

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**WPC (OAC) No. 4076 of 2013**

***Sarat Chandra Dikshit***

...

***Petitioner***

Mr. M.K. Panda, Advocate

*-versus-*

***State of Odisha & Others***

...

***Opposite Parties***

Mr. R.C. Pattnaik,

Standing Counsel

(School and Mass Education)

**CORAM:**

**JUSTICE M.S. RAMAN**

**ORDER**

**29.04.2022**

**Order No.**

1. *1.* This matter is taken up by virtual/physical mode.
2. The Original Application No. 4076 (C) of 2013 was filed before the Odisha Administrative Tribunal, Cuttack Bench, Cuttack. After its abolition, the same has been transferred to this Court which is renumbered as WPC (OAC) No. 4076 of 2013.
3. The Petitioner challenged the order of rejection dated 31st October, 2012, whereby his representation had come to be disposed of by the Director, Elementary Education, Odisha, Bhubaneswar communicated vide Memo No.17214, dated 31.10.2012 on the following ground :

“\*\*\*

*That, this case relates to allowing Trained Graduate Scale of Pay in favour of Aided / U.P. (M.E.) School with effect*

P.T.O.

*from 01.04.1975 or date of passing of B.Ed. whichever is later.*

*Government in their Order No.22046/SME, dated 08.11.2005 in O.A. No.305(C)/2000 and O.A. No.2383(C)/2003 have intimated that the Finance Department have been pleased to agree to allow the benefit to the applicant only, where the Hon'ble High Court / Tribunal have given specific orders as it has no general applicability.*

*That, in the instant case no specific order has been passed by the Hon'ble Tribunal for allowing Trained Graduate Scale of Pay to the applicant.*

*As such, the prayer of petitioner for allowing Trained Graduate Scale of Pay by granting the benefit of Rule 9 of the 1974 Rules with effect from 19.08.1978, i.e., from the date of acquisition of B.Ed. qualification has no merit and rejected. \*\*\*"*

4. Mr. M.K. Panda, counsel for the Petitioner submitted that the rejection of his representation is not tenable as the Competent Authority is required to grant the benefit under Rule 9 of the Odisha Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Education Instructions) Rules, 1974 with effect from 19.08.1978, i.e., from the date of acquisition of B.Ed. qualification.
5. The case of the petitioner is that while continuing as Headmaster in U.P.(M.E.) School under District Inspector of Schools, Banki he acquired B.Ed. qualification on 19.08.1978 and got retired from his services on attaining the

age of superannuation on 30.11.2007. Though he is entitled to Trained Graduate Scale of Pay on and from 19.08.1978, the authorities have not extended the benefit as claimed.

6. The learned Odisha Administrative Tribunal *vide* Order dated 07.07.2014 directed for filing of counter, the same has not been filed. Since the matter is of the year 2013 and the learned Tribunal *vide* Order dated 17.01.2018 observed as follows:

“\*\*\*

*List this case in the head “HEARING” in the 2<sup>nd</sup> week of February, 2018 and if by then, no counter is filed, then the case will be decided without the counter.”*

Therefore, the prayer of the Standing Counsel seeking for further adjournment is rejected and this Court does not wish to delay the matter any further by adjourning the matter.

7. From the rival contentions and submissions, the question arises for consideration is whether the petitioner having acquired B.Ed. qualification on 19.08.1978 is eligible for benefit of Trained Graduate Scale of Pay from that date as claimed?

8. The question is no more *res integra*.

9. This Court in an identical context that is obtained in the present case has decided the matter in affirmative in favour of the petitioner. In the case of *Sri Madhab Chandra Podh Vrs. State Of Orissa And four Ors., 1998 (II) OLR 334*, the

petitioner therein had travelled to this Court with the grievance that though he was continuing against a Trained Graduate Post in the Sachidananda High School in the district of Bolangir and acquired the trained qualification in December, 1983, yet he has been refused to be granted the trained graduate scale of pay since the date of his acquiring such qualification. In the decision of the Government communicated on 7.2.1983 *vide* Letter No. 5680-XIV-EDET-5/83/EYS, dated 07.02.1983 addressed to the Deputy Director of Public Instructions, Odisha, it was decided that there is no bar to allow trained scale of pay to all untrained graduate appointed against a trained graduate post as soon as he acquires training qualification. This decision was being taken by the Government in the background of the fact as to whether there was any necessity to amend the Rule 8(2)(b) of the Odisha Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974. The decision was that there was no need for amendment of the Rule to achieve the purpose of granting Trained Graduate Scale of Pay to a teacher who had been appointed against a Trained Graduate Post but was being paid a lesser scale of pay because of his not having the trained qualification. This was a general decision applicable to all such teachers and, therefore, he became entitled to the Trained Graduate Scale on his acquiring the trained qualification.

