

ORISSA HIGH COURT: CUTTACK

W.P.(C) NO. 15345 OF 2022

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

AFR

Balabhadra Majhi Petitioner

-Versus-

State of Odisha and others Opp. Parties

For Petitioner : M/s. Umakanta Sahoo and
H.K. Dash, Advocates

For Opp. Parties : Mr. S. Jena,
Standing Counsel (S&ME)

P R E S E N T:

THE HONOURABLE DR. JUSTICE B.R.SARANGI

Date of hearing and judgment : 11.11.2022

DR. B.R. SARANGI, J. By means of this writ petition, the petitioner, who is a retired Gana Sikhyaka from Primary School w.e.f. 30.04.2022, has sought for direction to opposite party no.1 for regularization of his service as Level-V Asst. Primary School Teacher, in accordance with

the notification no.14467-XIII-SME-AE-06/2016/SME dated 25.07.2016 and the notification no.25290-XIII-SME-AE-06/2016/S&ME dated 22.12.2016 issued by the Department of School and Mass Education, Govt. of Odisha, with effect from the date of his eligibility notionally, without any discrimination, within a stipulated time. He has further sought for direction to the opposite parties to release in his favour the differential arrear salaries with effect from the date of his regularization, along with other retiral benefits, within a stipulated time.

2. The factual matrix of the case, in a nutshell, is that the Scheme of Non-Formal Education was initiated vide resolution no.33241-XIII/CE-78/89-EYS dated 29.07.1989 of the Education and Youth Services Department of Odisha. Subsequently, in order to universalize primary education in the deprived areas in a time bound and cost effective manner, the Government of Odisha introduced Education Guarantee Scheme (EGS) and accordingly EGS schools are opened as a substitute

of primary schools. The EGS teachers are designated as Education Volunteer with a fixed amount of monthly honorarium and they are engaged by the Zilla Parishads under Village Education Committees formed for the local EGS schools in the locality. The petitioner was appointed in the locality after facing a selection process. The EGS centres were functioning effectively with effect from the academic year 1989-90. Since the said centres were closed due to improper management, as a consequence thereof, the Department of School and Mass Education, Govt. of Odisha took steps to regularize the EGS schools and the appointed teachers. Most of the EGS volunteers had been disengaged or facing disengagement. Therefore, Govt. of Odisha took steps to rehabilitate the disengaged EGS volunteers as Gana Sikhyaka under Sarba Sikhya Abhijan. Accordingly, vide resolution no.3358/SME dated 16.02.2008, the State Government floated/initiated the Scheme. Pursuant to the said scheme, the petitioner was rehabilitated as Gana Sikhyaka in the nearby school and, as such, the appointment order was issued by the Zilla

Parishad with certain terms and conditions. Consequentially, the petitioner was continuing in the school. As such, the petitioner is well qualified and has also got Teachers Education Training for two years from Board of Secondary Education, Odisha. Thereby, the petitioner, having satisfied the eligibility criteria, was to be appointed as a regular teacher in the primary school before coming into force the Right of Children to free and Compulsory Education Act, 2009. As the Government did not appoint any primary school teacher during the period from 1989 to 2010, the petitioner was deprived of getting job elsewhere as regular teacher like others.

2.1 The Government of India enforced Teachers Eligibility Test vide Gazette notification dated 25.08.2010. Subsequently, in the year 2012, Odisha Teachers Eligibility Test (OTET) was enforced vide resolution no.14302 dated 04.06.2012. As the petitioner had completed his two years training course under the Board of Secondary Education Odisha successfully and had

teaching experience since his appointment as Education Volunteer in the EGS School, another competitive examination like OTET may not be required for him, as the teachers standing on the same footing are continuing without the eligibility test. Therefore, OTET ought not to be applicable in the case of the petitioner for his regularization. The petitioner has also obtained +2 Arts certificate from the Council of Higher Secondary Education, Odisha.

