

HIGH COURT OF ORISSA: CUTTACK.

W.P.(C) Nos.590 of 2003, 24167 of 2012 and 25064 of 2013

In the matter of applications under Article 226 and 227 of the Constitution of India.

Abhimanyu Panda	(in W.P.(C) No.590 of 2003)
Nikunja Bihari Mohapatra	(in W.P.(C) No.24167 of 2012)
Swadesh Kumar Das	(in W.P.(C) No.25064 of 2013)
 Petitioners

- Versus-

State of Odisha and Others	(in all the cases)
 Opposite Parties

Counsel for Petitioners : Mr. J. K. Rath, Sr. Advocate, M/s. S. N. Rath, P. K. Rout, S. Mishra, C. K. Rajguru and D. N. Rath (in W.P.(C) No.590 of 2003)

M/s. S. Patra, P. K. Mohapatra, A. Panda, J. Mohanty and D. D. Sahu (in W.P.(C) No.24167 of 2012)

M/s. Sameer Kumar Das and S. K. Mishra (in W.P.(C) No.25064 of 2013)

Counsel for Opp.Parties :Mr. Bibhu Prasad Tripathy, Additional Government Advocate and Mr. K. K. Mishra, Additional Government Advocate.

PRESENT:

THE HONOURABLE SHRI JUSTICE SUJIT NARAYAN PRASAD

Date of hearing and judgment: 11.12.2017

S. N. Prasad, J. W.P.(C) No.25064 of 2013:-

This writ petition under Article 226 and 227 of the Constitution of India wherein the order dtd.29.07.2013 contained under Annexure-4 is under

challenge whereby and where under the claim of the petitioner to get the benefit of University Grants Commission Pay Scale has been rejected on the ground that he has entered into grant-in-aid fold under Direct Payment Scheme after the cut-off date, i.e. 01.04.1989.

2. The brief fact of the case of the petitioner is that the K.B.D.A.V. College, Nirakarpur, Puri is one of the oldest College, earlier known as Nirakarpur College, has got concurrence from the Government and affiliated to Utkal University since 1959 and is covered under the Direct Payment Scheme with effect from 01.04.1974, i.e. from the date of introduction of direct payment scheme mode by the State Government. It is an aided College within the meaning of Section 3(b) of the Orissa Education Act, hence the provision of Orissa Education Act and the rules framed there under are applicable. The college is imparting education up to the degree level in different faculties such as Arts, Science and Commerce since long. Considering the establishments and other features of the College, the opposite party no.2 has been pleased to approve the creation and approval of the lecturer post in the College and also accorded concurrence for expansion of I.com with 64 seats along with others. As per the provision of the yardstick prescribed by the Government, the Commerce stream justified for two posts of lecturers from the date of its concurrence, the Commerce stream in Nirakarpur College got Government concurrence from the session 1982-83, i.e. from 01.06.1982. So the department of Commerce became eligible for two lecturers as per the yardstick from 1.6.1982, accordingly, as per the grant in aid prevalent at the relevant

time and the present grant in aid orders, the post became eligible to receive grant in aid 5 years of its concurrence, therefore, the 1st and 2nd post of lecturer in Commerce are eligible to receive grant in aid from 01.06.1087.

The Governing Body, after following due process of selection, appointed the petitioner as lecturer in the Commerce in the College against the 2nd post on 6.11.1984 and he accordingly joined the post on 6.11.1984. The petitioner had secured 57.5% in M.Com examination and had also acquired M.Phil. and subsequently Ph.D. degree to his credit while he is in service, such appointment of the petitioner was, however, approved by the order of the Director dtd.11.12.1992 and he was paid grant in aid @ 1/3rd, 2/3rd and full cost w.e.f. 01.06.1989, 01.06.1991 and 01.06.1993 respectively. But due to illegalities committed by the authorities the petitioner's pay was fixed in the State Scale of pay in the approval itself but the petitioner has been denied the benefit of U.G.C. scale of pay while the others have been allowed.

The petitioner has raised this dispute and has approached this Court vide W.P.(C) No.25432 of 2012 annexing the copy of the judgment / order passed in O.J.C. No.5855 of 1998 and this Court, while disposing of the writ petition vide order dtd.22.3.2013, has directed the Director, Higher Education to consider the claim of the petitioner and in the light of the same, the authorities, while passing Annexure-3 dtd.29.07.2013, has rejected the same on the ground that the petitioner has entered into grant in aid fold under Direct Payment Scheme after the cut-off date, i.e. 1.4.1989.

3. Learned counsel for the petitioner, while arguing the case in assailing the order dtd.29.7.2013, has placed reliance upon the resolution dtd.6th October, 1989 which contains 'coverage' under clause 3.1. According to him the petitioner is coming under the coverage part and since he is eligible as per the educational qualification, hence his pay scale is to be replaced from Rs.1350-2975/- to that of the pay scale of Rs.2200-4000/-.

He further submits that his case is squarely covered by the judgment rendered by this court in the case of **Aswini Kumar Das Vrs. State of Odisha and Another** wherein the Hon'ble Apex Court while passing the judgment in Civil Appeal No.8256 of 1996 has approved the decision of the authority of fixing the cutoff date of 1.4.1989 and according to him since the petitioner has been appointed on a post which has been approved by getting the grant in aid fold prior to 1.4.1989, as such he cannot be denied the said benefit merely on the ground that he has come into grant in aid fold on 1.6.1989.

He submits by interpreting the provision of 'coverage' as contained in Clause 3.1 that it is the requirement of the coverage in view of the resolution dtd.6th October, 1989 that the revised scale 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 1.4.1989. Hence denying the said relief of U.G.C. pay scale is nothing but purely non application of mind.

He places reliance upon the other judgments rendered by this court in the case of **Sidhartha Kumar Sahu and Another Vrs. State of Orissa & Another** in O.J.C. No.5855 of 1998, **Mohin Mohammad Vrs. State of Orissa and Others** in W.P.(C) No.15478 of 2005, **Akshaya Kumar Swain Vrs. State of Orissa and Others** in O.J.C. No.9242 of 2000 and **Smt. Manjushree Patnaik Vrs. State of Orissa & Others** reported in 2006 (II) OLR 50.

4. Per Contra Mr. B. P. Tripathy, learned Additional Government Advocate appearing for opposite party – State has opposed the submission and argument advanced on behalf of learned counsel for the petitioner. While arguing, it has been submitted that the impugned order has got no infirmity in view of the fact that the petitioner has come into grant in aid fold after the cutoff date, as such he is not coming under the coverage part as contain in clause 3.1 of the resolution dtd.6th October, 1989 as also the provision of clause 2(1) of the Resolution dtd.6th November, 1990.

He submits that the petitioner has come into service on 6th November, 1984 against the 2nd post of lecturer in Commerce, received grant in aid @ 1/3rd, 2/3rd and full cost with effect from 1.6.1989, 1.6.1991 and 1.6.1993 on completion of required 5/7/9 years as per the principle for getting the benefit of grant in aid. He submits that the petitioner is wrongly interpreting the coverage part as given in clause 3.1 of the resolution dtd.6th October, 1989. According to him clause 3.1 stipulates that a teacher is to come

under the grant in aid fold prior to the cutoff date and since he has got benefit of grant in aid only on 1.6.1989, as such it is not available to him.

Learned Additional Government Advocate relied upon the judgment rendered in the case of **State of Orissa and Another Vrs. Mamata Mohanty** reported in (2011) 3 SCC 436.

5. The petitioner has filed rejoinder in reply to the stand taken by the opposite parties in the counter affidavit stating therein that so called cutoff date, i.e. 1.4.1989 as prescribed in the government resolution dtd.6th October, 1989 is not material for giving the benefit of resolution dtd.6.10.1989 with respect to the petitioner merely on account of the fact that he has come into grant in aid fold on 1.6.1989, rather the post on which he is working was approved prior to 1.4.1989 since the institution in question is coming under the fold of the resolution dtd.6.10.1989, hence the benefit of said resolution cannot be denied.

