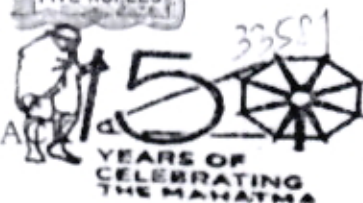


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IN THE HIGH COURT OF ORISSA : CUTTACK

W.P. (C) NO. 16912 OF 2017

Code No 311000

In the matter of :

An application under Article-226 & 227 of the
Constitution of India ;

A N D

In the matter of :

Article 14, 16 and 39 (d) of the Constitution of India ;

A N D

In the matter of :

Presented in Court

B.O. 16/8/17

Illegal denial of Revised UGS Scale of Pay to the
Petitioner - Lecturer working against an approved
post in the Christ College (Non-Government Aided
Degree College) ;

A N D

In the matter of :

Orissa Education Act, 1969 read with Orissa
Education (Recruitment & Condition of the Teachers
& Members of the Staff of Aided Educational
Institutions) Rules. 1974 ;

A N D

In the matter of :

... aged about 48 years. S/o. Late



Chhak, Cuttack, presently working as Lecturer in Chemistry, Christ College, Cuttack.

... Petitioner

-Vrs.-

1. State of Orissa represented by its Secretary to Government in the Department of Higher Education, Secretariat Building, Sachivalaya Marg, Bhubaneswar, Dist-Khurda.
2. Director of Higher Education, Orissa, At-Heads of Department Building, Bhubaneswar, Dist-Khurda.
3. Governing Body of Christ College, represented through its Secretary, Christ College, At/P.O./Town/Dist-Cuttack.

... Opposite Parties



Sl. No. of Order	Date of Order	ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
11.	28.08.2019	<p style="text-align: center;"><u>W.P. (C) No.16917 of 2017</u></p> <p>Heard Sri P.K. Jena, learned counsel for the petitioner and Sri S.N. Mishra, learned Addl. Government Advocate for the State.</p> <p>Short background involving the case is the petitioner joined Christ College, Cuttack established in the city of Cuttack having the concurrence from the Government and affiliation to the Utkal University. Christ College is covered under the direct payment scheme made by the State Government since 01.04.1974 and the college imparts education at the degree level both Science and Arts since long. Seven posts of Lecturer in Chemistry in the college was approved by the Director, Higher Education, Orissa on 26.05.1976. At a subsequent date on 12.01.1977 another two posts in the Chemistry was approved by the Director, Higher Education, Orissa with effect from 1977-78 and the posts were brought under the direct payment scheme from 1981-82. While the matter stood thus, the State Government brought out a notification</p>	



Sl. No. of Order	Date of Order	2 ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
		<p>to implement revised scale of pay for the Teachers in the Universities and other colleges following the University Grants Commission recommendation. A regulation was also brought in the meantime on 06.11.1990 by the Government to regulate the revision of scale of pay of different categories of Teachers serving in aided non-Government colleges.</p>	
		<p>In 1994 the petitioner became a Post-Graduate in Chemistry. Pursuant to an advertisement brought in 'The Samaj' by the college for the post of Chemistry including other subjects, the petitioner became an applicant for the post of Chemistry in the year 1998. Being selected, appointment letter was issued by the management of the college to the petitioner appointing him in the post of Chemistry but however in consolidated pay of Rs.1,600/- per month. The petitioner joined as a Lecturer in Chemistry on 09.02.1999. Petitioner's appointment was approved by the Director, Higher Education, Orissa under direct payment scheme on 01.07.1999 by way of</p>	



Sl. No. of Order	Date of Order	ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
		<p>communication dated 18.03.2000 vide Annexure-5. In the meantime a Lecturer standing in similar footing in the same college approached this Court for his entitlement to the revised scale of pay vide O.J.C. No.5855 of 1998 which writ petition was disposed of by judgment of a Division bench of this Court dated 09.05.2007, thereby allowing the writ application and directing the petitioner therein entitled to revised scale of pay and to grant the petitioner therein the benefit of salary of degree college lecturer. In disposing of W.P.(C) No.15478 of 2005, a Division Bench of this Court again granted similar relief to the petitioner involved therein by applying its own judgment vide O.J.C. No.5855 of 1998. The petitioner being deprived of the benefit of revised scale of pay made a representation to the Director, Higher Education, Orissa for grant of such benefit in his favour which not being considered, the petitioner approached this Court by filing Writ Petition No.11358 of 2011 which writ petition was disposed of on 03.05.2017 thereby directing the Director, Higher</p>	