2.2 The Govt. of Odisha in ST & SC Department issued a gazette notification on 17.10.2013 fixing the guidelines for engagement of Sikhya Sahayak. To provide free and compulsory education to every child of the age group of 6 to 14 years, the State Government took steps for appointment of Sikhya Sahayak, who would be regularized as teachers. Therefore, Government prescribed OTET and other eligibility criteria in the appointments of primary school teachers. But as and when the teachers, who were serving before 2011 are not facing the OTET test

and getting their job satisfaction, whereas the EGS teachers on the same work burden with the same teaching experience were compelled to face the OTET discriminately. As such, there is no difference in the teaching experience between the regular teacher CT qualified and Diploma in Elementary Education Examination by the Board of Secondary Education. But only difference is that the EGS teachers were getting very low salary than the regular teachers and most of the EGS teachers are at the verge of the retirement. Therefore, they should not have been deprived of regularization of service. Thus, notifications dated 25.07.2016 and 22.12.2016 were issued by the Department of School and Mass Education for appointment/regularization of those Gana Sikhyaka as Level-V Asst. Teachers (ex-cadre) who do not possess the qualification of passing the OTET. The petitioner got academic qualification, possessed special teachers training by the Board of Secondary Education, Odisha vis-à-vis appointed as a teacher in different EGS schools before enforcement of OTET in the year 2012.

Further, the State Government clarified that Gana Sikhyakas, on completion of eight years of regular and continuous service, would be regularized. As such, in the notifications, referred to above, it was clarified that the persons those who do not pass the OTET examination will not be eligible for further annual increments after 31.03.2019. Thus, the petitioner claimed that he having satisfied the eligibility criteria is otherwise eligible for regularization in service in Level-V Asst. Primary School Teacher. The same having not been done, the petitioner has approached this Court by filing the present writ petition.

3. Mr. Umakant Sahoo, learned counsel appearing for the petitioner vehemently contended that putting restriction of acquisition of OTET qualification for regularization of service, so far as Gana Sikhayaka is concerned, is arbitrary, unreasonable and contrary to the provisions of law. It is contended that when the petitioner was appointed as Education Volunteer in the EGS School

and on abolition of the EGS he was posted as Gana Sikhyaka and was having requisite qualification along with training experience, his service should have been regularized as Level-V Asst. Primary School Teacher. But the same was denied, as because he had not acquired the OTET qualification, which was only introduced in the year 2012. It is further contended that appointment of the petitioner as Gana Sikhyaka may be considered as irregular but cannot be construed to be illegal and, as such, by this process, he should not have been denied the benefit of regularization of service. It is contended that though Section-23 of the Right of Children to free and Compulsory Education Act, 2009 prescribes minimum qualification for appointment of teachers in the primary schools, but that *ipso facto* cannot be a ground to deny regularization of service of the Gana Sikhyakas, who do not possess the qualification of passing OTET for regularization as Asst. Teacher (ex-cadre) in Level-V of the Government.

3.1 It is further contended that in the notification dated 22.12.2016 issued by the School and Mass Education Department modalities have been fixed for regularization of Sikhaya Sahayaks, which prescribes that the Gana Sikhyakas who have completed eight years of regular and continuous engagement and have possessed educational and training qualification mentioned in Para (2) of the said notification, will be regularized as Level-V Asst. Teacher (ex-cadre) equivalent to Level-V teacher of Elementary cadre. In Para-2(b) of the said notification it has been prescribed that if the Gana Sikhyaka has not passed the OTET within 31st March, 2019, then he/she will not get any further increment after 31st March, 2019. Thereby, it is contended that acquisition of OTET qualification is only for availing incremental benefits after 31st March, 2019 and, as such, it has nothing to do in the matter of regularization. Therefore, the restriction imposed by the authority for regularization of service in the primary school is arbitrary, unreasonable, contrary and

violative of Articles 14, 19 and 21 of the Constitution of India.

To substantiate his contention, he has relied upon the judgment of the apex Court in the case of ***Chander Mohan Negi v. State of Himachal Pradesh***, 2020 (I) OLR (SC) 865.

