted the same to the respondent No.1 recommending Economics as the fourth optional subject of the College and for approval of respondent No.4 as against the said post for the purpose of release of block grant in her favour from 20.1.2009 under G.I.A Order, 2008. Mr. Das learned counsel for

the petitioner submitted that the said fact was never communicated to the appellant or to the College. It is submitted that on receipt of the memorandum from Respondent No.2, Respondent No.1 vide letter dated 20.2.2014 under Annexure-10 accorded its concurrence for payment of block grant in favour of private respondent No.4. The present appellant being aggrieved by the said order of the Government respondent No.1 dated 20.2.2014 filed the GIA case before the learned Tribunal with the prayer as indicated hereinabove. It is submitted that learned Tribunal without proper appreciation of the stand taken in the said petition and the provision of law contained under Para 10 of the G.I.A Order, 2008, dismissed the application vide the impugned order dated 24.8.2017. It is submitted that while dismissing the claim of the appellant, learned Tribunal held the approval of the appointment of Respondent no.4 as valid and held her entitled to receive grant in aid.

9. Mr. Das learned counsel for the appellant submitted that in view of the clear provision contained in Para 10 of the G.I.A order 2008, the services of private respondent No.4 should not have been approved as against the 4th optional subject Economics in place of the subject Sanskrit, as against which subject the appellant is continuing from the year 1993. It is also submitted that Respondent No.2 while submitting the memorandum dated 24.10.2013 wrongly calculated the average of the students admitted in the subject Sanskrit and Economics during the last 3 years prior to 1.6.2003. The said fact though was agitated by the appellant but learned Tribunal without proper appreciation of the said stand and the provision contained under Para 10, more particularly proviso to Para 10(6) of the said order, dismissed the claim vide the impugned judgment. Mr. Das making all such submissions submitted that the impugned order needs interference of this Court as the claim of the appellant has been illegally rejected while approving the claim of private Respondent No.4.

10. Mr. R.N. Mishra, learned Additional Government Advocate on the other hand submitted that even though the services of the private Respondent No.4 has been approved as against the post of Lecturer in Economics as the 4th Optional subject pursuant to the order passed by Respondent No.1 on 20.2.2014 under Annexure-10, but no grant in aid has been released in favour of the said private respondent No.4 because of the pendency of the present appeal. But it submitted by the learned counsel for the State that the entitlement to receive block grant under G.I.A Order, 2008 is governed under Para 10 of the G.I.A Order, 2008

11. Mr. M.K. Sahoo, learned counsel appearing for the private Respondent No.4 on the other hand submitted that not only the Respondent Nos.1 & 2 found the Respondent No.4 as eligible for her approval as against the post of lecturer in Economics by holding Economics as the fourth Optional subject, but also he submitted that the learned Tribunal has not committed any illegality or irregularity in upholding the said order passed in favour of the Respondent NO.4. It is

submitted that pursuant to the order passed by the learned Tribunal in G.I.A case No.32 of 2011, Respondent No.2 rightly recommended the claim of the Respondent No.4 vide memorandum dated 13.10.2013 and in consideration of that Respondent No.1 rightly allowed the claim vide its order dated 20.2.2014 under Annexure-10.

12. Mr. Sahoo further submitted that even though the claim for receipt of block grant under G.I.A Order 2008 is governed under Para 10 of the said order, but in view of the clarification issued by the Government, Respondent No.1 on 30.4.2012 under Annexure-12, the claim of the Respondent No.4 was found more admissible than the claim of the appellant. It is submitted that in view of such clarification issued by the Government on 30.4.2012 under Annexure-12, Respondent No.2 while forwarding the claim vide Memorandum dated 26.10.2013, held Respondent No.4 as entitled to get the approval in respect of the subject Economics as the fourth optional subject. Mr. Sahoo fairly submitted that in spite of the order of approval

issued in favour of respondent No.4, no block grant has been released in her favour due to the challenge made by the appellant in G.I.A Case No.87 of 2014 and the pendency of this appeal before this Court. Mr. Sahoo further submitted that while the subject Economics was allowed as an Optional subject when permission and recommended was granted by the State-Respondent, the subject Sanskrit was allowed as an optional subject w.e.f the Academic Session 1994-95 vide order dated 26.8.2014 in lieu of the optional subject Oriya. Mr. Sahoo accordingly submitted that by committing fraud the subject Sanskrit was allowed as an optional subject in place of the subject Oriya.