Sl. No. of Order	Date of Order	4 ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
		<p>Education to dispose of the representation of the petitioner in the light of order passed therein under Annexure-8 and taking a decision thereon within a period of three months. In the meantime, the dispute involved in Contempt Petition No.1016 of 2017, which was disposed of directing the petitioner to approach the appropriate forum.</p> <p>Taking to the representation into consideration, the Director, Higher Education, Orissa rejected the claim of the petitioner observing as follows :</p> <p>"7. Whereas the cut-off date i.e. 1.4.1989 has been upheld by the Hon'ble Apex Court while deciding the case of State of Orissa vrs. Aswini Kumar Das. If the parameter of 1.04.1989 as the cut-off date for grant of U.G.C. scale of pay fixed in the Government Resolution dated 6.10.1989 and 6.11.1990 it has been upheld by the Hon'ble Apex Court is taken into account, the claim of the present petitioner Dr. Mishra does not come within the existing frame work set for extension of revised U.G.C. pay scale benefit."</p> <p>Sri Jena, learned counsel for the petitioner on reiteration of the facts narrated herein above and taking this Court to the two decisions of this Court and</p>	

Sl. No. of Order	Date of Order	5 ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
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disposal of similar matters in the Hon'ble Supreme Court, further the provision at Clause-3.1 of 1989 resolution contended that provision not covering the case of the petitioner since he was appointed after the cut-off date, the 1st April 1989, opposed not only the provisions contended in the resolution introduced by the State Government but also opposed to series of decisions through legal battles indicated herein above. Taking this Court to the history involving grant of revised scale of pay to the similarly situated person in the same institution, the background involving the judgment of this Court in a series of cases in the meantime and dismissal of attempt of the State in the Hon'ble apex Court in S.L.P.(C) No.17327 of 2014, thereby confirming the judgment of this Court in W.P.(C) No.15478 of 2005, further taking to the provision at Clause-3.1 of the resolution dated 06.10.1989, learned counsel for the petitioner claiming the action of the State Authority had prays this Court for interfering at Annexure-1, setting aside the same



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and allowing the writ petition with grant of relief claimed therein.

In their opposition the opposite party nos.1

and 2 filing counter affidavit opposed the claim of the petitioner on the premises that the judgment cited by the petitioner has no application to the case at hand. Further for the restrictions in Clause-3.1 of the resolution of the Government dated 06.10.1989 covering the employees appointed prior to cut-off date prescribed therein claimed that the petitioner is not entitled to the benefit claimed on the premises that the provision referred to herein above has no application to the case at hand.

Learned counsel for the State also taking this Court various grounds taken into counter affidavit attempted to oppose the claims made by the petitioner. Learned State counsel further taking this Court to the cut-off date fixed for the purpose submitted that the petitioner cannot get the benefit of revised scale of pay and grant of such benefit to the petitioner will lead to a



Sl. No. of Order	ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
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disastrous end. He thus prayed for dismissal of the writ petition.

Looking to the provision contained in the circular dated 06.10.1989, this Court finds, the provision at Clause-3.1 of the Resolution 89 reads as follows :

“Coverage- The revised scales and other measures for improvement of standards in higher education shall be applicable to all categories of full time Teachers working in all affiliated Government Colleges and aided non-Government Colleges either covered or eligible to be covered under direct payment schemes till the 1st April 1989. The scheme will also be extended to full time eligible teachers working in the college of Accountancy and Management Studies, Cuttack.”

It is at this stage taking into the background involving the institution where the petitioner is employed, this Court finds, there is no dispute that the Christ College- Institution, the employer of the petitioner has been brought to the fold of direct payment scheme by the State Government since 01.04.1974. Further it also appears there is no dispute



Sl. No. of Order	Date of Order	8 ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
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that the petitioner is holder of a sanctioned post in the department of Chemistry of the institution. Further looking to the notification brought on 03.11.1989, it also becomes clear that the State Government has already brought out a notification to implement the revised scale of Teachers in the University and other colleges as per U.G.C. recommendation. Further it also becomes clear from the resolution dated 06.11.1990 that the Government has already taken a decision to apply revision of scale of pay also to different categories of Lecturers serving in aided non-Government colleges.

