

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 21443 of 2019

(An application Articles 226 and 227 of the Constitution of India)

AFR Dr. Urmimala Pradhan Petitioner

-Versus-

State of Odisha & another Opp.Parties

Advocate(s) appeared in this case:-

For Petitioner : M/s. Dr. J.K. Lenka, P.K. Behera
& P. Das, Advocates

For Opp.Parties : Mr. B.P. Tripathy,
Addl. Government Advocate.

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT
14th October, 2022

SASHIKANTA MISHRA, J.

Pursuant to an advertisement issued by the Governing Body of Indira Gandhi Women's College, Cuttack for filling up of the 2nd post of Lecturer in Odia, the petitioner applied and was selected for the said post. She joined on 01.03.1986. Be it noted here that Indira Gandhi Women's College, Cuttack was established in the year 1980 and was

affiliated to Utkal University for the old intermediate course from the academic session 1980-1981 commencing from 01.06.1980. The college received Government concurrence as per order dated 24.11.1987 for degree (B.A./+3 Course) from academic Session 1987-88. Affiliation of the University was also granted from 1987-88. Due to increase in workload of the College, the Governing Body created 2nd post of Lecturer in Odia, in which one Basabadutta Pattnaik was appointed and joined on 01.12.1984. In 1986, the 1st post of Lecturer in Odia fell vacant, whereupon the said Basabadutta Pattnaik was adjusted against the said post in February, 1986 and consequently, the 2nd post of Lecturer in Odia fell vacant, which was advertised and the petitioner was appointed as already stated. As per the order dated 14.02.1997, the Government accorded prior concurrence for approval of the post indicating that the same is admissible during 1984-85 and accordingly, by order dated 11.03.1997, the Director, Higher Education approved the services of the petitioner at the rate of 1/3rd w.e.f. 01.06.1990 by counting five years of service from the beginning of the academic session i.e., 01.06.1985. It is stated that though the College

is entitled to receive grant-in-aid on 3+5+7 principle, but the Government extended the same on 5+7+9 principle. The petitioner was given State scale of pay instead of UGC Scale, for which she submitted several representations, but to no avail. It is the further case of the petitioner that similarly placed Lecturers in other disciplines, namely, Ajoy Kumar Das, Bhagyalaxmi Mohanty and Mausumi Kanungo have been allowed UGC Scale of pay basing on the order passed by this Court in W.P.(C) No.15481 of 2005, as confirmed by the Supreme Court in Civil Appeal No.3793 of 2012. Similarly, the Government has also allowed UGC Scale of pay in favour of Manjushree Pattnaik, Mamata Mohanty, Akshaya Kumar Swain, Dr. Sidhartha Kumar Sahoo, Basanta Kumar Mishra and Kamala Behera, even though all of them were appointed/approved after 01.04.1989. The petitioner is a physically disabled person and claims to have been thus discriminated. In course of her service career, the petitioner has been transferred to other Colleges, such as, Imarti Devi Women's College, Cuttack and Netaji Subhash Memorial City College, Cuttack. The petitioner claims that all the said Colleges had got degree affiliation much prior to

01.04.1989 and that she was also imparting teaching in degree classes since her joining by taking honours classes in her subject regularly till her retirement. The petitioner has also cited the case of one Sefali Mohapatra and of one Jayashree Ray, who have been granted UGC Scale. It is stated that as the College, in which the petitioner was initially recruited, is a degree College prior to 01.04.1989, it comes within the definition of 'College' as per the note to Clause-2(1) of the Government Resolution dated 06.11.1990. The post held by the petitioner falls under para-4(A) Category- 1(i) of 1994 GIA order as such post was approved and the petitioner had received GIA prior to 1994 GIA order, i.e. at the rate of 1/3rd w.e.f. 01.06.1990. Her case is identical with that of Sefali Mohapatra but she was discriminated. The petitioner, therefore, approached this Court in W.P.(C) No. 16242 of 2005 claiming UGC Scale of pay which was disposed of by order dated 13.03.2019 with a direction to the Secretary of Higher Education Department to consider her case in the light of the Judgment passed in the case of **State of Orissa & Anr. Vs. Mamata Mohanty**, reported in (2011) 3 SCC 436. By order dated 24.09.2019,