6. In reply, it has been submitted by the learned counsel appearing for opposite party – State that extending the U.G.C. pay scale to Non-Government College Teachers is out and out an executive decision of the employer and taking into consideration the said power, the State Government has taken decision in accordance with law, hence the same needs no interference by this court.

It has been stated that the judgment rendered in the case of **Akshaya Kumar Swain** (supra) has been assailed by them before the Hon'ble

Apex Court which was adjudicated along with 627 alike cases, the leading case being Civil Appeal No.1272 of 2011, taking into account his acquisition of higher qualification like M. Phil. vide Utkal University notification dtd.24.9.1990 though Sri Swain was exempted from the deficiency of under qualification as per the judgment of Hon'ble Supreme Court delivered in Civil Appeal No.1272 of 2011 (**State of Odisha Vrs. Mamata Mohanty**, reported in 2011(3) SCC 436) but the other deficiency lying on his part such as his entry to the Direct Payment Fold after the cutoff date, i.e. 1.4.1989, since still persists, his claim for grant in aid could not be considered as yet, therefore, the statement made by the petitioner is not true regarding the benefit having been extended in favour of Akshaya Kumar Swain.

It has been stated further that all the judgments in which the petitioner has relied upon has been taken note by Hon'ble Apex Court while dealing with the matter in the case of **State of Odisha Vrs. Mamata Mohanty** (supra), hence the petitioner cannot be held entitled to get the benefit of resolution dtd.6th October, 1989.

7. Heard the learned counsels for the parties and on appreciation of rival submissions of the parties it is evident that the relief which has been sought for by the petitioner that is for assailing the order dtd.29.7.2013 under Annexure-4 is an issue wherein the petitioner is claiming the benefit of resolution dtd.6th October, 1989 to give the replacement pay scale of Rs.2200-4000/- which has been denied to him by the said order.

This court, while going through the pleadings made by the parties as also in course of argument, has come across with the similar issue which fell for consideration before this court for interpretation of the cutoff date as stipulated in the resolution dtd.6th October, 1989 as also 6th November, 1990 and as such it is appropriate for this court to deal with the Government decision as well as the relevant provision of law as also the different judgments rendered time to time by this court as also by the Hon'ble Supreme Court before scrutinizing the legality and propriety of the order impugned.

The State Government has come out with a resolution on 6th October, 1989 which has been issued in pursuance to the decision taken by it to extend the U.G.C. scale of pay to the College Teachers w.e.f. 1st January, 1974 vide Education and Youth Service Department Resolution No.32737-EYS dtd.30th September, 1977. After considering the recommendation of the committee, the U.G.C. 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 decisions to State Government in their letter dtd.17th June, 1987 with further clarification on 7th September, 1987 and 22nd July 1988 and requested to implement the scheme in the States after taking local conditions into consideration.

The question of revision of pay scale for College Teachers on the basis of the recommendation of Government of India was under consideration of the Government for some time past. After careful consideration, the state

Government was pleased to decide to implement the scheme of Revision of Pay Scale for College Teachers with the following terms and conditions:-

“3.1. 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.

3.2. Date of effect :- The revised Scales of Pay shall be effective from the 1st January 1986.

3.3. Pay Scales :- The existing Scales of pay of different categories of Teachers in Colleges shall be revised as follows:-

A. General Colleges-

Sl. No.	Designation	Existing scales of pay	Revised Scales of Pay
1	Lecturers	Rs.700-1600/- Rs.1,350-2,976/-	Rs.2,200-75-2,800-100-4,000
2	Lecturers (Sr. Scale)	Rs. Not existing	Rs.3,000-100-3,500-125-5,000
3	Lecturers (Selection Grade)	Ditto	Rs.3,700-125-4,950-150-5,700
4	Reader	Rs.1,200-1,900/-	Rs.3,700-125-4,950-150-5,700
5	Professor	Rs.1,500-2,500	Rs.4,500-150-5,700-200-6,300
6	Principles Of Colleges- (I) Degree Colleges (ii) 3 P.G. Colleges (Ravenshaw / G. M. and Khallikote College) (iii) Leading Colleges situated at State and District Headquarters and Colleges having P.-G courses (list appended)	Rs.1,200-1,900 Rs.1,500-2,500 Rs.1,200-1,900	Rs.3,700-125-4,950-150-5,700 Rs.4,500-150-5,700-200-6,300 Rs.4,500-150-5,700-200-6,300

B. College of Accountancy and Management Studies : The existing Pay Scales of the Teachers in College of Accountancy and Management Studies, Cuttack having qualification prescribed by the U.G.C. shall be revised as follows:-

Sl. No.	Designation	Existing Scales of Pay	Revised Scales of Pay
1	Principal-cum-Professor	Rs.2,550-3,650	Rs.4,500-150-5,700-200-6,300
2	Professor	Rs.2,550-3,650	Rs.4,500-150-5,700-200-6,300
3	Associate Professor / Reader	Rs.2,250-3,500	Rs.3,700-125-4,950-150-5,700
4	Lecturer	Rs.1,350-2,975/-	Rs.2,200-75-2,500-100-4000

3.6. Recruitment and qualifications:- Recruitment to the post of Lecturers, Readers and Professors in affiliated colleges shall be in the manner as mentioned in the following paragraphs provided that the Lecturers who fulfill the criteria prescribed in this scheme will be eligible for promotion to the post of Readers.

3.6.1. *The minimum qualifications required for appointment to the post of Lecturers, Readers, Professor will be those prescribed by the University Grants Commission from time to time. Generally, the minimum qualifications for appointment to the post of Lecturer in the revised scale of Rs.2,200-4,000 shall be Master's Degree in the relevant subject with at least 55% marks or its equivalent grade and good academic record.*

3.6.2. *Only those candidates who besides fulfilling the minimum academic qualifications prescribed for the post of Lecturers, have qualified in a comprehensive test to be specially conducted for the purpose, will be eligible for appointment as Lecturers. The detailed scheme for conducting the test including its design, the agencies to be employed in the conduct of test, content, administration, etc. will be worked out by the U.G.C. keeping in view the requirements of the media of instruction followed by the State and other relevant considerations.*

3.6.3. *Pending the issue of guidelines by U.G.C. for qualifying tests for making candidates eligible for recruitment as Lecturer, all appointment to the various categories of posts shall be made strictly on merit and on the basis of advertisement and selection provided that the appointee should be required to pass in Oriya of Matriculation standard within 2 years of his appointment. The State Government may, however, exempt any one from this requirement in exceptional cases.*

3.6.5. *The post of Professor in the affiliated colleges shall be filled up on the basis of merit through all India advertisement and selection. The existing service rules shall be amended accordingly."*

The State Government has decided to implement the scheme of revision of pay scale for college teachers with the terms and conditions prescribed vide resolution dtd.6th October, 1989, the Government are now pleased to prescribe some instructions to regulate the revision of pay scale of different categories of teachers serving in aided non-Government Colleges of the State which are as follows:-

"1. Commencement:- These insructions shall be deemed to have come into force from the 1st day of January, 1986.

2. Category of teachers to whom these instructions shall apply:-

(1) Save as otherwise provided by or under these instructions, these instructions shall apply to all categories of fulltime teachers working in all aided non-Government Colleges either covered or eligible to be covered under Direct payment scheme till the 1st day of April, 1989.

NOTE_ 'College' under these instructions shall mean aided Colleges which have been given Government concurrence and University affiliation for opening of _3 Degree courses by the 1st April 1989 and not thereafter.

