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IN THE HIGH COURT OF ORISSA : CUTTACK
(ORIGINAL JURISDICTION CASE)

O. J. C. NO: 9242 OF 2000

CODE NO 310194

IN THE MATTER OF :

An application Under Articles 226 and 227

presented in Court
B.O.

of the Constitution of India and Arts. 14 and 16
of the Constitution of India;

19-9-2000

A N D

IN THE MATTER OF :

An application Under the provisions of
Orissa Education (Recruitment and conditions
services of Teachers and members of the
staff of Aided Educational Institutions
Rules 1974 and subsequent resolutions of the
Govt. for sanctioning the U.G.C. scale of
pay to the petitioner ;

A N D

IN THE MATTER OF :

Akshaya Kumar Swain, aged 40 yrs,
Son of Sukadev Swain, At- Bhagbarh, P.O.
Baradip Lock, Dist. Jagatsingpur, at present
serving as a Lecturer in English, Jagatsingpur
College, Jagatsingpur, Dist. Jagatsingpur

19/9/2000
P. H. Mohanty
NOTARY, CUTTACK CITY

Dr. Lin
Adv.

PETITIONER.

19/9/2000

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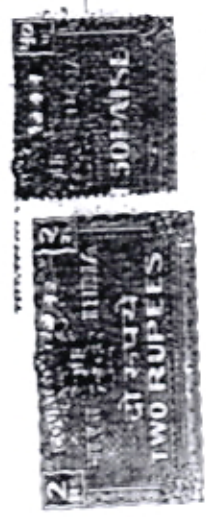
- Versus -

1. State of Orissa, represented through Principal,
Secretary to Govt. Deptt. of Higher Education,
Secretariate Building, At/P.O. Bhubaneswar,
Dist. Khurda.
2. Director, Higher Education, Orissa,
Heads of the Department Building,
At/P.O. Bhubaneswar, Dist. Khurda.
3. Governing Body of S.V.M. College,
represented through Principal - cum- Secretary,
At/P.O./ Dist. Jagatsingpur.

.... OPP. PARTIES.



C 981		O.J.C. No. 9242 of 2000	
Serial No. of Order	Date of Order	ORDER WITH SIGNATURE	Office note as to action (if any) taken on Order
5.	27.10.2005	<p>Heard Mr. B. Routray, learned counsel for the petitioner and Mr. Swain, learned Additional Standing Counsel for the State.</p> <p>The brief facts leading to this writ application as narrated therein are as follows.</p> <p>The petitioner was appointed against the 1st post of Lecturer in English in Kishorenagar College which got affiliation from the University w.e.f. 1.6.1983 and joined the said post on 4.11.1984. The petitioner while joining as a Lecturer was having qualification of 2nd class <u>Honours degree</u> and 2nd class <u>Master's degree</u> both in English. The college came under the fold of grant-in-aid w.e.f. 1.6.1988, i.e., 5 years after the date of recognition, i.e., 1.6.1983. The case of the petitioner is that the State Government by its resolution issued in Annexure-3 fixed the qualification for recruitment of Lecturers in affiliated Colleges of the State. The said Annexure-3 stipulates that candidate should have an M.Phil degree or a recognized degree beyond Master's level with at least a second class Master's degree. The petitioner though at the time of appointment did not have the M.Phil degree, prior to the approval of the appointment of the petitioner, i.e., 4.11.1989, he acquired the M.Phil degree. It is stated that the petitioner acquired the M.Phil degree in October 1989. The further case of the petitioner is that as per</p>	



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Serial No. of Order	Date of Order	ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
		<p>Annexure-5, a candidate acquiring M.Phil degree will be eligible to get the scale of pay of Rs.700-1600/- (pre-revised UGC scale) from the date of publication of the result. But the same benefit has not been extended to the petitioner compelling the petitioner to file this writ application.</p> <p>Counter affidavit has been filed by Opposite Party Nos.1 and 2 through one Ashok Kumar Mohanty, working as Deputy Director (SCH), Higher Education, refuting the claim of the petitioner mainly on the ground that the benefit cannot be extended to the petitioner as the petitioner came to the fold of grant-in-aid after 1.4.1989. It is an admitted fact that the petitioner was recruited as a Lecturer in English by the Management of Kishorenagar College against the 1st post of Lecturer and he was also allowed to receive grant-in-aid w.e.f. 4.11.1989, i.e., after 1.4.1989. The further case of the Opposite Party is that apart from all these Lecturers, who were selected by the service Selection Board, no other candidates have received the benefit of UGC scale of pay after 1.4.1989. To this, Mr. Routray, learned counsel for the petitioner submits that this is a hostile discrimination as against the petitioner as there is no distinction between the candidates recruited through Governing Body and through the Selection Board. The educational qualification of both the categories</p>	

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Serial No. of Order	Date of Order	ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
ated contd...		<p align="center">-3-</p> <p>are same so also the nature of duties and responsibility. On this score, we have asked the <u>State Counsel</u> to address us how the petitioner stands on a different footing than that of the Selection Board candidate. There is no answer to this. In the writ application in Annexure-4, the petitioner has given a list of Lecturers who were admitted into grant-in-aid fold even if their cases were approved after 1.4.1989. To this, there is no denial in the counter nor is there any convincing answer by the State.</p> <p>This being the position, we are also not in a <u>position</u> to find any ground to deny such benefit to <u>the petitioner</u>. 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 1.4.1989 as detailed in Annexure-4 to the writ application.</p>	



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The writ application is accordingly allowed. The opposite parties are directed to extend the benefit of UGC scale of pay in favour of the petitioner with effect from the date of approval. This exercise shall be done within a period of six months from the date of receipt of this order.

Urgent certified copy of this order be granted as per rules.

sd - B. R. Das J.
sd - A. K. Sanyal J.



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