13. In support of such submission, Mr. Sahoo relied on the decision of the ***Hon'ble Apex Court reported in (2010) 8 SCC page 383 and (2003) 8 SCC page 319.***

M. Sahoo also relied on a decision of this Court in the case of ***Anusaya Gadanayak Vs. The Collector, Dhenkanal & Others*** reported in ***2020(I) ILR-CUT-498.***

14. By making all these submission, learned counsel for Respondent No.4 submitted that the appellant has

got no case in her favour and there is no illegality or irregularity in the impugned judgment passed by the learned Tribunal.

15. Mr. Das, learned counsel for the appellant on the other hand relied on a decision of the Hon'ble Apex Court reported in the case of ***Rajendra Diwan v. Pradeep Kumar Ranibala and Another*** reported in ***(2019) 20 Supreme Court Cases 143***. In Para 61 of the said judgment, Hon'ble Apex Court has held as follows:-

“61. An appeal, on the other hand, is a continuation of the original proceedings. Where there is a statutory appeal from an appellate order of the Tribunal, the appellate court is obliged to rehear the case, re-appreciate and re-analyse the evidence on record, adjudicate the correctness of the order impugned and correct errors both of fact and of law, that the Tribunal may have made.”

16. The judgments relied on by Mr. Sahoo, as per the considered view of this Court are not germane to the issue involved in the present case.

17. Heard learned counsel for the parties at length. Perused the materials available on record.

18. This Court after going through the same finds that the claim for release of Block Grant as per G.I.A

Order, 2008 is governed under the provision contained under Para 10 of the said order. But this Court finds that the learned Tribunal while deciding the issue has relied on, a clarification issued by the Government on 30.4.2012 under Annexure-12. Since G.I.A Order, 2008 is framed under the provisions of Orissa Education Act, 1969, any clarification issued in contravention to the provision contained in the said order cannot supersede the statutory provision, in view of the decision reported in AIR 1989 S.C 1133. Hon'ble Court in Para 6 of the said judgment has held as follows:

“6. The aforesaid Rules expressly provided power to the Government to grant more chances for passing the examination in any individual case or in class of cases. Under the 1955 Rules, the Government preserved power to dispense with, or relax the requirements of any rule regulating "the conditions of service of government servants; or of any class thereof". In the exercise of this power, the Government could dispense or relax the operation of any rule, if it causes undue hardships in any particular case. It is need- less to state that this power includes the power to relax the conditions prescribed for promotion since promotion is a condition of service. There is no restriction as to the exercise of the power or discretion. The High Court, however, has observed that the scope of this power has been constrained by the circular dated 15th January, 1962. The circular states that the 1955 Rules permitting relaxation cannot be utilized to relax the rules which regulate conditions of service. It further states that the scope of the Rules should be limited only to

matters relating to travel-ling allowance, leave, etc. But this appears to be an exercise in vain. The circular is an executive instruction whereas the 1955 Rules are statutory since framed under the proviso to Article 309 of the Constitution. The Government could not have restricted the operation of the statutory rules by issuing the executive instruction. The executive instruction may supplement but not supplant the statutory rules. The High Court was in error in ignoring this well accepted principle.”

19. Therefore, this Court in view of the admitted illegality committed by the learned Tribunal by relying on the clarification issued on 30.4.2012, instead of the statutory provision contained in the para 10 of the G.I.A Order, 2008, held that learned Tribunal has not applied its judicial mind while deciding the claim of the appellant vis-à-vis Respondent No.4. Since in spite of the approval made in favour of Respondent No.4, no Block Grant has been released as yet, this Court deems it fit and proper to set aside the impugned judgment dated 24.8.2017 under Annexure-13, passed in G.I.A Case No.87 of 2014 and remit the matter for fresh adjudication. While remitting the matter to the learned Tribunal for fresh disposal, this Court directs the learned Tribunal to dispose of the matter afresh in accordance with law by giving an opportunity of hearing to the appellant as well as to the

Respondent No.4 within a period of six months from the date of receipt of this order, if there is no other legal impediment.

20. The F.A.O is disposed of with the aforesaid observation and direction.

21. There shall be no order as to costs.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 14th of September, 2022/sangita