which is enclosed as Annexure-23 to the writ petition and is impugned, the opposite party no.1 rejected the claim of the petitioner on the ground that she had received 1/3rd grant-in-aid w.e.f. 01.06.1990, which is after the cut-off date, i.e., 01.04.1989. Challenging such rejection of her claim for grant of UGC scale of pay, the petitioner has approached this Court seeking the following relief:

“The petitioner, therefore, most humbly and respectfully prayed that this Hon’ble Court would graciously be pleased to issue Rule NISI calling upon the Opposite Parties as to why the impugned order dt.24.09.2019 at Annexure-23 should not be quashed and as to why Opp. Parties should not be directed to extend UGC scale of pay to the petitioner w.e.f. 01.06.1990 with revision of pay and further direct the Opp. Parties to pay the differential arrear salary in the UGC scale and revised UGC Scale with all consequential and financial benefits.

And, if the Ops fail to show cause or sufficient cause, the rule be made absolute;

And, issue any other order/direction which would afford complete relief to the petitioner;

And for which act kindness, the petitioner shall is in duty bound every pray.”

2. Counter affidavit has been filed on behalf of opposite party No.1. The basic facts averred in the writ petition have not been disputed but it is specifically stated that the petitioner was selected by the governing body and appointed against the 2nd post of Lecturer in Odia against the +2 wing on 01.03.1986 and was continuing as such till the date of her approval in the said college on 01.06.1990 as

per records of the said College. The College being a Category-1 College receiving grant-in-aid from 01.06.1988, requires to be governed under the provisions of Para-9(2)(b)(i) of the Grant-in-Aid Order, 1994. For approval of an unapproved post in such College the incumbent is required to complete five years of qualifying service for acquiring eligibility for the purpose of grant-in-aid. Since the 2nd post of Lecturer in Odia in the +2 wing was filled up on 01.12.1984 (by Basabadutta Pattnaik) and therefore, after counting five years as per the prevailing grant-in-aid principles, her post was approved for extension of GIA w.e.f. 01.06.1990, which is the first date of the next academic session as per provisions. Reference has also been made to the Resolutions dated 06.10.1989 and 06.11.1990 introducing payment of revised UGC pay scale benefit to College Teachers from 01.01.1986 wherein the basic criteria is that the teacher concerned must be imparting teaching exclusively to degree students and should have been covered under direct payment scheme by the cutoff date, i.e. 01.04.1989. The petitioner joined against 2nd post of Lecturer in Odia on 01.03.1986 after the said post become

admissible to the College against +2 wing during 1983-84 on the basis of work load exclusively of +2 wing. The said wing was covered under grant-in-aid scheme from 01.12.1984 and basing on the completion of five years rendered against the same by the petitioner's predecessor and her, it completed the qualifying service on 01.12.1989 and as such, the date of approval was taken as 01.06.1990, which is the first date of the next academic session. The fact that the petitioner was appointed against the 2nd post of Lecturer in Odia exclusively against the +2 wing is evident from the fact that as on the date of her joining, i.e., 01.03.1986, the +3 wing had not opened in the said college. So being a teacher of the +2 wing she cannot claim UGC scale of pay. As regards the cases of other Lecturers it is stated that the facts relating to them are different and in any case, they were granted UGC scale of pay in compliance of the orders of this Court and the Apex Court.