Looking to the provision at Clause-3.1

quoted herein above, this Court observes the provision makes it clear that the institutions which have already got affiliation as non-Government College and entered into the direct payment scheme by 01.04.1989 will be entitled to apply revised scale of pay to each of its employees. This itself covers the case of the petitioner for the institution where the petitioner got employment has already been brought under direct payment scheme



Sl. No. of Order	Date of Order	9 ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
		<p>prior to 01.04.1989. Further looking to the provision of the subsequent resolution made by the Government dated 06.11.1990, the Government has made it clear to regulate the revision of scale of pay of different categories of teachers serving in the aided non-Government colleges of the State and applying the instruction under the resolution with effect from 01.01.1986 but however bringing in the aided non-Government colleges either covered or eligible to be covered under direct payment scheme till the 1st April 1989 as find place in Clause-2 sub-clause (1) of the resolution dated 06.11.1990. The matter was re-considered in terms of the disposed of writ petition but, however, the authority has taken a decision that the petitioner being appointed and confirmed subsequent to the cut-off date 1st April 1989, the petitioner is not entitled to the benefit under Clause 3.1 of the circular dated 06.10.1989, which decision appears to be not only contrary to the purpose of resolution 1989 as well as resolution 1990 referred to</p>	



Sl. No. of Order	Date of Order	10 ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
		<p>herein above but also remains contrary to the decision of this Court involving the writ petition indicated herein above. Thus it clearly appears that the decision of State authority remain contrary to its own resolution.</p> <p>Considering the case and counter case of the rival parties, looking to the observation of the Hon'ble Supreme Court in the case of State of Orissa and Anr. Vrs. Aswini Kumar Das & Ors., (1998) 3 SCC 613, this Court finds the Hon'ble Supreme Court in paragraph-15 has observed as follows :</p> <p>"15. In the present case the State Government has decided to provide grants-in-aid to cover the revised U.G.C. scales to pay for those teachers in existing colleges which have received Government concurrence and University affiliation on or before 1st of April 1989. The date has a direct nexus with the date of the decision to provide for such higher pay scales in the grant-in-aid to be given to the concerned colleges. The date which is so fixed cannot be considered as arbitrary or unreasonable. Colleges which have secured Government concurrence or affiliation from the University after 1st of April 1989, therefore, cannot claim any right to the higher grant in aid contrary to the policy as laid down by the State. The High Court was, therefore, not right in coming to the conclusion that the Note to paragraph 2(1) of the Government Resolution of 6th of</p>	



Sl. No. of Order	Date of Order	II ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
		<p>November, 1990, was arbitrary and unreasonable."</p> <p>The disposal of SLP No.17327 of 2014 involving a judgment of this Court in similarly situated case vide W.P.(C) No.15478 of 2005. The Hon'ble apex Court though condoned the delay but dismissed the Special Leave Petition on the ground of delay.</p> <p>Reading the aforesaid observation and direction of the Hon'ble Supreme Court, this Court finds for the benefit accrued to the employees involving the decision, case of the petitioner herein above, has the protection of revised scale of pay. For the application of Clause-3.1 to the institution/college which has admittedly acquired Government concurrence/affiliation from University prior to 01.04.1989 and for the admitted position that the institution which the petitioner is serving having got Government concurrence or affiliation from the University prior to 01.04.1989 there is no question of depriving the petitioner to get benefit of Clause-3.1 of the Resolution dated 06.10.1989 or from the benefit in terms of 1990</p>	



Sl. No. of Order	Date of Order	12 ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
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Resolution. Not only this petitioner's case is also squarely covered by the decision of this Court as well as the Hon'ble Apex Court taken note herein above.

In the circumstances, while interfering with the impugned order, this Court sets aside the order vide Annexure-1 and allows the claim of the petitioner directing the State Authority to put the petitioner in the U.G.C. scale of pay and also giving the benefit of the revised scale of pay with effect from the date of his approval, i.e. 01.07.1999. The entire calculation and release of arrear with 7% interest per annum all through will be undertaken within a period of six weeks from the date of production of certified copy of this order by either side.

The writ petition is disposed of accordingly.

Free copy of this order also be handed over to the learned State Counsel for necessary communication and compliance.

Sd- B. Rath, J.



Date of Application :- 28.
 Date of Notification :- 20.
 Date of Supply :- 22.
 Date of Ready :- 22.
 Date of Delivery :- 22.

01.2020

C.A. No- 5705/2020

MEMO OF COSTS

	Rs.	P.
Application Fee.....	0	50
Searching Fee.....	—	—
Extra Fee for Un.....	22	50
Folios Page 30	15	00
Hologram Fee (14)	14	00
Other Items if any.....	09	10
Total	61	10

(Rupees *Sixty one*
& Paise *Ten* only)

28.01.2020
ASO,

28/1/20
EXAMINER OF
CUM
SUPERINTENDENT
COPYING DEPARTMENT

CERTIFIED TO BE A TRUE COPY

22.01.20
Assistant Registrar (Estt.) I/c.
ORISSA HIGH COURT
Authorised Under Section-76, Act-I of 1972

