



No. 14540(2)
W.P.(C) No. 20728/2012

FROM

THE SUPERINTENDENT OF THE HIGH COURT OF ORISSA, CUTTACK

To

- ✓ 1. The Department of Higher Education, Govt. of Odisha
(represented by Secretary, Department of Higher Education),
Secretariat, Bhubaneswar-751001, Dist: Khurda.
2. The Director, Higher Education, Govt. of Odisha, Heads of
the Departments Building, Bhubaneswar-751001,
Dist: Khurda.

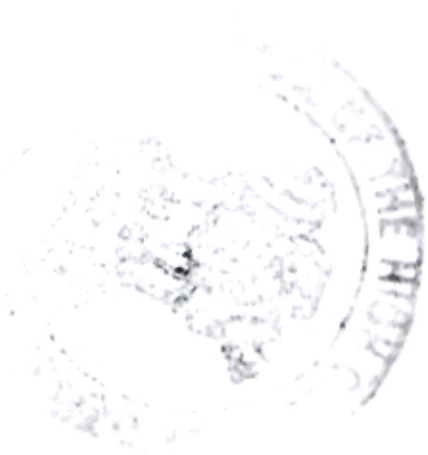
Dated, Cuttack the 15-4- 2019

Sir,

I am directed to forward herewith a copy of Court's Judgment dated 27.03.19 passed in W.P.(C) No. 20728/2012 (Dr. Jayashree Sarangi -Vrs.- Dept. of Higher Education, Govt. of Orissa & Ors.) for your information and necessary action.

Yours faithfully,

SUPERINTENDENT



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ORISSA HIGH COURT, CUTTACK.

W.P.(C) No.20728 of 2012

*An application under Articles 226 & 227 of
the Constitution of India.*

Dr. Jayashree Sarangi

... **Petitioner**

Versus

**Department of Higher Education,
Govt. of Odisha & another**

... **Opposite Parties**

For Petitioner

: Mr. D.K. Satpathy,
Advocate

For Opp. Party nos.1 & 2:

Mr. S.N. Mishra,
Additional Government Advocate

PRESENT :

THE HONOURABLE MR. JUSTICE BISWANATH RATH

Date of hearing : 19.03.2019

Date of Judgment : 27.03.2019

Biswanath Rath, J.

This writ petition has been filed by the petitioner seeking the following relief:

"In the facts and circumstances of the case it is humbly prayed that the Hon'ble Court be graciously pleased to admit the petition, to quash the order no.23510 dated 22.09.2012 of O.P.No.1 and after hearing learned counsel for the parties issue a writ in the nature of mandamus or any other appropriate writ/order or direction commanding the Opp.Parties to grant to the petitioner forthwith (i) UGC scale of pay with effect from 1.6.86, i.e. her date of approval, (ii) pay all her differential arrear salary due to her till date with

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interest @6% per annum since the date of her approval and (iii) determine accordingly her rank and status by according her promotion as and whenever necessary."

Looking to the pleadings and the prayer indicated hereinabove, it appears, the petitioner has sought for a direction from this Court for quashing of the order at Annexure-5 on the premises of being contrary to the resolution of the Government dated 6th October, 1989 at Annexure-6.

2. Short background involved in the case is that the petitioner was appointed as Lecturer in Odia at Shyamsundar Sanskrit College, Bhograi in the district of Balasore since 26.11.1984. Post of the petitioner was approved on 1.06.1986 vide order No.8750 dated 14.03.1990. The petitioner claimed that on approval of her post, she became eligible for direct payment of salary as per the grant-in-aid principle. In a subsequent development the name of the petitioner has been approved as the Principal-cum-Secretary of Shyamsundar Sanskrit College, Bhograi. The petitioner claimed that the institution where she works is fully aided and also covered under the provision of direct payment under the grant-in-aid principle w.e.f. 14.4.1975. Referring to Annexure-3 a communication dated 4th October, 1983 learned counsel for the petitioner claimed that the institution of the petitioner is also affiliated to Shree Jagannath Sanskrit Vishwavidyalaya, Puri with commencement of academic session 1981-82. Petitioner further claimed that Shyamsundar Sanskrit College, Bhograi has been permanently affiliated by Shree Jagannath Sanskrit Vishwavidyalaya, Puri under a communication of the University dated 6.1.2011 vide Annexure-4. The pleading further discloses that the petitioner's representation for grant of U.G.C scale from the particular date has been rejected



by the opposite party no.1 on 22.09.2012 vide Annexure-5, which is assailed herewith.

3. Petitioner alleged that the resolution dated 6.10.1989 does not include the grant of U.G.C scale to the teachers of the aided non-government Sanskrit Colleges and tolls which are coming under the category of special education and different from that of direct payment system.