3. The petitioner filed rejoinder to the counter filed by the opposite parties. The assertion of opposite parties that the petitioner was appointed against +2 wing of the College is sought to be refuted by stating that the petitioner

was appointed on 01.03.1986 and discharging her duties in Degree College. Previously I.A. and B.A. were combined and being taught as a composite college. After the College was bifurcated into +2 and +3 wings, the petitioner was shown as Lecturer in Degree College and since then she has been teaching students of Degree stream till her retirement. It is further stated that after bifurcation of the two wings, the Degree College Lecturers applied in B-Form for their salary while +2 wing Lecturers applied in A-Form. The petitioner used to apply in B-Form and therefore, for all purposes she was treated as Lecturer of the Degree College and was also the head of the Department till her retirement. Since the petitioner was appointed against the 2nd post and the said institution got University affiliation and Government concurrence prior to 01.04.1989, it is a Degree College. It is also stated that one Bhagyalaxmi Das, who was appointed as Lecturer in Indira Gandhi Women's College against the 3rd post and had joined the College much after the petitioner, i.e. on 15.10.1987, was allowed UGC Scale pursuant to order of the State Education Tribunal. While challenging the order of the Tribunal, the Government in its

appeal memo has admitted that on the basis of composite work load of I.A. and B.A., Bhagyalaxmi Das had been allowed GIA w.e.f. 01.06.1994. This Court upheld the order of the Tribunal against which the Government preferred SLP before the Supreme Court, but the same was dismissed. The petitioner has also referred to similarly placed Lecturers of different colleges, who have been granted UGC Scale of pay. It is reiterated that the petitioner's post was admissible during 1984-85 academic session on the 5+7+9 principle whereas for Women's Colleges, the principle 3+5+7 is applicable. It is also stated that in so far as Indira Gandhi Women's College is concerned, the 1st post and 3rd post of Odia Department have got degree Lecturer scale but the petitioner, who held the 2nd post, was denied, which amounts to gross discrimination.

4. Heard Dr. J.K. Lenka, learned counsel for the petitioner and Mr. B.P. Tripathy, learned Addl. Government Advocate for the State.

5. Relying upon the averments made in the writ petition, Dr. Lenka would argue that the petitioner was appointed in 1986 but the Degree wing opened in 1987-88

and was also granted University affiliation for +3 degree course. The Government accorded prior concurrence for approval of services of the petitioner and in the said order, the name of the petitioner finds place at serial no.3 clearly mentioning that the post held by the petitioner is eligible for 1984-85 academic session and the date of eligibility to receive 1/3rd grant-in-aid is from 01.06.1990, 2/3rd grant-in-aid from 01.06.1992 and full grant-in-aid from 01.06.1994. Accordingly, the services of the petitioner and others were approved by the Director vide order dated 11.03.1997. As per the note appended to paragraph-2(1) of the Resolution dated 06.11.1990, 'Colleges' shall mean aided Colleges, which have been given Government concurrence and University affiliation for opening of +3 Degree course by 1st April, 1989. The cutoff date according to Dr. Lenka is highly relevant inasmuch as, the petitioner was admittedly appointed and her post was held to be admissible much prior to the said date and, Government concurrence and University affiliation for +3 wing was also granted from the academic session 1987-88. Dr. Lenka therefore argues that there is no way by which the petitioner's case can be

rejected, particularly when similar benefit has been granted to several Lecturers. It is further argued that the opposite party no.1 has committed an error in holding that the petitioner entered into direct payment fold of +3 wing after 01.04.1989 and that her case is not covered by the ratio of Mamata Mohanty's case. In holding so, according to Dr. Lenka, the opposite party no.1 has lost sight of the fact that the College in question was a composite college. There being overwhelming evidence that the petitioner was taking classes in the +3 stream, it is wrong on the part of the opposite parties to treat her as a Lecturer in the +2 wing.

