

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.16477 of 2022

Dr. Kamalini Panigrahi *Petitioner*
Mr. Chandrakanta Nayak, Adv.
-versus-
State of Odisha & Ors. *Opposite Parties*
Mr. D. Mund, AGA.

CORAM:
DR. JUSTICE S.K. PANIGRAHI

Order
No.
07.

ORDER
23.12.2022

1. This matter is taken up through hybrid mode.
2. The petitioner in the aforementioned Writ Petition has challenged the order of rejection passed by the Principal Secretary, Government of Odisha, Department of Higher Education vide letter No.HE-NCET-1 CASE-070-2022-20903/HE dated 21.05.2022. The petitioner alleges that the order is illegal and arbitrary and not in accordance with the provision of law.

I. FACTUAL MATRIX OF THE CASE:

3. The case of the petitioner, in nutshell, is that the present petitioner joined as a lecturer in Hindi on 04.08.1992 vide order of appointment letter No.458 dated 04.08.1992 issued by the President, Emarti Devi Women's College, Nayasarak, Cuttack. On 29.01.1983 vide letter No.VEC

13/82 Govt. of Odisha, Education and Youth Service Department granted concurrence for opening of intermediate college. On the said letter it was clearly clarified that the sanction strength of the college at the relevant time of application was 128 students and the compulsory subject are English, MIL (Oriya), Hindi which goes on to show that the post of Hindi was created in the year 1983.

4. On 07.11.1983 Utkal University vide its notification granted affiliation to the colleges with the strength of seats as 128 wherein the present petitioner's college found place in serial no. 21. One Dr. Chandra Sekhar Jain was appointed as lecturer in the year 1982 against the 1st post of Hindi Lecturer where he continued till 1992 against which the present petitioner was appointed as lecturer on 04.08.1992 and joined on dated 10.08.1992. The Emarti Devi Women's College got +3 affiliation in the year 1983-84 and got +3 concurrence in the academic session 1988-89. Thereafter, letter dated 26.08.1983 was issued for affiliation for opening of Higher Secondary classes in Arts Stream during the Academic Session 1983-84.
5. Director, Higher Education vide office order No.46938 dated 06.09.2001, approved service of the petitioner from 01.06.1998, instead of taking into continuity that is from

1983-84 by depriving the petitioner of UGC. On being aggrieved, the petitioner has filed this writ petition.

II. PETITIONER'S SUBMISSIONS:

6. Learned counsel for the Petitioner earnestly made the following submissions in support of their contentions:

7. The resolution of Government of Odisha, Education and Youth Service Department dated 06th October, 1989 and 06th November 1990 prescribed the following condition to be fulfilled by a candidate/claimant for being eligible for receipt UGC Scale of pay.

I. He/she must have secured minimum of 55% of marks at his/her PG in the concerned subject along with a good academic record.

II. He/ She must have entered into direct payment fold prior to 01.04.1989.

III. The +3 (Degree) wing in the said college must have opened prior to 01.04.1989.

IV. He/ She must be a full-time lecturer.

8. Emarti Devi Women's College got affiliation in the year 1982-83 as notified by the Utkal University on 07.11.1983 against 128 seats in English (Odia, Hindi, Political Science, Economics, Odia, History, Logic, Home Science and Hindi). On 26.08.1983, +3 wing got affiliation. The present petitioner has secured more than 55% and a Ph.D. and D. Litt. Qualified.

9. One Dr. Chandra Sekhar Jain was appointed as lecturer in Hindi against the 1st Post in the year 1982 where he continued till to 1992 against such the present petitioner joined as lecturer on 21.01.1992. As per the continuity of the post by the incumbent Dr. Chandra Sekhar Jain's post became qualified for UGC scale of payment after completion of 05 (five) years i.e. in the year 1988.
10. The Government Resolution dated 06th October 1989 for UGC Clause-3 specified the word coverage:

"3.1. Coverage The revised scales and other measures for improvement of standards in Higher Education shall be applicable to all categories of full time Teachers working in all affiliated Government Colleges and aided non-Government Colleges covered or eligible to be covered under direct payment schemes till the 1st April 1989. The scheme will also be extended to full time eligible Teachers working in the College of Accountancy and Management Studies, Cuttack".
11. The present petitioner is falling under the said clause which makes eligible to be covered under direct payment scheme till 1st April 1989. However, while rejecting the claim of UGC Scale of the petitioner on 21.05.2022, the Principal Secretary to Government held that since the present petitioner came under the direct payment scheme with effect from 01.06.1998, she is not entitled to UGC scale of payment ignoring the fact the claimant joined

against a justified post having clear continuity became eligible for direct payment prior to cutoff date i.e. 01.04.1989.

12. The employee of the above college who have joined against the 1st post of different subjects either directly and in view of continuity are getting UGC scale of pay whereas the denial by the authority against the petitioner is violative of Article 14 and 16 of the Constitution of India.

III. COURT'S REASONING AND ANALYSIS:

13. Firstly, it is pertinent to understand the guidelines pertaining to the UGC pay scale of a teacher. The resolution of Government of Odisha, Education and Youth Service Department dated 06th October, 1989 and 6th November 1990 prescribed the following conditions to be fulfilled by a candidate/claimant for being eligible for receipt UGC Scale of pay.

I. He/she must have secured minimum of 55% of marks at his/her PG in the concerned subject along with a good academic record.

