IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.20407 of 2022

Nimain Charan Jena …. ***Petitioner***

Mr. Kunal Kumar Swain, Adv.

-versus-

State of Odisha and Ors. …. ***Opposite Parties***

Mr. Debasis Mohapatra, SC
(for S & ME Deptt.)

CORAM:
DR. JUSTICE S.K. PANIGRAHI

Order No.	**ORDER** **29.08.2022**

01. **1**. This matter is taken up through hybrid arrangement.

2. Heard learned counsel for the parties.

3. In this Writ Petition, the Petitioner, who was serving as a Hindi Teacher in Jenamani High School, Gobindprasad, in the district of Dhenkanal, seeks a direction from this Court to the Opposite Parties to allow him to avail the benefit of Trained Graduate Scale of Pay with effect from 02.09.2006 on attaining the age of 48 years as per the ratio decided by this Court in the case of **Radharani Samal – vrs.- State of Odisha**[1].

4. Learned counsel for the Petitioner submits that this Court has earlier decided the similar issue in the case of **Akshya Kumar Nayak –vrs. State of Orissa and Ors.**

[1] 2017 (I) ILR-CUT-546

vide common judgment dated 04.08.2022 passed in W.P.(C) No.5480 of 2021 and batch of cases. Hence, he submits that this Writ Petition may be disposed of in the light of the judgment passed in the case of **Akshya Kumar Nayak** (supra).

5. Learned Standing Counsel for the Department of School and Mass Education submits that he has no objection, if this matter is disposed of in the light of the judgment passed in the case of **Akshya Kumar Nayak** (supra).

6. On perusal of the records and the judgment passed in the case of **Akshya Kumar Nayak** (supra), it appears that similar issue has already been decided by this Court in the said judgment which was disposed of on 04.08.2022. The ordering portion of the said judgment is as follows.

> *"**33**. This Court is unable to accept the submission of learned Standing Counsel for the Department of School and Mass Education as the petitioner's entitlement to avail Trained Graduate Scale of pay flows from the Government resolution dated 18.02.2008 and the Petitioner possesses the minimum qualification as mandated by the said resolution. It is also submitted that the petitioner attained 48 years of age as on 11.07.2016, after the clarificatory order of the State Government dated 06.05.2014 and*

therefore, the agitation of claim could not have been done in the same timeline as the issuance of the clarificatory order. Hence, it cannot be said that the claim of the petitioner is hopelessly barred by limitation and stale.

***34**.This Court is of the view that the grievance voiced by the petitioner appears to be well founded and he would be entitled to re-fixation of scale of pay. Since, there are statutory rules occupying the field, the petitioner is entitled to requisite remedy by relying on such rules. Moreover, where a service-related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. In the case at hand, the issue was in relation to refixation of pay and in such circumstances, relief may be granted in spite of delay as it does not affect the rights of third parties.*

***35**. In the service jurisprudence evolved by this Court from time-to-time, it is postulated that all persons similarly situated should be treated similarly and only because one person has approached the Court would not mean that persons similarly situated should be treated differently. Justice demands that a person should not be allowed to derive any undue advantage over other employees; the normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit; not doing so would*

> *amount to discrimination and would be violative of Article 14 of the Constitution of India.*
>
> ***36**. In the light of above discussions and guided by the precedents narrated hereinabove, this Court hereby allows the present Writ Petition as well as the connected batch of Writ Petitions.*
>
> ***37**. Accordingly, this Writ Petition along with the connected batch of Writ Petitions are disposed of. No order as to cost."*

7. In view of the aforesaid common judgment passed in W.P.(C) No.5480 of 2021 and batch of cases, this Writ Petition is disposed of being allowed.

8. Urgent certified copy of this order be granted on proper application.

(Dr. S.K. Panigrahi)
Judge

B.Jhankar