6. Per contra, Mr. B.P. Tripathy has submitted that grant of concurrence by the Government and affiliation by the University for the +3 wing Degree course does not affect the petitioner's case in any manner inasmuch as she was admittedly appointed against the 2nd post of Odia in the +2 wing. Her services were approved on such basis and she along with others was brought under the direct payment scheme as per the GIA principle by order dated 11.03.1997. It was clearly mentioned in the said order that they shall be given State Scale of Pay and in no case they will be eligible

to UGC Scale. The date of eligibility for grant-in-aid is mentioned as 01.06.1990, which according to Mr. Tripathy is highly relevant because admittedly the previous incumbent, namely, Basabadutta Pattnaik, who held the post from 01.12.1984 till February, 1986 was adjusted against the 1st post. The petitioner was appointed thereafter i.e., 01.03.1986 on which date there was no +3 wing in the college. The said post became admissible for GIA taking the cumulative service of Basabadutta Pattnaik and the petitioner on the 5+7+9 principle. The +3 wing was opened and concurrence and affiliation was granted from the academic session 1987-88, by which time the petitioner had been already appointed against 2nd post in the +2 wing. Therefore, notwithstanding the fact that the College continued to impart +2 and +3 courses as a composite institution, mere opening of the +3 wing cannot automatically change the status of the petitioner as a Lecturer in the +2 wing to +3 wing. It is further argued by Mr. Tripathy that if the petitioner was aggrieved by order dated 11.03.1997 in granting her State Scale instead of UGC scale she should have challenged the same at the

relevant time but not having done so, she cannot claim the same at this belated stage only because some other Lecturer(s) have been granted such benefit.

7. As is evident from the materials on record, the petitioner had earlier approached this Court in W.P.(C) No. 16242 of 2005 for the self same relief. This Court by order dated 13.03.2019 directed as follows:

*“In view of the aforesaid submission, the opposite parties are directed to consider the case of the petitioner in the light of the judgment in **Mamata Mohanty** (supra) within a period of four months from the date of production of certified copy of this order.”*

Pursuant to such order, the Commissioner-cum-Secretary to Government in the Department of Higher Education considered the case of the petitioner and rejected the same vide the impugned order. Reading of the impugned order shows that the Commissioner held that the petitioner was initially appointed against the 2nd post of Lecturer in Odia by the Governing Body in Intermediate/Higher Secondary Course of the College and that the date of eligibility of the petitioner to receive 1/3rd grant-in-aid was with effect from 01.06.1990, which is after the cut-off date of 01.04.1989. The Commissioner also referred to the decision of the Apex Court in the case of **State of Orissa**

and Anr. vs. Aswini Kumar Dash and Ors. , reported in (1998) 3 SCC 613, wherein the cut-off date of 01.04.1989 was held to be neither arbitrary nor unreasonable. The Commissioner further held that the case of the petitioner is not similar to **Mamata Mohanty's** case, as the main contention in her case was educational qualification and acquisition of higher qualification i.e., eligibility to receive UGC scale of pay. On the other hand, in the case of the petitioner, her status, whether she was a +3 degree Lecturer and to qualify for being eligible to receive UGC scale of pay, is involved. The Commissioner also held that the Apex Court in **Mamata Mohanty**, disapproved the act of the petitioner in approaching the High Court after many years of adoption of the principle for grant of UGC scale of pay claiming impetus from judgments in like cases. On such grounds the claim of the petitioner for grant of UGC scale of pay and consequential benefits was rejected.

8. Whether the grounds of rejection of the petitioner's claim are valid and justified can be decided only with reference to the relevant facts and the rules/instructions/provisions governing the field. There is

no dispute that the petitioner had joined against the 2nd post of Lecturer in Odia in Indira Gandhi Women's College, Cuttack on 01.03.1986 and that the said 2nd post of Lecturer was admissible to the College against the +2 wing during 1983-84 on the basis of workload exclusively of +2 wing. The said +2 wing of the College was covered under grant-in-aid scheme from 01.06.1988 and basing on the completion of qualifying service of five years rendered against the 2nd post of Lecturer in the +2 wing of the College by the predecessor of the petitioner from 01.12.1984 (Basabadutta Pattnaik) and by the petitioner from 01.03.1986, the said post completed qualifying service on 01.12.1989. However as per the principles of grant-in-aid, the first day of the next academic session being 01.06.1990, was taken as the date of approval for grant-in-aid and the 2nd post of Lecturer in Odia in +2 wing of the College was approved under grant-in-aid from such date. There is also no dispute that as on the date of appointment of the petitioner i.e., 01.03.1986, the +3 wing had not opened in the said College. The +3 wing was opened in the College during 1987-88 and the College was notified as an aided