4. Mr. S. Jena, learned Standing Counsel for School and Mass Education Department vehemently contended that Gana Sikhyakas, who have acquired higher qualification as non-collegiate candidate by obtaining permission from competent authority, i.e., Collector or District Project Coordinator can only be considered for regularization and clarification to that effect been given in the department letter dated 20.09.2017. It is contended that the SPD, OSEPA issued a circular on 07.04.2010 intimating that the Collector is the competent authority to issue permission to Gana Sikhyakas for obtaining higher qualification. From 16.02.2008 to 07.04.2010, there was no instruction issued by the

competent authority to issue permission for obtaining higher qualification. Therefore, it was considered to allow permission issued by others like C.I. of Schools, D.I. of Schools, BDOs, S.I. of Schools, BRCCs and HMs during the period from 16.02.2008 to 07.04.2010 and after 07.04.2010, permission from the competent authority was only considered. Although case of some of the candidates was considered for regularization in service, but so far as the case of the petitioner is concerned, it is contended he had approached the Collector, Nayagarh by filing Misc. Case No.1/2018 with a prayer to regularize his service as Level-V Asst. Teacher (ex-cadre). The Collector, vide order dated 01.01.2018, passed order in the said Misc. Case directing the District Education Officer, Nayagarh not to take any decision on regularization of Gana Sikhyaka until further orders. But the said Misc. Case was disposed of by the Collector, vide order dated 20.04.2018, holding that there was no justification by the District Education Officer not to include the name of the petitioner to regularize his service.

4.1 After the order dated 20.04.2018 was passed by the Collector, this Court, while entertaining a public interest litigation filed by Odisha Vikash Parishad, Bhubaneswar bearing W.P.(C) No. 4684 of 2018, passed interim order directing the authorities not to regularize any Gana Sikhyaka as Level-V Asst. Teacher, as per notification dated 22.12.2016, who does not possess OTET qualification. But, ultimately, the said writ petition was dismissed, as withdrawn. As a consequence thereof, taking into consideration the provisions contained in Right of Children to Free and Compulsory Education Act, 2009 as well as the Odisha Right of Children to Free and Compulsory Education Rules, 2010, whereby for appointment of a teacher in elementary cadre minimum qualification has been prescribed by the academic authority as passing of Teachers Eligibility Test (TET) is mandatory and, therefore, acquisition of requisite qualification having OTET qualification is required for absorption as regular primary teacher in terms of government notification dated 22.12.2016 and, as the

petitioner had not possessed the OTET qualification till his date of retirement, his service was not regularized. Consequentially, he seeks for dismissal of the writ petition.

To substantiate his contention, Mr. S. Jena, learned Standing Counsel for School and Mass Education Department has relied upon the judgment of the apex Court in the case of **State of Uttar Pradesh v. Anand Kumar Yadav**, (2018) 13 SCC 560 and **State Bihar v. Arbind Jee**, 2021 SCC OnLine SC 821.

5. This Court heard Mr. Umakant Sahoo, learned counsel appearing for the petitioner and Mr. S. Jena, learned Standing Counsel for School and Mass Education Department 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. In the facts and circumstances, as narrated above, now it is to be considered whether the petitioner, who was serving as a Gana Sikhyaka having requisite academic and training qualifications, is entitled to be regularized in service as Level-V Asst. Teacher under the Government, even in absence of OTET qualification.

7. There is no dispute that the petitioner was appointed as an Education Volunteer under the EGS and after abolition of the said scheme, he was absorbed as a Gana Sikhyaka and also acquired higher qualification of +2 Arts from Council of Higher Secondary Education, Odisha and training qualification from the Board of Secondary Education, Odisha. For just and proper adjudication of the case, Section-23 of the Right of Children to Free and Compulsory Education Act, 2009 is extracted hereunder:-

“Qualifications for appointment and terms and conditions of service of teachers are clarified as “-(1) Any person possessing such minimum qualifications, as laid down by an academic authority, authorized by the Central Government, by notification, shall be eligible

for appointment as a teacher, (2) Where a State does not have adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualifications as laid down under sub-section (1) are not available in sufficient numbers, the Central Government may, if it deems necessary, by notification, relax the minimum qualifications required for appointment as a teacher, for such period, not exceeding five years, as may be specified in that notification: Provided that a teacher who, at the commencement of this Act, does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of five years. (3) The salary and allowances payable to, and the terms and conditions of service of, teachers shall be such as may be prescribed.”