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4. Scale of pay of the post :- As from the date of commencement of this Resolution, the scale of pay of every post specified in column (2) of the First Schedule shall be as specified against it in column (4) thereof.

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FIRST SCHEDULE

Sl. No.	Name of the Post	Existing Scales of Pay	Revised Scales of Pay
1	Lecturer	Rs.700-1,600 1350-2975	Rs.2,200-4000 (With three advance increment for Ph.D. and one advance increment for M. Phil. at the initial on first appointment.
2	Lecturer (Senior Scale)	Not existing	Rs.3,000-5,000/-
3	Lecturer (Selection Grade)	Not existing	Rs.3,700-5,700
4	Reader	Rs.1,200-1,900	Rs.3,700-5,700
5	Principals of Colleges	Rs.1,200-1,900	Rs.3,700-5,700

The Orissa Revised Scales of Pay (For College Teachers) Rules, 1989 is under Article 309 of the Constitution of India, applicable to the whole time employment of Government in posts / services in respect of which revised scales are specified in the first schedule as indicated herein above. The same is applicable to the college teachers which provides provision of revision of pay scale as contained in the 1st schedule having the pays scale of lecturer to be revised from Rs.1350-2975/- to Rs.2,200-4,000/-.

8. The petitioner herein is working in an aided college and the sole grievance raised by him relying upon the provisions as contained in the Odisha Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 which contains a provision under Rule 9 which speaks as follows:-

“9. Drawal of pay and allowances by employees of Aided Institutions :- (1) Every employee of an Aided Educational Institution shall draw the same pay, dearness allowance and subsistence allowance in case of suspension as is admissible to counterpart in the government

educational institutions under the relevant rules applicable to him and shall ordinarily be paid in the month following the month to which the claim relates directly by Government or by any Officer or by any Agency authorized by Government.

(2) The accounts shall be maintained in such manner as the Government or any person authorized by Government may determine from time to time.

(3) An increment earned by an employee shall ordinarily be sanctioned by the Managing Committee or the Governing Body; as the case may be as a matter of course which two months of its accrual unless it is withheld under the provisions of these rules.

(4) Advance increments not exceeding five may be allowed with the previous sanction of Government to a teacher in any College in consideration of his special qualification, proficiency or experience:

Provided that no application by a Governing Body to sanction advance increments shall be considered unless it is submitted through the Director.”

The learned counsel appearing for the petitioner while relying upon the said provision, has submitted that in view of the provision of rule 9, the petitioner who is working in an aided college will also entitled to be given parity of the pay scale as that of the lecturers working in Government Colleges.

9. This court has examined the various judgments which have been relied upon by the learned counsels for the parties.

The judgment rendered in the case of **State of Orissa & Another Vrs. Aswini Kumar Das** passed in Civil Appeal No.8256 of 1995 wherein the issue of cutoff date of 1.4.1989 was challenged and the Hon'ble Apex Court has approved the cutoff date as that of 1.4.1989 as would be evident from paragraph 13 which speaks as follows:-

“13. In the present case the State Government has decided to provide grants-in-aid to cover the revised U.G.C. scales of 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 November, 1990, was arbitrary and unreasonable.”

The other judgment i.e. in the Case of **Dr. Siddhartha Kumar Sahu Vrs. State of Orissa & Others** (O.J.C. No.5855 of 1998) the issue fell for consideration before this court is regarding entitlement of U.G.C. pay scale which has been denied by the State authorities on the ground that the appointment was approved w.e.f.25.10.1991 under the Direct Payment Scheme which was after 1.4.1989 and this court, while dealing with the issue, has passed an order deprecating the stand of the state authorities in denying the claim of the petitioner.

However, the fact of the said case is quite different to that of this case because here in the instant case the post of the petitioner was approved prior to 1.4.1989, however, he has come into grant in aid fold after 1.4.1989.

In the judgment rendered in the case of **Akshaya Kumar Swain** (supra) the fact leading to the said case is that the petitioner of that case was allowed grant in aid on 4.11.1989, i.e. after 1.4.1989 and this court has allowed the relief in favour of the petitioner since the opposite party – state has failed to dispute the claim of the petitioner, but it is evident from the stand taken by the opposite parties in an affidavit wherein it has been stated that the said Akshaya Kumar Swain has not been extended the benefit since the order passed by this court has been assailed before the Hon'ble Supreme Court in

Civil Appeal No.1267 of 2011 along with other analogous cases, the leading case being Civil Appeal No.1272 of 2011, i.e. in the case of **State of Orissa and Another Vrs. Mamata Mohanty** reported in (2011) 3 SCC 436 and taking into account his acquisition of higher qualification like M.Phil vide Utkal University Notification dtd.24.09.1990 though Sri Swain was exempted from the deficiency of under qualification as per the judgment of Hon'ble Supreme Court delivered in Civil Appeal No.1272 of 2011 (State of Odisha Vrs. Mamata Mohanty (supra)) but since the other deficiency lying on his part such as his entry to the Direct Payment Fold after the cutoff date, i.e. 1.4.1989, still persists, his claim for grant in aid could not be considered as yet.

This court has taken into consideration the ratio laid down by the Hon'ble Apex Court in the case of **Mamata Mohanty Vrs. State of Odisha** (supra) and while going through the factual aspect of this court, the Hon'ble Apex Court has been pleased to hold therein that possessing educational qualification is paramount consideration to get the appointment as lecturer and in consequence thereof the pay scale. The Hon'ble Apex Court while rendering judgment in the case of Mamata Mohanty (supra) has taken into consideration all the judgments rendered by this court in this regard and came to a definite finding at paragraphs 69, 70 and 71 which are being reflected herein below:-

“69. In view of the above, it stands crystal clear that a teacher who had been appointed without possessing the requisite qualification at initial stage cannot get the benefit of grant-in-aid scheme unless he acquires the additional qualification and, therefore, question of grant of UGC pay scale would not arise in any circumstance unless such teacher acquires the additional qualification making him eligible for the benefit of grant-in-aid

scheme. The cumulative effect therefore comes to that such teacher will not be entitled to claim the UGC pay scale unless he acquires the higher qualification i.e. M.Phil/Ph.D.

70. In the facts and circumstances of the case, we feel that terminating the services of those who had been appointed illegally and/or withdrawing the benefits of grant-in-aid scheme of those who had not completed the deficiency in eligibility/educational qualification or withdrawing the benefit thereof from those who had been granted from the date prior to completing the deficiency, may not be desirable as a long period has elapsed. So far as the grant of UGC pay scale is concerned, it cannot be granted prior to the date of acquisition of higher qualification. In view of the above, the impugned judgment/order cannot be sustained in the eyes of law.

71. The full particulars of the respondent-teachers are not before us as in some cases there had been claim and counter claim of possessing the requisite marks i.e. 54% in Master's Course, as in Civil Appeal No.1253 of 2011, State of Orissa & Anr. v. Lokanath Mishra & Ors. Thus, we pass the following directions:

- (i) In case of dispute regarding possessing of 54% marks, the authorities, Secretary of Higher Education/Director of Higher Education may examine the factual position and decide the case of individual teachers in accordance with law laid down in this case;
- (ii) If a person did not possess the requisite qualification on the date of appointment and was not entitled for grant-in-aid scheme unless he completes the deficiency, his case would be considered from the date of completing the deficiency for grant of UGC pay scale. However, in no case, the UGC pay scale can be granted prior to the date of according the benefit of the grant-in-aid scheme, i.e. by acquiring the degree of M.Phil/Ph.D;
- (iii) The aforesaid exercise shall be completed within a period of four months from today; and
- (iv) The arrears of pay, if any, shall be paid to the teacher concerned within a period of four months thereafter.”