College from 01.06.1994 as per Grant-in-Aid Order, 1994. According to the opposite party authorities and as implicitly reflected in the impugned order, the petitioner was approved for grant-in-aid with effect from 01.06.1990 being a teacher of +2 wing, which is also after the cut-off date of 01.04.1989. The petitioner has however seriously disputed such stand of the opposite party authorities by contending that though she was initially appointed against the +2 wing yet after opening of the +3 wing, the College became a composite college where both I.A. and B.A. courses were being taught. The petitioner was shown as lecturer in the Degree College as she was teaching students of the Degree stream till her retirement. While + 2 wing lecturers apply for salary in A-Form, the Degree Lecturers apply in B-Form for salary. The petitioner received her salary by applying in B-Form and therefore, for all practical purposes, she was treated as a Lecturer of Degree College and continued as such when she became the head of the Department and retired. Be it noted here that no acceptable evidence is available on record to substantiate the contentions as above.

9. Given the rival contentions as above it would be apposite to refer to the instructions of the Government regulating the grant of UGC scale of pay to teachers. Originally, the Government in the erstwhile Education and Youth Services Department issued a Resolution on 6th October, 1989 for revision of pay scale of teachers in Colleges and other measures for maintenance of standard in Higher Education. Paragraph 3.1 of such Resolution provides that the revised scales and other measures for improvement of standards in higher education shall be applicable to all categories of full-time lecturers working in affiliated Government Colleges and aided non-Government Colleges either covered or eligible to be covered under direct payment scheme till 1st April 1989. By a subsequent Resolution issued on 6th November, 1990 further instructions were issued to regulate the revision of scale of pay of different categories of teachers serving in aided non-Government Colleges of the State. Paragraph-2(1) provides that these instructions shall apply to all categories of full-time teachers working in all aided non-Government Colleges either covered or eligible to be covered under direct payment

Note appended to the said paragraph reads as follows:

Paragraph-2 provides that these instructions shall not apply to:

(v) *teachers who were appointed primarily in +2 institutions existing as on the 1st April 1989 including intermediate Colleges, converted to +3 institutions*

(vi) *teachers appointed after 1st April 1989 to teach in +2 courses in existing Degree Colleges or +2 institutions.”*

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to be the bone of contention between the parties. Firstly, in view of the ratio of the case of **Aswini Kumar Dash** (supra) the cut-off date cannot be treated as arbitrary or unreasonable. Secondly, it is to be seen whether the petitioner was covered or eligible to be covered under the direct payment scheme prior to the cut-off date. As has already been discussed hereinbefore, the petitioner was appointed on 01.03.1986. The +2 wing of the College was covered under grant-in-aid scheme from 01.06.1984 and basing on the completion of qualifying service of five years rendered against the 2nd post of Lecturer in the +2 wing of the College by the predecessor (Basabadutta Pattnaik) of the petitioner from 01.12.1984 and by the petitioner herself from 01.03.1986, the said post in the +2 wing completed such qualifying service on 01.12.1989. However, as per the principles of grant-in-aid, the first day of the next academic session being 01.06.1990 was treated as the date of approval for GIA.

It is undisputed that the petitioner had not been covered under the direct payment scheme prior to the cut-off date. It is also undisputed that the petitioner was not

eligible to be covered under the direct payment scheme prior to the cut-off date. The petitioner's eligibility accrued on 01.12.1989, which is after the cut-off date. Further, the +3 wing of the College having opened in the year 1987-88 was notified as an aided College from 01.06.1994 as per GIA Order, 1994. The petitioner had in the meantime been approved for grant-in-aid with effect from 01.06.1990 being a teacher of the +2 wing. Even though much argument has been made to contend that the petitioner, despite being appointed against the 2nd post in the +2 wing was teaching in the +3 wing yet the same cannot be of any help to her firstly, because there is nothing on record to substantiate such contention and secondly, in view of the express prohibition in the Resolution dated 01.11.1994 for grant of UGC scale of pay to teachers either covered or eligible to be covered under the direct payment scheme by the cut-off date i.e., 01.04.1989. This Court therefore, finds that the petitioner is not entitled to the benefit of UGC scale of pay as claimed. To such extent therefore, the impugned order deserves no interference.