On perusal of the aforementioned provisions, it is made clear that any person possessing such minimum qualification, as laid down by the academic authority, authorized by the Central Government, by notification, shall be eligible for appointment as a teacher. It is also provided that where there is no adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualification as laid down under sub-section (1) are not available in sufficient numbers, the Central Government may relax the

minimum qualifications required for appointment as a teacher for such period not exceeding five years, as may be specified in the notification.

8. Referring to Section-23, as mentioned above, National Council for Teacher Education issued a notification on 23.08.2010 fixing minimum qualification from Classes-I to V, which is extracted hereunder:-

"1. Minimum Qualifications:

(i) Classes I-V

(a) *Senior Secondary (or its equivalent) with at least 50% marks and 2- year Diploma in Elementary Education (by Whatever name known)*

OR

Senior Secondary (or its equivalent) with at least 45% marks and 2-year Diploma in Elementary Education (by whatever name known), in accordance with the NCTE (Recognition Norms and Procedure), Regulations 2002

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4-year Bachelor of Elementary Education (B.El. Ed.)

OR

Senior Secondary (or its equivalent) with at least 50% marks and 2-year Diploma in Education (Special Education)

AND

(b) *Pass in the Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose."*

9. The aforesaid notification, having been published on 23.08.2010, has got prospective effect and, as such, there is no dispute that the petitioner was appointed as a Education Volunteer under the EGS and after abolition of the said scheme, he was appointed as Gana Sikhyaka prior to commencement of the Right of Children to Free and Compulsory Education Act, 2009, basing upon which the notification was issued on 23.08.2010, by which time acquisition of OTET qualification was not made mandatory. But fact remains, the petitioner had got the minimum qualification for appointment as a teacher and also acquired training qualification from the Board of Secondary Education, Odisha and, thereby, he was otherwise eligible to be appointed as a teacher in a primary school.

10. It is of relevance to note that by resolution dated 04.06.2012 in Annexure-6, Government of Odisha in Department of School and Mass Education, taking into account the notifications dated 23.08.2010 and 29.07.2011 issued by the National Council of Teacher Education, being the academic authority, laid down Class-I to VIII as the minimum qualification for a person to be eligible for appointment as teacher. As such, the State Government passed the aforesaid resolution by introducing OTET qualification for appointment of teacher and in the said resolution, under Clause-4 eligibility criteria were fixed for appearing in the OTET examination, which read as under:-

“Eligibility

(i) *Persons having the following minimum qualifications shall be eligible for appearing in OTET.*

(a) *Category-A*

*Higher Secondary (+2 or its equivalent)
with at least 50% marks and 2-year
Diploma in Elementary Educations (CT)*

OR

*Higher Secondary (+2 or its equivalent)
with at least 50% marks and 2-year
Diploma in Education (Special
Education)*

OR

Graduation and 2-year Diploma in Elementary Education/2-year Diploma in Special Education.

(b) Category-B

Graduation with at least 50% marks and 1-year Bachelor in Education (B.Ed.).

OR

Graduation with 50% marks and 1-year B.Ed. (Special Education)

OR

Higher Secondary (+2 or its equivalent) with at least 50% marks and 4-year B.A. Ed./B.Sc. Ed.

Provided that relaxation of 5% in minimum qualifying marks in +2 or graduation level, as the case may be, shall be allowed to the candidates belonging to SC, ST, OBC / SEBC category.

Provided further that candidates having minimum marks in +2 or graduation level, as the case may be, prescribed at the time of admission in teacher education courses shall also eligible to appear in OTET.

- (ii) Persons who are pursuing (final year) any of the teacher education courses (recognized by the NCTE or by the RCI, as the case may be) specified above in both the categories.*
- (iii) Persons declared eligible by the State Govt. / NCTE/ Govt. of India from time to time."*

11. The aforesaid resolution will have to apply prospectively. The teachers, who were appointed prior to

2011, were to be exempted from OTET test. As such, since the petitioner was continuing in the teaching job before 2011, he ought to have been exempted from OTET test at par with similarly situated employees, whose services were regularized as Asst. Teachers from Gana Sikhyaka. Therefore, considering the demand raised by the Gana Sikhyakas, a Ministerial Sub-Committee was constituted under the Chairmanship of the Minister, Finance and Public Enterprises, vide order No.17420/S&ME dated 21st August, 2015, and on the basis of the recommendations made by the said committee, the Government resolved the demands of Gana Sikhyakas, vide resolution dated 25.07.2016, Clause-1 to 5 of which are extracted hereunder:-

"1. Ganasikshyaks, who have +2/ Degree qualification with either C.T. /B.Ed. and who have completed eight years of continuous and satisfactory engagement will be regularized as "Elementary Level-V teachers" in the year 2016-17 after detail modalities on regularization are worked out by the Government in School and Mass Education Department.