II. He/ She must have entered into direct payment fold prior to 01.04.1989.

III. The +3 (Degree) wing in the said college must have opened prior to 01.04.1989.

IV. He/ She must be a full-time lecturer.

14. The present petitioner has secured total mark of 453 out of 800 in M.A. which is above 56 percentage. Emarti Devi Women's College got affiliation in the year 1982-83 as notified by the Utkal University on dated 07.11.1983 against 128 seats in English (Odia, Hindi, Political Science, Economics, Odia, History, Logic, Home Science and Hindi). On 26.08.1983 +3 wing got affiliation. (at page-34 of the writ petition). The present petitioner has secured more than 55% and a Ph.D. and D. Litt. Qualified. The present petitioner has fulfilled 3 out of the 4 conditions. The question before this Court is whether the petitioner should be granted UGC scale of payment considering the fact that she had joined after the prescribed cut-off date.
15. The petitioner has contended that as per the grant-in-aid principle, the post becomes eligible to receive grant-in-aid, since the date of creation of the post as per the workload, there was continuity of post by the incumbent, post justified to receive grant-in-aid as well as to come under the direct payment fold prior to 01.04.1989. One Dr. Chandra Sekhar Jain was appointed as Lecturer in Hindi against the 1st Post in the year 1982 where he continued till 1992. However, the present petitioner joined as Lecturer on 21.01.1992. As per the continuity of the post by the incumbent Dr. Chandra Sekhar Jain's post became

qualified for UGC scale of payment after completion of 05 (five) years i.e. in the year 1988. However, this contention of the petitioner cannot be accepted considering the fact that the Government Resolution dated 06th October 1989 for UGC clause-3 specified the word coverage:

"3.1. Coverage- The revised scales and other measures for improvement of standards in Higher Education shall be applicable to all categories of full time Teachers working in all affiliated Government Colleges and aided non-Government Colleges covered or eligible to be covered under direct payment schemes till the 1st April 1989. The scheme will also be extended to full time eligible Teachers working in the College of Accountancy and Management Studies, Cuttack".

16. It is evident that the benefit of revision in pay scale by virtue of the resolution dated 6th October, 1989 will be applicable to such category of employees who are working in aided non-Government Colleges either covered or eligible to be covered under direct payment scheme till 01.04.1989. Considering the fact that the petitioner was appointed after the cut-off date, the contentions of the petitioner cannot be entertained by the Court. In the cases of *State of Orissa & Anr vs Mamata Mohanty*¹ and *Abhimanyu Panda vs State Of Odisha*² it was held that

¹ (2011) 3 SCC 436.

² W.P.(C) Nos.590 of 2003, 24167 of 2012 and 25064 of 2013 (Orissa High Court)

cut-off date provided by the Government's notification cannot be relaxed.

17. Even assuming that there is a power of relaxation under the Regulations, the power of relaxation cannot be exercised in such a manner that it completely distorts the Regulations. The power of relaxation is intended to be used in marginal cases. The Supreme Court in *Kendriya Vidyalaya Sangathan & Ors. v. Sajal Kumar Roy & Ors.*³, held:

"The appointing authorities are required to apply their mind while exercising their discretionary jurisdiction to relax the age- limits....The requirements to comply with the rules, it is trite, were required to be complied with fairly and reasonably. They were bound by the rules. The discretionary jurisdiction could be exercised for relaxation of age provided for in the rules and within the four corners thereof."

18. In *Food Corporation of India & Ors. v. Bhanu Lodh & Ors.*⁴, the Supreme Court held that:

"Even assuming that there is a power of relaxation under the Regulations..... the power of relaxation cannot be exercised in such a manner that it completely distorts the Regulations. The power of relaxation is intended to be used in marginal cases.... We do not think that they are intended as an "open sesame" for all and sundry. The wholesale go-by given to the Regulations, and the manner in

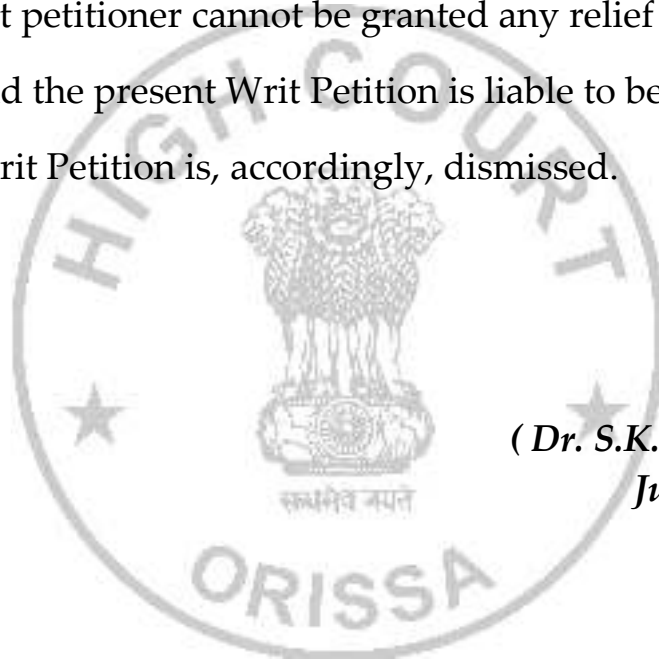
³ (2006) 8 SCC 671

⁴ AIR 2005 SC 2775

which the recruitment process was being done, was very much reviewable as a policy directive, in exercise of the power of the Central Government under Section 6(2) of the Act."

19. In light of the aforesaid discussion and having regard to the present position of law, considering the fact that the petitioner has joined the services after the cut-off date established by the State, this Court is of the opinion that the writ petitioner cannot be granted any relief by way of a writ and the present Writ Petition is liable to be dismissed.
20. This Writ Petition is, accordingly, dismissed.

B.Jhankar



(Dr. S.K. Panigrahi)
Judge