10. Learned counsel appearing for the petitioner has relied upon the cases of several purportedly similarly placed lecturers who have been granted UGC scale despite their services being approved after the cut-off date. Reliance has been placed particularly on the case of **Ajay Kumar Das vs. Gagan Bihari Dhal & Anr.** (I.A. No.1/2006 in CONMPT. PET.(C) No. 155/2014 in C.A. No. 3793/2012). It is however seen that in the said case it was specifically observed by the Apex Court that the direction issued in the said case shall not prevent the State from taking all such defences as may be open to them in law and facts insofar as similar claims made by other teachers are concerned and that no opinion was expressed on the merit of any such contentions which the State of Odisha may choose to urge in any such proceedings. Therefore the ratio of **Ajay Kumar Das** (supra) cannot simply be applied to the present case.

11. Insofar as the case of **Mamata Mohanty** (supra) is concerned it was held that the benefit would be available as on the date of acquiring higher qualification by the concerned teacher. The applicability of the resolution dated 06.11.1990 in case of teachers who were not covered or

eligible to be covered under the direct payment scheme prior to the cut-off date was not an issue in the said case.

12. Reliance has also been placed on the judgment of the Apex Court in the case of **State of Orissa & Anr. Vs. Dr. Siddhartha Kumar Sahu** (R.P.(C) No.2561/2016 in SLP(C) No. 5587/2011). It is seen that in the said case also, the Apex Court clarified as under:

“It is not disputed that there is a mistake as far as the judgment, that is, sought to be followed, is concerned. It is not the judgment dated 9th February, 2011 passed in Civil Appeal No.1272 of 2011, reported in (2011) 3 SCC 436, which rules the field, but the judgment dated 17th March, 1998 passed in Civil Appeal Nos. 8256 of 1996 (& connected matters), reported in (1998) 3 SCC 613.

Therefore, the order dated 18.02.2011 passed SLP(C) No.5587 of 2011 is reviewed. The petitioner (s) in SPC(C) No.5587 of 2011 will be governed by the decision of this Court State of Orissa and Anr. Vs. Aswini Kumar Dash and Ors., reported in (1998) 3 SCC 613.”

It is further evident that on account of huge delay the benefit already granted to Dr. Siddhartha Kumar Sahu was decided not to be disturbed by the State. Suffice to note that it cannot be cited as a precedent in the present case.

13. The petitioner has also relied upon the case of **The State of Odisha and Anr. Vs. Vagyalaxmi Das & Anr.** (Review Petition (Civil) Nos.964-965 of 2000, SLP (Civil)

Nos. 26228-26229 of 2019), wherein the respondent being appointed against the 3rd post of Odia was granted UGC scale even though she was appointed later than the petitioner. Learned counsel for the petitioner has relied upon the decision of the State Education Tribunal in GIA Case No.373 of 2011 filed by said Vagyalaxmi Das and on the order dated 16.03.2018 passed by this Court in FAO No. 188 of 2015 filed by the State against the order of the Tribunal. Reading of the order dated 10.01.2014 passed by the Tribunal reveals the relief was granted to the petitioner therein entirely basing on the ratio decided in the case of **Akshaya Kumar Swain vs. State of Orissa** (OJC No. 9242 of 2000, decided on 27.10.2005). Further, the point involved in the present case namely, the restriction placed under para-2(1) of Resolution dated 06.11.1990 viz-a-viz the cut-off date was neither raised before the Tribunal nor decided by it. As to order passed by this Court in FAO No 188 of 2015, it is observed that the said appeal was dismissed only on the ground of limitation and not on merits.