2. On regularization as Elementary Level-V teacher, they will be entitled to salary in the

Pay Scale of Rs. 5,200-20,200/- with Grade Pay of Rs. 2,200/- with D.A. and other allowances as admissible from time to time.

3. Ganasikshyaks having no requisite academic qualification of +2/Degree and training qualification of either C.T. or B.Ed. shall not be regularized as Elementary Level-V teachers.

4. Ganasikshyaks having no requisite academic and training qualification shall acquire the required academic/training qualification by 31st March, 2018 positively. No further relaxation shall be considered thereafter.

5. Ganasikshaks who will not be able to acquire the requisite academic and training qualification by 31st March, 2018 shall be disengaged on 1st April, 2018.”

In terms of the above resolution, if a teacher has requisite academic and training qualifications, his services should have been regularized as Level-V Asst. Teacher.

12. The Government in School and Mass Education Department issued a notification on 22.12.2016, pursuant to resolution dated 25.07.2016, formulating the modalities for regularization of Gana Sikhyakas. Clause-1 and 2 of the said notification 22.12.2016 read as under:-

“1. The Gana Sikshyaks who have completed 8 years of regular and continuous engagement and have possessed educational

and training qualification as mentioned at Para (2) below will be regularized as Level- V Assistant Teacher (ex-cadre) equivalent to Level-V teacher of Elementary cadre.

2. For regularization as Level-V Assistant Teacher (ex-cadre), a Gana Sikshyak must be possessing educational and training qualification as given below:-

(a) (i) Higher Secondary (+2 or its equivalent) and 2 year Diploma in Elementary Education (C.T.) or Higher Secondary (+2 or its equivalent) and 2 year Diploma in Education (Special Education); or Graduate in Arts/ Science and 2 year Diploma in Elementary Education or Graduate Arts/Science and 2 year Diploma in Education (special Education); and must have Odia as M.I.L. up to Class-VII or pass in Odia language test equivalent to M.E. standard conducted, or declared equivalent, by BSE (Odisha); or

(ii) Graduation in Arts/ Science and 1 year Bachelor in Education (B.Ed.) or Graduation in Arts/ Science and 1 Year B.Ed. (Special Education); or Higher Secondary (+2 or its equivalent) and 4 years Bachelor in Elementary Education or Higher Secondary (+2 or its equivalent) and 4 years B.A./B.Sc. or B.A. /B.Sc. Ed., and must have Odia as M.I.L, up to Class-X or pass in Odia language test equivalent to Xth standard conducted, or declared equivalent, by BSE (Odisha).

(b) Such Gana sikshyak is required to pass OTET within 31st March, 2019 if he has not passed OTET earlier. If she/ he does not pass the OTET by such date, she/ he will not be eligible to get any further increment after 31st March, 2019.

Explanation:-

(i) For the purpose of equivalency of Higher Secondary (+2), examination conducted by the institutions declared equivalent by the Council of Higher Secondary Education, Odisha shall be considered.

(ii) For the purpose of equivalency of 2 years Diploma in Elementary Education, examinations conducted by the institutions declared equivalent by the Board of Secondary Education, Odisha shall be considered.

(iii) For the purpose of 2 years Diploma in Education (Special Education)/ one year B.Ed. (Special Education), a course recognized by the Rehabilitation Council of India (RCI) shall be considered.

(iv) For the purpose of Degree in Teacher Education (B.Ed.), B.Ed. Degree of other Universities declared equivalent with corresponding degree of the Universities of Odisha and a course recognized by the NCTE shall be conducted.”