It is evident from going through paragraph 69 that a teacher who has been appointed without possessing the requisite qualification at the initial stage cannot get the benefit of grant in aid scheme unless he acquires the additional qualification and therefore question of grant of U.G.C. pay scale would not arise in any circumstance unless such teacher acquires the additional qualification making him eligible for the benefit of grant-in-aid

scheme. The cumulative effect therefore comes that such teacher will not be entitled to claim the U.G.C. pay scale unless he acquires the higher qualification, i.e. M.Phil. / Ph.D., while at paragraph 70 it has been laid down that terminating the services of those who had been appointed illegally and / or withdrawing the benefits of grant in aid scheme of those who had not completed the deficiency in eligibility / educational qualification or withdrawing the benefit thereof from those who had been granted from the date prior to completing the deficiency, may not be desirable as a long period has elapsed. So far as the grant of U.G.C. pay scale is concerned, it cannot be granted prior to the date of acquisition of higher qualification.

Thus, the Hon'ble Apex Court in the case of Mamata Mohanty has laid down the proposition that without having requisite qualification an employee has got no right to hold the post, but however in the case of grant of U.G.C. pay scale, if the required qualification has been acquired by such employee, the same is to be considered by the authority from the date of getting the higher qualification and not from the date of initial appointment.

10. The fact of the instant case is that the petitioner has been appointed in an aided college and has been placed in the pay scale of Rs.1350-2975/-. He claims for replacement of his pay scale to Rs.2200-4000/-. In this case the petitioner is having the requisite qualification as required under the resolution dtd.6th October, 1989 but the claim of the petitioner is being disputed on the ground that he has come under the fold of grant in aid after 1.4.1989, i.e. w.e.f. 01.06.1989. All the judgments which have been referred

herein above and relied upon by the parties including the opposite party – State who has mainly relied upon the judgment rendered in the case of **State of Orissa Vrs. Mamata Mohanty** (Supra), the issue fell for consideration is regarding having educational qualification but fact herein is with respect to cutoff date.

This court has closely scrutinized the ‘coverage’ provided under clause 3.1 and taken it into consideration by going through the provision of Grant in Aid Order 1994 which is known as the Odisha (Non-Government Colleges, Jr. Colleges and Higher Secondary Schools) Grant-in-Aid, Order 1994. The coverage, as stipulated under clause 3.1, as per which the benefit of revised scale and other measures for improvement of standards in Higher Education shall be applicable to all categories of fulltime Teachers working in all affiliated Government Colleges and aided non-Government Colleges either covered or eligible to be covered under direct payment scheme till 1.4.1989.

The submission of learned counsel appearing for the petitioner is that the requirement under coverage part is of affiliation to be given to the colleges prior to 1.4.1989 by extending the benefit of direct payment scheme and once the institution in question has been given the benefit of direct payment scheme prior to 1.4.1989 and the employee working under the said institution is having the requisite qualifications prescribed under the statute against the approved / sanctioned post, he will automatically entitled to get the benefit of coverage as provided under clause 3.1, as such the petitioner is

with an order of rule made under this Act. Grant- in-Aid where admissible under the said rules or order, as the case may be, shall be payable from such date as may be specified in that rule or order or from such date as may be determined by the State Government.

Provided that pending framing of such rule or issue of order, the State Government may, without jurisdiction to such rule or order, direct that private educational institutions which were receiving grant-in-aid and the posts in such educational institutions in respect of which grant-in-aid was being released shall continue to be paid such amount as grant-in-aid as was being paid to them immediately prior to commencement of the Orissa Educational (Amendment) Act, 1994".

In exercise of power under Section 7-C (4) of the Act, the Orissa (Non-Government Colleges, Junior Colleges and Higher Secondary Schools) Grant-in-Aid Order, 1994 (in short, "the 1994 Order"), has been issued to regulate payment of grant-in- aid to private educational institutions. The Order contains the categories of non-government educational institutions eligible for consideration as aided educational institutions, procedure for notifying an institution as aided educational institution and the extent of aid to be given. Aid has to be given for the teaching and non-teaching posts of the specified categories at admissible rates.

The interpretation of the provision of Section 7-C(1), 7-C(4) and Grant-in-Aid Order, 1994 has been dealt with by this court in the case of **Banamali Behera Vrs. State of Orissa and Others** reported in 1997 (I) OLR 555 wherein it has been laid down that when the post has been sanctioned and approved by the Government, there is no justification for not extending the benefit of grant in aid to the petitioner working against the said post solely on the ground of governing body has to follow the requisite procedure and accordingly the Division Bench of this court, in the

said judgment has been pleased to hold by entitling the petitioner of the said case to receive from the state Government authorities 1/3rd salary cost with effect from 1.3.1991, 2/3rd from 1.3.1993 and full salary cost with effect from 1.3.1995.

Thus it is evident that the benefit of grant in aid is to be given to such category of employee who has been appointed against the sanctioned post and whose services have been approved.

This court has examined the issue in the Full Bench judgment of this court in the case of **Laxmidhar Pati and Others Vrs. State of Orissa and Others** reported in 1996 (I) OLR 152 wherein in view of two conflicting views of two Division Bench of this court, i.e. in the case of **Jalada Delanga Uchha Bidyapitha Vrs. State of Orissa and Others** reported in 1993 (I) OLR 77 wherein a Division Bench of this court has taken the view that since the entitlement to receive aid flows from the order of the Government, until and unless an order is passed, no right is accrued and on mere satisfying the eligibility qualification, an institution cannot claim the grant-in-aid, and the second one by another Division Bench in the case of **Kartik Ch. Mohanta and Others Vrs. State of Orissa and Others** reported in 1995 (I) OLR 310 wherein it has been held that a school when satisfies the pre-conditions contained in the grain-in-aid principles would become entitled to grant-in-aid and, therefore, Government must release grant-in-aid with effect from that date.

The Full Bench of this Court, while dealing with the issue, has come to finding that the view taken in the case of **Jalada Delang Uchha Bidyapith** (supra) has been held to be correct.

This court, after going through the said judgment, has found that it is the institution which is to be granted the benefit of grant-in-aid and not the individual functionaries.

It is evident from reading of Section 7-C(1) that the grant in aid is to be extended in favour of private educational institutions or for any post or to any person employed in any such institution after commencement of Odisha Education (Amendment) Act, 1994, subject to fulfillment of the eligibility condition either by the institution or by the person working therein.

In another Full Bench judgment of this court rendered in the O.J.C. No.17629 of 2001, disposed of on 14th May, 2014 the Hon'ble Full Bench of this court, at paragraph 13, after taking into consideration the provision of Sections 7-C(1), 7-C(4) and Grant-in-Aid Order, 1994 and by referring to the paragraphs 12, 13 and 15 of the judgment rendered in the case of **Prafulla Kumar Sahoo Vrs. State of Orissa and Others** reported in 2003(I) OLR 91, has come to finding that the judgment rendered in the case of **Prafulla Kumar Sahoo** (supra) is having with correct views, for ready reference, paragraphs 12, 13 and 15 of the said judgment is quoted herein below:-

“12.After the claim to eligibility to grant-in-aid is decided by the Director, the State Government has to decide the date from which the grant-in-aid would be paid after finding the resources for making such payment. If funds are available under the budget for making payment of the grant-in-aid, the State Government can forthwith issue the order specifying the date from which the payment of grant-in-aid would be made. But if budgetary allocations for grant-in-aid have been exhausted, the State Government will have to wait till such budgetary allocations are made. Thus until the State Government issues an order determining the date from which grant-in-aid is payable to an educational institution or to a member of the teaching or non-teaching staff of the educational institution after finding the resources for the same, grant-in-aid cannot be claimed as a matter of right and no direction can be issued by the Court for payment. But once the State Government issues an order determining the date from which grant-in-aid is payable, a direction can be given by the Court to make payment of grant-in-aid, both current and arrear. This conclusion is in accord with the decision of the Supreme Court in *State of Orissa and another v. Pratap Kumar Nayak and another* (supra) that case of each employee for grant-in-aid has to be considered as per the Grant-in-Aid Order and Section 7-C of the Orissa Education Act, 1969 and it is for the State Government to examine each and every case in accordance with the prescribed procedure for such grant-in-aid. This conclusion is also consistent with the view taken by the Full Bench of this Court in *Laxmidhar Pati and others v. State of Orissa and others* (supra) that mere eligibility to grant-in-aid ipso facto does not confer a right or entitlement on the educational institution or its teaching or non-teaching staff to claim and receive grant-in-aid.