9.1. In yet another case being *Jasobanta Mohanty Vrs. State of Odisha, 2016 (II) ILR-CUT 384*, the decision rendered by this Court in *Madhab Chandra Podh Vrs. State of Orissa and 4 others, 1998 (II) OLR 334* was followed. At Paragraph 7 of *Jasobanta Mohanty Vrs. State of Odisha, 2016 (II) ILR-CUT 384* this Court observed as follows:

“7. The next question that arises for consideration of this Court whether the petitioner is entitled to arrear salary with effect from he acquired B.Ed. qualification. In the case of *Union of India and others Vrs. Tarsem Singh, (2008) 8 Supreme Court Cases 648*, the apex Court in paragraph-7 of the report held thus:

“7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. 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. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted

*in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.”*

8. *In view of the authoritative pronouncement of the apex Court in the case of Tarsem Singh (supra), the petitioner is entitled to arrear salary for a period of three years prior to the date of filing of the writ application.*
9. *The inescapable conclusion is that the petitioner is entitled to trained graduate scale of pay with effect from the date he acquired B.Ed. qualification. With regard to the arrear salary, the same shall be calculated and paid to the petitioner for a period of three years prior to the filing of the writ application. Since the petitioner has retired from service, his pensionary benefits shall be calculated accordingly. The entire exercise shall be completed within a period of six months. The writ application is allowed. No costs.”*

- 9.2. This Court made the following further observation in the case of *Jasobanta Mohanty Vrs. State of Odisha, 2016 (II)* ILR-CUT 384:

*“10. Before parting with the case, this Court is of the view that the claim of the petitioner was denuded on jejune grounds. The immortal words of Chief Justice Chagla in the case of Firm Kaluram Sitaram Vrs. The Dominion of India, AIR 1954 Bombay 50, that when the State deals with a citizen it should not ordinarily rely on technicalities, and if the State is satisfied that the case of the citizen is a just one, even though legal defences may be open to it, it must act, as has been said by eminent judges, as an honest person.”*

- 9.3. Mr. M.K. Panda, counsel for the Petitioner brought to the notice of this Court by referring to Annexure-4 that in the similar context the learned Administrative Tribunal has granted relief to the applicant therein namely *Siba Prasad Hota Vrs. State of Odisha and Others* being O.A. No. 837(C) of 2006 and others. The Order dated 6th September, 2007 passed in aforesaid cases by Administrative Tribunal is quoted hereunder:-

*“Heard the learned counsel for the applicants as well as the learned standing counsel (SME).*

*The applicants who are trained graduate teachers are working as Headmasters in different M.E. Schools under the D.I. of Schools, Patnagarh in the district of Balangir. The said schools was taken over by the Government with effect from 1.4.1991. According to the applicants they are entitled for trained graduate scale of pay from 1.4.1975 or the date of passing B.Ed examination whichever is later.*

*It is submitted by the learned counsel for the applicant that the applicants have made represent at one vide Annexure-7 to the Director, Elementary Education Orissa, Bhubaneswar (Respondent No.2) with a prayer to take*

*necessary steps for fixing of their pay under ORSP Rules, 1978 in the trained graduate scale of pay from 1.4.1975 or from the date of B.Ed. examination whichever is later but no order has yet been passed on their representations. Hence, he submits that respondents No.2 may be directed to consider and pass appropriate order on their representation within a time frame.*

*The learned standing counsel (SME) submits that without expressing any opinion on the merit of the case, respondent No.2 may be directed to consider and dispose of the representations of the applicant as per law.*

*Similar cases, such as O.A. 305(C)/2000 and batch were filed and disposed of by a two Member Bench of this Tribunal vide order dated 24th March, 2003 as at Annexure-5. Applying the ratio of the said decision, dispose of the aforesaid as with a direction to the respondents to follow the direction issued by the Government under ..... the pay of the applicants in the scale of pay Trained Graduate teachers from the date of passing of B.Ed. examination and revise their pay as per the ORSP Rules, 1998 with effect from 1.1.2006. The said exercise shall be completed within three months from the date of receipt of a copy of this order.*

*The O.As are disposed of.”*

- 10.** Since the similarly situated persons have been directed to avail the benefit of scale of pay as trained graduate teacher from the date of passing B.Ed. examination, the Petitioner's case deserves consideration in the light of decisions referred to *supra*.
- 11.** Without expressing any opinion on the merits of the case, this Court disposes of the writ petition directing Opposite

Party No.2 to consider the representation of the petitioner taking into consideration the Judgments and Order(s) and pass appropriate order in accordance with law within a period of three months from the date of production of certified copy of this order along with the letter of Government of Odisha in School and Mass Education Department relied upon by the Petitioner.

**12.** Accordingly, the writ petition stands disposed of.

**(M.S. RAMAN)**  
**JUDGE**



Laxmikant

April 29, 2022  
Cuttack