14. In **Akshaya Kumar Swain (supra)**, it is observed that the petitioner was not granted the benefit of U.G.C.

scale as he had not acquired M.Phil degree at the time of his appointment. He had however, acquired such degree prior to approval of his appointment. The other ground for which such benefit was denied was that he was recruited by the Management. A Division Bench of this Court after considering the rival submissions held as follows:

“This being the position, we are also not in a position to find any ground to deny such benefit to the petitioner. The ground for such denial only being that he was recruited by the Management. As the petitioner has satisfied the requirements so far as they relate to the qualification in Annexures-3 and 5 and as there is nothing contrary to show in the record that the petitioner is not eligible to get grant-in-aid save and except saying that this is the reason he was recruited through the Governing Body, we are convinced that the petitioner shall be entitled to get the benefit as has been given to the similarly situated Lecturers like the ones sponsored by the Selection Board and adjusted against the direct payment post after 01.04.1989 as detailed in Annexure-4 to the writ application.”

It is evident that the moot question involved in the present writ petition is, eligibility of a Lecturer to receive UGC scale of pay after coming into the direct payment fold after 01.04.1989. The other point involved is whether a Lecturer appointed against +2 wing can be granted such benefit. Though in Akshaya Kumar Swain (supra) the Division Bench of this Court has taken note of the fact that

the petitioner therein was adjusted against the direct payment post after 01.04.1989, but the question of applicability of the condition laid down in the note appended to paragraph-2(1) of resolution dated 06.11.1990 per se was not decided nor was the point relating to eligibility of a +2 Lecturer to receive UGC Scale. Even otherwise, as has already been discussed hereinbefore, the Apex court in the case of Ajay Kumar Das has held that it is open to the State to take all such defences as may be open to them in law and facts. Therefore, the principal question that fell for consideration before the Division Bench in Akshaya Kumar Swain being intrinsically distinct than the present case, this Court is of the humble view that the decision rendered therein cannot be made applicable to the case at hand.

15. It is well settled that a decision is an authority for what it decides and not what can logically be deduced therefrom. It is equally well settled that a little difference in facts or additional facts may lead to a different conclusion. The above view was taken by a Constitution Bench of the Supreme Court in the case of **Union of India v. Chajju Ram**, reported in (2003) 5 SCC 568 : AIR 2003 SC 2339.

Therefore, it is observed that none of the cases relied upon by the petitioner are applicable to the facts of the case at hand.

16. It has been further argued that the petitioner is a physically disabled person and therefore, denial of the benefit of UGC scale of pay amounts to discrimination which is prescribed under the Rights of Persons with Disabilities Act, 2016. This is a fallacious argument and deserves to be rejected at the threshold, for the reason that there is not an iota of natural to show that the petitioner's claim for grant of UGC Scale was rejected on the ground of her disability rather, the same was rejected entirely on the basis of her ineligibility as per the relevant provisions.

17. Another important aspect to be noted is that the petitioner claims to have been denied the benefit of UGC scale of pay since its inception i.e., 1989-90. She however preferred to remain silent till as long as 2005 from the date of issuance of the Resolutions dated 06.10.1989 and 06.11.1990. There is no explanation offered as to the inordinate delay in approaching the authorities/Court

earlier. In the case of **Mamata Mohanty** (supra), the apex court took a serious view as the petitioner had approached the High Court after many years of adoption of the principle for grant of UGC scale of pay evidently because the cases of certain similarly placed persons had been allowed by the High Court/Supreme Court. This is another ground for denying the relief claimed by the petitioner.

8. For the foregoing reasons therefore, this Court finds no infirmity much less any illegality in the impugned order so as to interfere therewith. Resultantly, the writ petition being devoid of merit is therefore, dismissed.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack,
The 14th October, 2022/A.K. Rana, P.A.