13. This is not to say that after the eligibility or admissibility to grant-in-aid is decided in accordance with the Grant-in-Aid Order, 1994 by the authorities of the Education Department, Government of Orissa, the State Government will defer payment of grant-in-aid to educational institutions or members of teaching or non-teaching staff held to be eligible or admissible to grant-in-aid for a long and indefinite period of time. Sub-section (1) of Section 7-C of the Orissa Education Act provides that the State Government "shall" within the limits of its economic capacity, set apart a sum of money annually for being given as grant-in-aid to private educational institutions in the State. The aforesaid provisions of law, therefore, casts an obligation on the State Government to set apart a sum of money for being given as grant-in-aid to private educational institutions in the State. Such obligation of the State Government, however, is subject to the limits of its economic capacity.

15. Orissa is a State with large sections of people including Scheduled Castes and Scheduled Tribes who are illiterate and backward consistent with the Directive Principles of the State Policy in Articles 41 and 46 of the Constitution, the legislature has imposed a mandate on the State Government under Sub-section (1) of Section 7-C of the Orissa Education Act to set apart a sum of money annually for being given as grant-in-aid to private educational institutions in the State subject to the limits of its economic capacity. The State Government has also made the Grant-in-Aid Order, 1994 under Sub-section (4) of Section 7-C of the

Orissa Education Act clearly indicating the relevant factors to be taken into consideration for deciding the eligibility of an educational institution or a member of teaching or non-teaching staff of such educational institution keeping in mind the educational needs of the State. The State Government cannot ignore such legislative mandate as well as the Directive Principles of State Policy and the statutory provisions of the Grant-in-Aid Order, 1994. Unless, therefore, there are other more pressing needs than education, the State Government must set apart sufficient money for making payment of grant-in-aid to educational institutions or their teaching or non-teaching staff in accordance with the Grant-in-Aid Order, 1994".

This Court, after going through the judgment referred herein above and the provisions of law, is of the considered view that for getting the benefit of grant-in-aid, the institution, the employee working therein or the post are required to be eligible to get the benefit, i.e. if the institution is held entitled to get the benefit of grant-in-aid but the post on which the employee is working is not approved, no grant-in-aid would be granted, likewise, if the person working in the said post is not eligible as per the qualification, he is not entitled to get the benefit of grant-in-aid, hence the eligibility condition is required to be fulfilled.

11. This court has examined the fact of the this case in the light of the discussion made herein above from which it is evident that the institution has been brought under the fold of Direct Payment Scheme prior to 1.4.1989, as such the institution is coming under the fold of 'coverage' as stipulated under clause 3.1. It is also not in dispute that the post against which the petitioner is working is approved as also the petitioner is having all requisite qualifications, but he has been given the benefit of grant-in-aid with effect from 1.6.1989, reason for which his claim for getting the benefit of U.G.C. pay scale has been rejected.

This court, while examining the ground taken by the opposite parties in rejecting the claim on the ground of getting the benefit after 1.4.1989, has found that the authorities have not taken into consideration the fact that the institution having been brought under the fold of grant-in-aid prior to 1.4.1989 where the petitioner is working, the petitioner is having with requisite qualifications but he has been given the benefit of grant-in-aid on 1.6.1989, why it has been given with effect from 1.6.1989 that has not been disclosed but fact remains that even accepting that the same has been given after 1.4.1989, even though the petitioner was fulfilling all the requisite criteria for the said benefit, can the opposite party – State get advantage of their wrong doing by rejecting the claim of the petitioner on this ground.

This court, in order to examine this aspect of the matter has considered the judgment pronounced by the Hon'ble Apex Court in the case of **State of Orissa Vrs. Mamata Mohanty** (supra) and is of the considered view that the Hon'ble Apex Court while dealing with the issue the following pictures emerges before it as would be evident from paragraph 68 which is quoted herein below:-

“68. From the aforesaid discussion, the following picture emerges:

(i) The procedure prescribed under the Rules, 1974 has not been followed in all the cases while making the appointment of the respondents/teachers at initial stage. Some of the persons had admittedly been appointed merely by putting some note on the Notice Board of the College. Some of these teachers did not face the interview test before the Selection Board. Once an order of appointment itself had been bad at the time of initial appointment, it cannot be sanctified at a later stage.

(ii) At the relevant time of appointment of the respondents/teachers there has been a requirement of possessing good second class i.e. 54%

marks in Master's Course and none of the said respondents had secured the said percentage.

(iii) Their appointments had been approved after a long long time. In some cases after 10-12 years of their initial appointment by the statutory authority i.e. Director of Higher Education.

(iv) A candidate becomes eligible to apply for a post only if he fulfills the required minimum benchmark fixed by the rules/advertisement. Thus, none of the respondents could even submit the application what to talk of the appointments.

(v) The so-called relaxation by the Utkal University was accorded by passing a routine order applicable to large number of colleges, that too after a lapse of long period i.e. about a decade.

(vi) Fixation of eligibility falls within the exclusive domain of the executive and once it has been fixed by the State authorities under the Rules 1974, the question of according relaxation by Utkal University could not arise and, therefore, the order of condonation etc. is nullity.

(vii) The relaxation has been granted only by Utkal University though Rule 2(i) of Rules 1974 defined 'University' means Utkal University, Berhampur University, Sambalpur University and Sri Jagannath Sanskrit Vishwa Vidyalaya.

(viii) Granting relaxation at this stage amounts to change of criteria after issuance of advertisement, which is impermissible in law. More so, it is violative of fundamental rights enshrined under Articles 14 and 16 of the Constitution of the similarly situated persons, who did not apply considering themselves to be ineligible for want of required marks.

(ix) The exercise of condonation of deficiency had not been exercised by any University other than Utkal University.

(x) The post of the teachers i.e. respondents is transferable to any college affiliated to any other University under the Rules 1979.

(xi) The power to grant relaxation in eligibility had not been conferred upon any authority, either the University or the State. In absence thereof, such power could not have been exercised.

(xii) This Court in *Damodar Nayak (supra)* has categorically held that a person cannot get the benefit of grant-in-aid unless he completes the deficiency of educational qualification. Further, this Court in *Dr. Bhanu Prasad Panda (supra)* upheld the termination of services of the appellant therein for not possessing 55% marks in Master Course.

(xiii) The aforesaid two judgments in *Damodar Nayak (supra)* and *Dr. Bhanu Prasad Panda (supra)*, could not be brought to the notice of either the High Court or this Court while dealing with the issue. Special leave petition in the case of *Kalidas Mohapatra & Ors. (supra)* has been dealt with without considering the requirement of law merely making the reference to Circular dated 6.11.1990, which was not the first document ever issued in respect of eligibility. Thus, all the judgments and orders passed by the High Court as well as by this Court cited and relied upon by the respondents are held to be not of a binding nature. (*Per in curiam*)

(xiv) In case a person cannot get the benefit of grant-in-aid scheme unless he completes the deficiency of educational qualification, question of grant of UGC pay scale does not arise.