4. Referring to different documents appended herein and the explanation at Section 3 of the Orissa Education Act, 1969 which includes educational institutions imparting Shastri, Upashastri, Madhyama and Prathama courses of Shree Jagannath Sanskrit Vishwavidyalaya shall be deemed to be a College/ Junior College, learned counsel for the petitioner submitted that not only there has been no following of the provision at Section 3 of the Orissa Education Act, 1969 but the decision of the authority also remains contrary to the clause 3.3.1 of the resolution dated 6.10.1989. Learned counsel for the petitioner thus contended that there has been discrimination attributed so far as the petitioner is concerned in the matter of grant of U.G.C scale of pay.

It is, in the above premises, learned counsel for the petitioner prayed this Court for allowing the prayer of the petitioner made in the writ petition.

5. Learned counsel for the petitioner further referring to the rejoinder affidavit submitted that the petitioner holding the post belongs to non-sanskrit subject becomes immaterial. Learned counsel for the petitioner, therefore, urged that the post of Lecturer in Odia being a post available in a Sanskrit college there cannot be two principles adopted for a Sanskrit subject and Odiya subject involving particular institution.

6. Learned counsel for the petitioner also challenged the stand of the contesting opposite party that the U.G.C scale of pay can only be applied to the junior colleges and the college of accountancy and management studies following the resolution dated 6th of October, 1989 and also claimed that the decision runs contrary to the said resolution and further, also runs contrary to the definition of the educational institution read with its explanation in the Orissa Education Act, 1969. In the above premises, learned counsel for the petitioner justified the claim of the petitioner.

7. On the contrary, Shri S.N. Mishra, learned counsel representing on behalf of the Director Higher Education Department-opposite party no.2 as well as opposite party no.1 referring to the counter affidavit contended that the post of Lecturer in Odiya under the Shyamsundar Sanskrit College, Bhograi belongs to non-sanskrit subject in Upashastri and Shastri courses, therefore, following the yardstick involving a correspondence of the Government of Odisha Education and Youth Services Department, learned counsel attempted to justify that the petitioner being a non-cadre employee of an aided institution and for there being no indication in the resolution dated 6.10.1989 providing U.G.C scale of pay to lecturer in aided Sanskrit college, the petitioner is not entitled to U.G.C scale of pay. Learned counsel for the opposite party no.2 also contended that the Sanskrit college and Sanskrit Tolls are coming under the category of special education and therefore, they are covered under the separate grant-in-aid policy of the State. It is, in the above premises, learned counsel for the opposite party no.2 submitted that there is no illegality in passing of the order vide Annexure-5.

8. Considering the rival contentions of the parties, this Court finds, there is little background involving the case i.e. in the first instance, at an earlier occasion the petitioner moved this Court on the selfsame prayer by filing W.P.(C0 No.4936 of 2004 which matter was disposed of by this Court by order dated 25.10.2009 giving the following direction:

“Considering the said submission, we direct that, if the petitioner makes a representation to OP1 highlighting the grievance, as was in the writ petition, within one month from today, OP 1 shall take a decision on the said application by taking into consideration the eligibility criteria in the resolution dated 6th October, 1989 passed by the Government of Orissa, Education and Youth Services Department, within a period of three months thereafter.”

It is based on the above direction, the opposite party no.2 considering the representation of the petitioner disposed her claim by the order vide Annexure-5 impugned herein.

9. Now coming back to the case at hand, from the pleadings as well as the order vide Annexure-1 this Court finds, there is no denial to the fact that the petitioner was originally appointed as a Lecturer in Odiya at Shyamsundar Sanskrit College, Bhograi on 26.11.1984 vide Annexure-1 by the order of the Director, Higher Education Department dated 14.03.1990 treating the petitioner to be an appointee on 1.06.1986. She has been made eligible to receive grant 1/3rd w.e.f. 1.06.1987. While the petitioner was continuing as such, she has been approved against the post of Principal-cum-Secretary of the same College by the order of the Deputy Director dated 3.05.2014. Communication at Annexure-3 issued by the authority of Shree Jagannath Sanskrit Vishwavidyalaya, Puri discloses affiliation of Shyamsundar Sanskrit College, Bhograi to be Shree Jagannath Sanskrit Vishwavidyalaya for the academic session 1981-82 and 1982-83 vide Annexure-4. The communication dated 6.01.2011 also

discloses a list of institution getting permanent affiliation under Shree Jagannath Sanskrit Vishwavidyalaya which includes Shyamsundar Sanskrit College, Bhograi at Sl.no.8. The above being the undisputed facts, this Court now proceeds to examine the benefits in the resolution dated 6.10.1989. Clause 2 of the Resolution reads as follows:

"2. Following the appointment of the Fourth Pay Commission for Central Government Employees the U.G.C. had appointed a committee under the Chairmanship of Prof. R.C. Moherotra to examine the present structure of the emoluments and conditions of service of University and College Teachers. After considering the recommendations of the Committee, the University Grants Commission submitted its recommendations to the Government of India for their consideration and implementation. The Government of India after examining the various recommendations contained in the report and the observation of the U.G.C., communicated their decision to the State government in their letter, dated the 17th June, 1987 with further clarification on the 7th September, 1987 and the 22nd July, 1988 and requested to implement the scheme in the States after taking local condition into consideration."

10. Clause 3.1 under the heading 'coverage' brings in all categories of full time teachers in all affiliated government colleges and aided non-government colleges either covered or eligible to be covered under direct payment scheme till 1.04.1989. Similarly, clause 3.3 prescribing the revised scale of pay of Lecturers at sl.no.1 so also the Principals of Colleges at sl.no.6. Looking to the aforesaid provision in the resolution dated 6.10.1989, this Court finds, the benefits therein covers all aided non-government colleges till 1.04.1989. It is, at this stage of the matter, this Court finds, Shyamsundar Sanskrit College, Bhograi to which the petitioner belongs, got interim affiliation of Shree Jagannath Sanskrit Vishwavidyalaya for the academic session 1981-82 and 1982-83 and it also got permanent affiliation of the very same University vide notification dated 6.01.2011. Annexure-1 further discloses that the petitioner became eligible for grants from 1.06.1987

whereas, the institution of the petitioner became eligible to receive the grant-in-aid much prior to 1987.

Under the circumstance and for there being no exclusion of the institution like that of the institution to which the petitioner belongs, from clause 3.1 this Court observes, the institution to which the petitioner belongs, is also covered under the resolution dated 6th October, 1989. Further, looking to a correspondence vide Annexures-7 & 8, this Court on examining the issue of grant of U.G.C scale of pay to the Sanskrit College teachers in the State, finds, on deliberation on the said issue, there has been covering of at least 33 lecturers out of 36 lecturers continuing then in the Sanskrit colleges to be eligible to get U.G.C scale of pay and the matter was left open to the Government to take decision on the same.

11. It is, at this stage, considering the objection of the State that the petitioner's institution stands on a different footing and cannot be treated as a general institution, this Court here taking into account the definition at 3-(b) and 3-(f) of the Orissa Education Act, 1969 and the explanation finds as follows:

"3.(b) Aided Educational Institution means private educational institution which is eligible to and is receiving grant-in-aid from the State Government, and includes an educational institution which has been notified by the State Government to receive grant-in-aid.

(f) Educational Institution means any college or a junior college or a Higher Secondary School or any other School defined in this Act or any institution imparting technical and professional education, special education and includes all movable and immovable properties of such School or College, as the case may be.

Explanation - An Educational Institution imparting Shastri, Upashastri, Madhyama and Prathama courses of Shri Jagannath Sanskrit University shall be deemed to be a College, a Higher Secondary School/junior College, a High School and

an Upper primary School respectively for the purposes of this Act."

Reading of all the above provisions together with explanation therein, this Court finds, the institution imparting Shastri, Upashastri, Madhyama and Prathama courses of Shree Jagannath Sanskrit Vishwavidyalaya shall also be deemed to be a college and further subject Odia being one of the subject in these Sanskrit Colleges, this Court finds, there is no question of keeping the petitioner away from the benefit under the resolution dated 6th October, 1989 at Annexure-6. To establish that the subject odiya is a subject in the Upashastri course, this Court here refers to the document filed by the Director vide Annexure-A/2.

12. Under the circumstance, for the clear position involving the resolution dated 6th of October, 1989, the development taking place through the document at Annexures-7 & 8 and the legal provision indicated hereinabove, this Court finds, the impugned order vide Annexure-5 remains unsustainable. This Court, therefore, interfering in the impugned order at Annexure-5 sets aside the same and while allowing the writ petition directs the opposite party nos.1 & 2 to grant the benefit of U.G.C scale to the petitioner w.e.f. from her appointment since her eligibility w.e.f. 1.06.1987. The entire arrear for the grant of above benefit shall be calculated within a period of six weeks hence and be released in favour of the petitioner within fortnight thereafter. The benefit so accrued shall also carry interest @ 6% per annum allthrough.

13. The writ petition succeeds. No cost.

*True copy
NGJ
supd*

Sd. Prishwanath Rallu

Orissa High Court, Cuttack.
The 27th day of March, 2019/A. Jena, Sr.