13. On perusal of the aforesaid clause, it is made clear that Gana Sikhyakas, who have completed eight years of regular and continuous engagement and have possessed educational and training qualification, will be regularized as Level-V Asst. Teacher (ex-cadre) equivalent to Level-V Teacher of Elementary cadre. As such, there was no provision for debarring the Gana Sikhyakas, having no OTET qualification, from regularization as Level-V Asst. Teacher. Clause-2(b) of aforesaid notification

prescribes that the Gana Sikhyaka is required to pass OTET within 31st March 2019, if he has not passed OTET earlier. If she/he does not pass the OTET by such date, she/he will not be eligible to get any further increment after 31st March, 2019. Thereby, restriction has been imposed that Gana Sikhyakas, having no OTET qualification, will not be eligible to receive the increment and, as such, there is no bar for regularization of their service, even though they have no OTET qualification, that too till 31st March 2019. On the basis of Government letters dated 22.12.2016, 05.01.2017, 27.05.2017 and 27.07.2017 of Director, Elementary Education, a list of 487 trained Gana Sikhyakas, who were found eligible for appointment as Level-V Asst. Teacher, was sent to the Directorate, vide letter dated 10.08.2017, for favour of necessary action. Besides, a copy of the proceedings of the selection committee meeting held on 06.07.2017 and 05.08.2017 under the Chairmanship of Collector-cum-Chairman, District Selection Committee was also sent to the Directorate. Prior to approval of the selected Gana

Sikhyakas as Level-V Asst. Teacher, the SPD, OPEPA, vide letter dated 24.08.2017, directed the DPC, Nayagarh for publication of the list and bio-datas in his office notice board and invite objection, if any, from the stakeholders, if something noticed by them after proper scrutiny. But after scrutiny of the list of eligible Gana Sikhyakas, a verified list of trained Gana Sikhyakas was prepared again. Accordingly, the Government in School and Mass Education Department conveyed the creation of 563 nos. of posts of Level-V Asst. Teacher in respect of Nayagarh district, vide letter dated 18.09.2017. Before issuance of appointment order on the demands of the Gana Sikhyaka Mahasangha, the Government issued a clarification letter relating to validity of permission given to them by departmental official for prosecuting higher qualification, vide letters dated 20.09.2017 and 23.09.2017 respectively, Clauses-(a) and (b) of which are extracted hereunder:-

“a. The Gana Shikhyakas who have acquired higher qualification as non-collegiate candidate by obtaining permission from

Competent Authority i.e. Collector or DPC can only be considered for regularization.

b. The clarification given at point No. 3 of the Department Letter No. 17960 dated 20.09.2017 is hereby explained further. SPD, OSEPA issued a circular on 07.04.2010 intimating that Collector is the competent authority to issue permission to Gana Shikhyas for obtaining higher qualification. From 16.02.2008 to 07.04.2010, there was no instruction issued on competent authority to issue permission for obtaining higher qualification. In view of the above it is considered to allow the permission issued by others like CI of schools, D.I. of Schools, BDOs, S.I. of Schools, BRCCs and HMs during 16.02.2008 to 07.04.2010. After 07.04.2010, permission from the competent authority only be considered.”

14. In compliance of the above, a list of 21 candidates, including the petitioner, who were found not eligible for appointment as Level-V Asst. Teacher (ex-cadre), was drawn after proper scrutiny and duly approved by the Collector-cum-Chairman, District Selection Committee, Nayagarh. Thereafter, the petitioner approached the Collector, Nayagarh by filing Misc. Case No.1/2018, which was disposed of vide order dated 20.04.2018, with the following directions:-

“The D.E.O., Nayagarh is instructed not to delay any further to regularize the case of the petitioners. The entire process should be completed by 15.05.2018 and compliance be reported. The other debarred candidates of similar nature should be considered along with these petitioners.”