(xv) The cases had been entertained and relief had been granted by the High Court without considering the issue of delay and laches merely placing reliance upon earlier judgments obtained by diligent persons approaching the courts within a reasonable time.

(xvi) The authority passed illegal orders in contravention of the constitutional provisions arbitrarily without any explanation whatsoever polluting the entire education system of the State, ignoring the purpose of grant-in-aid scheme itself that it has been so provided to maintain the standard of education.

(xvii) The High Court granted relief in some cases which had not even been asked for as in some cases the UGC pay scale had been granted with effect from 1.6.1984, i.e., the date prior to 1.1.1986 though the same relief could not have been granted. Thus, it clearly makes out a case of deciding a case without any application of mind.

(xviii) In some cases the UGC pay scale has been granted by the High Court prior to the date of according the benefit of grant-in-aid scheme to the concerned teachers which was not permissible in law in view of the law laid down by this Court in Damodar Nayak (supra).

(xix) The grievance of the respondents that not upholding the orders passed by the High Court in their favour would amount to a hostile discrimination is not worth acceptance for the reason that Article 14 of the Constitution envisages only positive equality.

(xx) Concept of adverse possession of lien on post or holding over are inapplicable in service jurisprudence.

(xxi) The submission on behalf of the respondents that Government orders/circulars/letters have been complied with, therefore, no interference is called for, is preposterous for the simple reason that such orders/circulars/letters being violative of statutory provisions and constitutional mandate are just to be ignored in terms of the judgment of this Court in Ram Ganesh Tripathi (supra).”

The Hon'ble Apex Court thereafter at paragraph 69 has come to a finding that a teacher who has been appointed without possessing the requisite qualification at the initial stage cannot get the benefit of the grant in aid scheme unless he acquires the additional qualification and therefore question of grant of UGC pay scale would not arise in any circumstance unless such teacher acquires the additional qualification making him eligible for the benefit of grant-in-aid scheme. The cumulative effect therefore comes that such

teacher will not be entitled to claim the U.G.C. pay scale unless he acquires the higher qualification, i.e. M.Phil. / Ph.D.

The Hon'ble Apex Court has further passed direction at paragraph 71 which is being referred herein below:-

71. The full particulars of the respondent-teachers are not before us as in some cases there had been claim and counter claim of possessing the requisite marks i.e. 54% in Master's Course, as in Civil Appeal No.1253 of 2011, State of Orissa & Anr. v. Lokanath Mishra & Ors. Thus, we pass the following directions:

- (i) In case of dispute regarding possessing of 54% marks, the authorities, Secretary of Higher Education/Director of Higher Education may examine the factual position and decide the case of individual teachers in accordance with law laid down in this case;*
- (ii) If a person did not possess the requisite qualification on the date of appointment and was not entitled for grant-in-aid scheme unless he completes the deficiency, his case would be considered from the date of completing the deficiency for grant of UGC pay scale. However, in no case, the UGC pay scale can be granted prior to the date of according the benefit of the grant-in-aid scheme, i.e. by acquiring the degree of M.Phil/Ph.D.;*
- (iii) The aforesaid exercise shall be completed within a period of four months from today; and*
- (iv) The arrears of pay, if any, shall be paid to the teacher concerned within a period of four months thereafter."*

It is evident from the direction passed as quoted herein above that the matter has been directed to be considered by the Secretary, Higher Education / Director, Higher Education by examining the factual position and decide the case of individual teachers in accordance with law with a further direction upon the authority that if a person did not possess requisite qualification on the date of appointment and was not entitled for grant in aid scheme unless he completes the deficiency, his case would be considered from the date of completing the deficiency for grant of U.G.C. pay scale. However, in

no case, the U.G.C. pay scale can be granted prior to the date of according the benefit of grant-in-aid scheme, i.e., by acquiring the degree of M.Phil/Ph.D.

It is further evident that the Hon'ble Apex Court, while dealing with the issue in the case of **Mamata Mohanty**, has gone into the issue of delay and latches, but in the direction part at paragraph 71 the Secretary has been directed to consider their cases after examining the factual aspect related to individual cases.

This court, while examining the resolution dtd.6th November, 1990, has found that the benefit of the instruction dtd.6th October, 1989 has been held to be applicable to all categories of fulltime teachers working in all aided non-Government Colleges either covered or eligible to be covered under direct payment scheme till 1.4.1989, as would be evident from clause 2(1) of the Resolution dtd.6th November, 1990. Further the instructions shall not be applied to the following circumstances:-

- i. *persons on contract except when the contract provides otherwise,*
- ii. *persons re-employed after retirement.*
- iii. *Instructors / Lecturers appointed for Vocational subjects Arts stream of +2.*
- iv. *teachers appointed against unrecognized subjects / streams even in unrecognized and aided colleges,*
- v. *teachers who are appointed primarily in +2 institutions existing as on the 1st April, 1989 including Intermediate Colleges covered +2 institutions.*
- vi. *teachers appointed after 1st April, 1989 to teach in +2 courses in existing Degree Colleges or +2 institution.*
- vii. *teachers whose qualifications / norms are below the qualifications / norms prescribed by the U.G.C. even if such lack of prescribed qualification has been condoned by government / University.*
- viii. *teachers paid out of contingencies,*
- ix. *teachers paid otherwise than monthly basis including those paid only on piece rate basis.*
- x. *teachers not drawing pay in a regular scale of pay for whom no revised scale is prescribed,*

- xi. teachers outside the prescribed yardstick, i.e. outside the standard staff.*
- xii. whom the Government may, by order, specifically exclude from the operation of all or any of the provisions contained in these instructions.”*

It is evident that the benefit of revision in pay scale by virtue of the resolution dtd.6th October, 1989 will be applicable to such category of employees who are working in aided non-Government Colleges either covered or eligible to be covered under direct payment scheme till 1.4.1989.

Thus it is apparent that in the case of **Mamata Mohanty** the issue of cutoff date of 1.4.1989 was not the subject matter, rather this issue was in the case of **Aswini Kumar Das** (supra) and the cutoff date has been declined to be interfered with by the Hon'ble Supreme Court in the said judgment, as such the benefit of U.G.C. as per coverage contained in clause 3.1 will be extended on the basis of cutoff date of 1.4.1989. Now only question which is to be examined in this case is whether the cutoff date of 1.4.1989 is for the institution or the employee concern.

12. Here in the instant case it is not in dispute that the College in question is a +3 degree College and the same is covered under the Direct Payment Scheme prior to 1.4.1989. The authorities have rejected the claim of the petitioner on the ground that the petitioner has come under the grant in aid fold by coming under the direct payment scheme on 1.6.1989, as such he is not coming under the coverage as stipulated under clause 3.1 of the resolution dtd.6th October, 1989 but when this court has examined the provision of Section 7-C of Order, 1994 and the judgments passed by this

court in the case of Banamali Behera (supra), Laxmidhar Pati (supra) and Kartik Ch. Mohanta (supra), it is the institution to satisfy the condition to get the benefit of Grant-in-Aid / Direct Payment Scheme, but simultaneously the employee who is seeking to get the benefit, must be eligible and working in the sanctioned / approved post as also the non-applicability of the resolution dtd.6th October, 1989 under the provision of clause 2(2) of the Resolution dtd.6th November, 1990 as quoted above, it is not stipulated therein that if a lecturer working in the non-aided college having come under the grant in aid fold under direct payment scheme after 1.4.1989, will be deprived to get the benefit of resolution dtd.6th October 1989 and it is settled that when a specific decision has been taken in this regard under the resolution dtd.6th November 1990 regarding applicability of the resolution dtd.6.10.1989, the authority cannot deviate from the said condition. But here in the instant case, rejecting the claim of the petitioner by the impugned order on the ground that the petitioner has come into grant in aid fold being covered under direct payment scheme after 1.4.1989 is not sustainable since it is not in consonance with the condition mentioned in clause 3.1 of the resolution dtd.6th October, 1989 or the clause 2(1) read with (2) of the Resolution dtd.6.11.1990 and further the opposite party cannot be allowed to take advantage of his wrong in granting benefit of Grant-in-Aid w.e.f. 01.06.1989 without any reason while the petitioner was possessing all requisite conditions, hence the impugned order is held to be illegal, since it has been passed without appreciating the spirit of the resolution dtd.6th October 1989 and 6th November 1990. Accordingly the impugned order dtd.29.07.2013 is hereby quashed.

13. This court thinks it proper to remit the matter before the authority by following the ratio laid down by Hon'ble Apex Court in the case of **Mamata Mohanty** (supra) whereby and where under the Hon'ble Apex Court has been pleased to remit the matter before the Secretary of the concerned Department to take a decision in accordance with law after examining the factual aspect.

In view thereof the Director, Higher Education, Odisha is directed to pass fresh order in the light of observations made herein above within reasonable period, preferably within period of three months from the date of receipt of copy of this order.

W.P.(C) No.590 of 2003

14. This writ petition is for issuance of direction upon the opposite parties to give the benefit of revision of pay scale to the petitioner as per 1989 Pay Revision Rules in the scale of pay of Rs.2,200-4,000/- with effect from the date when the pay of the petitioner has been fixed in the scale of pay of Rs.1350-2975/- and to calculate the arrear entitlement of the petitioner.

15. The brief fact of the case of the petitioner is that he having been selected by the Governing Body of Shishu Anant Mohavidyalaya at Balipatna in the district of Puri, now at Khurda was appointed as Lecturer in English on ad hoc basis, he had secured 50.4% of marks in his post graduate examination. When he was appointed, the College was an unaided college, it came to the fold of grant in aid with effect from 1985-86 academic session and from 1.6.1985

1/3rd grant was made available to the College. The petitioner was appointed against the 2nd post of Lecturer in English and such post was due as per the grant in aid principle 5 years after completion of the post and such was due with effect from 2.11.1989. When the petitioner was appointed, the minimum required percentage of marks provided then was 2nd class M.A., however, since the petitioner was having 50.4% of marks, i.e. 2nd Class M.A. Degree, he was appointed. His appointment was approved and he was put under the pay scale of Rs.1350-2975/- vide order of the Government being G.O. No.46210/EYS and No.46209/EYS dtd.18.10.1985 having been communicated vide office order No.38310 dtd.13.8.1992.

It has been stated that the approval of appointment of the petitioner was made taking into consideration the condonation of deficiency in qualification. According to the petitioner his services have been approved after having condoned the minimum educational qualification as required but instead of granting the pay scale of Rs.2,200-4,000/- he is being paid the scale of pay of Rs.2000-3500/- (revised), i.e. the corresponding revised scale of Rs.1350-2975/-.

The contention of the petitioner is that since he is working in an unaided College and came in to grant in aid fold with effect from 1.6.1985, as such in view of the provision of the Orissa Revised Scale of Pay (For College Teachers) Rules, 1989 as also in view of the resolution dtd.6th October 1989 as well as 6th November, 1990 he is entitled to get the pay scale at par with the

Government lecturers working in the Government Colleges. But the same is being denied, hence this writ petition.

16. Counter affidavit has been filed by the opposite party – State disputing the claim of the petitioner by stating therein that the petitioner was appointed as lecturer in English on 2.11.1984 having 50.3% in post graduate examination. The prescribed qualification to hold the post of lecturer at the time of appointment of the petitioner was prescribed in the Government Resolution No.2359/EYS dtd.13.9.1983 which the petitioner was not possessing, hence he was under qualified lecturer within the meaning of the resolution dtd.13.9.1983.

It has been stated that the State Government, after careful consideration, was pleased to allow such under-qualified lecturers to continue against their respective posts notwithstanding their under-qualification to make them eligible to receive grant in aid from Government vide G.O. No.34373 dtd.5.8.1989, provided they were appointed during the period from 1.4.1982 to 31.12.1984 subject to the conditions that the Universities which have made order of condonation shall obtain the concurrence of U.G.C. and the under-qualified lecturers appointed between 1.4.1982 to 31.12.1984 are required to obtain M.Phil Degree or Post Masters Degree acceptable under the qualification prescribed by the U.G.C. by 31.12.1994, failing which their annual increment shall be stopped.

It has been stated therein that the under-qualified lecturers have been approved and released grant in aid in their favour like that of the petitioner with effect from 2.11.1989 notwithstanding their under-qualification, hence he is not entitled to get the benefit of resolution dtd.6th October, 1989 as also 6th November, 1990, as such it has been submitted that the writ petition is having no merit, hence liable to be dismissed.

17. Rejoinder affidavit and further affidavit has been filed by the petitioner controverting the stand taken in the counter affidavit by stating therein that the petitioner's claim is genuine since in the case of others including one Ajaya Kumar Das this court has passed the similar order which has also been tested and approved by the Hon'ble Supreme Court, as such the claim of the petitioner cannot be disputed now.

18. In response, learned counsel appearing for opposite party – State submits that so far as the contention advanced on behalf of the petitioner that in the case of Ajaya Kumar Das the benefit has been extended but that judgment is in *rem* rather it is a judgment in *persona* since it would be evident from the order passed in I.A. No.1 of 2016 in Contempt Civil No.155 of 2014 in Civil Appeal No.3793 of 2012 dtd.25.7.2016 wherein Hon'ble Apex Court has been pleased to observe therein that release of such benefit shall not prevent the State from taking all such defences as may be opened to them in law and on facts in so far as similar claims made by other teachers are concerned. We further make it clear that we have not expressed any opinion on the merit of

any such contention which the State of Orissa may choose to urge in any such proceedings

In the light of this, it has been submitted that the issue needs to be decided on its own merit.

19. Having heard the learned counsels for the parties and on appreciation of their rival submission it is evident that the petitioner, at the time of his appointment, was not having with the requisite qualification of minimum percentage of marks as required in the resolution dtd.6th October, 1989 since the said resolution prescribes the minimum qualification to acquire the post of lecturer in the revised scale of Rs.2,200-4,000/- of having Master Degree in relevant subject with at least 55% marks or its equivalent grade and good academic record and since he is not having the minimum percentage of marks and other required qualification, hence he cannot take advantage of resolution dtd.6th October 1989 as also 6th November 1990 which has been issued by the Education and Youth Service Department of Government of Orissa to regulate the revision of pay scale of different categories of teachers serving in the aided non-Government Colleges in the State.

Learned Senior Counsel appearing for the petitioner submits that while in service, the petitioner has got the requisite qualification and also came into grant in aid fold by directly coming under the direct payment scheme, as such he is entitled to get the benefit of the resolution dtd.6th October 1989 and 6th November, 1990 in view of the provision of Rule 9 of the Rules 1974 which

prescribes parity in the pay scale in between the government lecturers or the lecturers working in aided Colleges.

Learned counsel for the petitioner has further relied upon various judgments passed by this Court as also in the case of Ajaya Kumar Das. But this Court, after considering all the judgments as also the judgment rendered by Hon'ble Supreme Court in the case of State of Orissa Vrs. Mamata Mohanty which has been rendered while dealing with other cases as above is of the view that the Hon'ble Supreme Court, in the said case has considered the entire aspect of the matter by placing reliance upon the judgment rendered in the case of **State of Orissa Vrs. Damodar Nayak**, reported in (1997) 4 SCC 560 as also the judgment rendered in the case of **Dr. Bhanu Prasad Panda Vrs. Sambalpur University**, reported in (2001) 8 SCC 532 and came to the considered view as would be evident from paragraph 68 of the judgment as quoted herein above that having not possessing good second class, i.e. 54% of marks in Master's course the appointment itself is illegal and the same cannot be relaxed in absence of any statutory provision in this regard.