15. In the meantime, in W.P.(C) No. 4684 of 2018, which was filed by Odisha Vikash Parishad, Bhubaneswar in the nature of Public Interest Litigation, this Court passed interim order on 24.04.2018 directing the authorities not to regularize the Gana Sikhyakas, who does not possess OTET qualification, as Level-V Asst. Teacher under the notification dated 22.12.2016 and, as such, the Gana Sikhyakas may be allowed to continue subject to final result of the writ petition. But, ultimately, the said writ petition was withdrawn and, thereby, the interim order passed in the said writ petition no more subsists. As a consequence thereof, a right accrued in favour of the petitioner for regularization in service as Level-V Asst. Teacher along with consequential benefits. The same having not been acceded to, the petitioner has

approached this Court by filing the present writ petition. But fact remains, the petitioner does not possess OTET qualification and, as such, he has been absorbed as Gana Sikhyaka much before the Right of Children to Free and Compulsory Education Act, 2009 came into force and subsequent instructions issued from time to time. If the reference made in Sub-clause-(2) of the circular dated 22.12.2016 will be taken into consideration, it only provides that a Gana Sikhyaka is required to pass OTET within 31st March 2019, if he has not passed OTET earlier. If she/he does not pass the OTET by such date, she/he will not be eligible to get any further increment after 31st March, 2019. Thereby, there is no bar to regularize the service of a Gana Sikhyaka, having no OTET qualification. Rather, the said sub-clause states that in the event a Gana Sikhyaka acquired OTET qualification, he is only entitled to get the increment.

16. In **Chander Mohan Negi** (supra), the apex Court held that appointments of teachers made as per the

schemes notified by the Government cannot be treated as illegal, if at all they can be considered irregular, even though condition has been included that such appointees should not seek regularization/absorption. It is held that for no fault of them, they cannot be denied regularization/absorption. In view of the requirement of the State, their services were extended from time to time and now all the appointees have completed more than 30 years of service in different schemes and some of them acquired higher qualification and training qualification. Thereby, denial of regularization cannot have any justification and, as such, the condition of passing of OTET will not stand as a bar for regularization of the petitioner, when the State for its own requirement has extended the term of appointment from time to time and, as such, appointees have continued for more than 30 years in the post. In view such position, the judgment of the apex Court, is directly applicable to the present case.

17. So far as the judgment relied upon by the learned Standing Counsel for School and Mass Education Department in the case of **Anand Kumar Yadav** (supra) is concerned, in the said judgment the apex Court has taken into consideration the regularization/absorption of Sikhya Mitra's and it has been held that Sikhya Mitras do not have any legal right for regularization, as they neither fulfilled minimum qualification, not even BTC qualification under 2001 Regulations, nor were they appointed against sanctioned posts. For mere contractual appointment, their services cannot be regularized. The ratio of this case is totally distinguished from **Chander Mohan Negi** (supra). As such, the fact of **Chander Mohan Negi** (supra) is fully applicable to the present case. Thereby, the judgment cited by the learned Standing Counsel for School and Mass Education Department has no assistance to the present opposite parties.

18. Likewise, the judgment cited by learned Standing Counsel for School and Mass Education

Department in the case of **Arbind Jee** (supra) is factually different from the present case and, thereby, the same is not applicable to the case at hand.

19. Taking into consideration the factual and legal aspects, as delineated above, this Court is of the considered view that the opposite parties cannot deny the benefit of regularization of service to the petitioner as Level-V Asst. Teacher, as the petitioner has got requisite academic qualification and has also acquired training qualification and otherwise also satisfies the eligibility criteria for regularization. Therefore, for non-acquisition of OTET qualification, he cannot be denied the benefit of regularization. If the petitioner has not acquired the OTET qualification by 31th March 2019, he may not be entitled to incremental benefit, but that *ipso facto* cannot deny the benefit of regularization to him. Accordingly, this Court directs the opposite parties to regularize the service of the petitioner as Level-V Asst. Teacher on completion of eight years as Gana Sikhyaka, as per the notification dated

22.12.2016. As he has already retired from service, he should be extended such benefit notionally from the date of completion of eight years as Gana Sikhyaka by regularizing his service as Level-V Asst. Teacher. Since the petitioner has already retired, his pension be revised and he should be granted pensionary benefits in the revised scale of pay admissible to him by fixing the same notionally, as expeditiously as possible, preferably within a period of three months from the date of communication of this judgment.

20. In the result, the writ petition is allowed. However, there shall be no order as to costs.

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DR. B.R. SARANGI,
JUDGE

Orissa High Court, Cuttack
The 11th November, 2022, Ashok/GDS