The Hon'ble Supreme Court has further taken note of the judgment rendered in the case of Damodar Nayak that a person cannot get the benefit of grant in aid unless he completes the deficiency of educational qualification, Hon'ble Apex Court in the case of Bhanu Prasad Panda up held the termination for non-possessing 55% marks in the Master's degree and hence the Hon'ble Apex Court in the case of Mamata Mohanty has observed that while passing the order, this court has not taken into consideration the

judgment rendered by the Hon'ble Apex Court in the case of State of **Orissa Vrs. Damodar Nayak** (Supra) and State of **Orissa Vrs. Dr. Bhanu Prasad Panda** has not been brought to the notice or even before the Hon'ble Apex Court while dealing with the issue and the Special Leave Petition in the case of **State of Orissa Vrs. Kalida Mohapatra** passed in SLP No.14206-09 of 2001 has been dealt with without considering the requirement of law merely making the reference to the circular dtd.6.11.1990, which was not the first circular ever issued in respect of eligibility, hence it has been opined that all the judgments and orders passed by the High Court as well as by this court cited and relied upon by the respondents are held to be not of binding nature.

It has further been laid down therein that in case a person cannot get the benefit of grant in aid benefit unless he completes the deficiency of educational qualification, question of grant of U.G.C. pay scale does not arise.

Further the delay and latches has also been taken note of by the Hon'ble Supreme Court in the said case. At paragraph 69 it has been stated as already quoted herein above, but at the risk of repetition the same is being discussed again. The Hon'ble Supreme Court in the case of Mamata Mohanty has laid down the ratio that a teacher who had been appointed without possessing the requisite qualification at the initial stage cannot get the benefit of grant in aid scheme unless he requires the additional qualification and, therefore, the question of grant of U.G.C. pay scale would not arise in any circumstances unless such teacher acquires the additional qualification making him eligible in the benefit of grant in aid scheme. The cumulative effect

therefore comes to that such teacher will not be entitled to claim the U.G.C. pay scale unless he acquires the higher qualification i.e., M.Phil/Ph.D. Hence at paragraph 69 it has been laid down by the Hon'ble Apex Court that the grant of U.G.C. cannot be granted prior to the date of acquisition of higher qualification and accordingly the judgment impugned has been passed and the matter has been remitted before the Secretary Higher Education/Director Higher Education to examine the case by passing the following directions:-

- (i) *In case of dispute regarding possessing of 54% marks, the authorities, Secretary of Higher Education/Director of Higher Education may examine the factual position and decide the case of individual teachers in accordance with law laid down in this case;*
- (ii) *If a person did not possess the requisite qualification on the date of appointment and was not entitled for grant-in-aid scheme unless he completes the deficiency, his case would be considered from the date of completing the deficiency for grant of UGC pay scale. However, in no case, the UGC pay scale can be granted prior to the date of according the benefit of the grant-in-aid scheme, i.e. by acquiring the degree of M.Phil/Ph.D;*
- (iii) *The aforesaid exercise shall be completed within a period of four months from today; and*
- (iv) *The arrears of pay, if any, shall be paid to the teacher concerned within a period of four months thereafter."*

20. The petitioner here in the instant case is claiming his replacement pay scale by getting U.G.C. pay scale from the date when he has been given the pay scale of 1350-2975/- but the same cannot be allowed to be given to him in view of the fact that on the date when he has got the said pay scale, he is having no requisite qualification, as such the direction passed by the Hon'ble Supreme Court in the case of **Mamata Mohanty** under point No.(ii) of

paragraph 68 will come in his way that if a person did not possess the requisite qualification on the date of appointment and was not entitled for grant in aid scheme unless he completes the deficiency and his case would be considered from the date of completion of the deficiency for grant of UGC pay scale. However, in no case, the UGC pay scale can be granted prior to the date of acquisition of higher qualification, i.e. M.Phil/Ph.D, in other words, such category of employee will be entitled to get the benefit from the date on which one possessed requisite qualification.

In view of such a direction, this court is remitting the matter of the petitioner for its consideration in the light of the proposition laid down in the case of Mamata Mohanty as quoted herein above for its consideration within reasonable period, preferably within three months of production of certified copy of this order.

With the above observation and direction the writ petition stands disposed of.

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21. In this writ petition the petitioner prays for issuance of direction upon the opposite parties to quash Annexure-2 so far as it relates to fixing the pay scale of petitioner in the scale of Rs.2,000-3,500/- and extend the benefit of pay scale of Rs.2,200-4,000/- with effect from 1.6.1995.

22. The brief fact of the case of the petitioner is that he was appointed by the Principal-cum-Secretary, Sadhu Goureswar College as a Lecturer in English (4th post) on 28.8.1989, while working as such, on 13.5.1996 the Deputy Director (N.G.C.-1) of the office of Directorate requested the Principal, Sadhu Goureswar College to submit all records for verification and necessary action, but instead of taking action pursuant to the letter dtd.13.5.1996, a Junior Lecturer was sponsored for appointment against the 4th post of English. Finding no way, the petitioner approached this court vide O.J.C. No.11635 of 1997 praying therein to quash such order sponsoring a Jr. Lecturer and accord approval to the appointment of the petitioner. During pendency of the writ petition a Jr. Lecturer was re-sponsored to Sriram College, Rampur, District Sonapur as also during pendency of the said writ petition the Odisha Aided Educational Institutions (Appointment of Lecturers Validation) Act, 1998 came into force and accordingly the petitioner amended his writ petition and prayed for regularization of service as per 1998 Validation Act and giving him all consequential and financial benefits. The writ petition was allowed on 21.10.2008 and the government authorities were directed to validate the appointment of the petitioner and grant him financial benefits under the Validation Act. Accordingly, vide order dtd.29.10.2010 the services of the petitioner were validated w.e.f. 6.9.1989 and vide order dtd.30.10.2010 the 4th post was approved and the petitioner was fitted in the pay scale of Rs.2,000-3,500/-, accordingly arrear salary was also made in the year 2010.

The petitioner after coming into effect of the pay scale of lecturer as Rs.2,200-4,000/- as prescribed by the Government in view of the Orissa Revised Scales of Pay (College Teachers) Rules, 1989 has raised his claim in the light of the provision of Rule 9(1) of the Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Education Institutions) Rules, 1974 and to that effect he has submitted a representation but till date no decision has been taken on the same.

23. Counter affidavit has been filed by the opposite party no.2 wherein the stand has been taken that the petitioner was appointed as Lecturer in the 4th post on 28.8.1989 and accordingly the post was validated and he has been granted the pay scale of Rs.2000-3500/-.

The opposite party is disputing the claim of the petitioner on the ground that he is not coming under the coverage as provided under clause 3.1 of the resolution dtd.6th October, 1989 since he was appointed as Lecturer much after 1.4.1989 and his services were validated subsequently, so he is not entitled to get the pay scale of Rs.2,200-4,000/- which is the U.G.C. pay scale. The contention raised by the petitioner regarding applicability of the provision of Rule 9(1) of the Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Education Institutions) Rules, 1974 is also not sustainable.

24. It is evident from the pleading made in the writ petition that no decision has been taken by the authorities in the light of the judgment rendered by Hon'ble Apex Court in the case of **Mamata Mohanty** (supra); in the case of the petitioner of this case, as such without entering into the merit of the claim of the petitioner, it would be appropriate to direct the Director, Higher Education to take decision on the claim of the petitioner within three months from the date of production of certified copy of this order.

With these observations and directions all the three writ petitions stand disposed of.

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S.N.Prasad, J.