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**THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C) No.8976 of 2017**

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Chittaranjan Das

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Petitioner

State of Odisha & Ors.

**-Versus-**  
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Opp. Parties

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For Petitioner : Mr. Budhadev Routray, Senior Advocate along with  
Mr. B. Mohanty, Advocate  
For Opposite Parties: Mr. D. Nayak, Additional Government Advocate.

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**CORAM:**

**THE HONOURABLE MR JUSTICE S. TALAPATRA  
THE HONOURABLE MISS JUSTICE SAVITRI RATHO**

**JUDGMENT**

**3<sup>rd</sup> April, 2023**

**S. Talapatra, J.**

By means of this writ petition, the petitioner has challenged the notification dated 24.01.2017, Annexure-7 to the writ petition.

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Further, the petitioner has urged this court for directing the Opposite Parties to grant the benefits of Lecturer Group-A Scale to the petitioner w.e.f. 01.06.2003, instead of 01.06.2012. The petitioner has also urged to quash the explanation, appended to Rule 4(1)(c) of the Odisha Non-Government Aided College Lecturer Placement Rules, 2014, published by the notification dated 04.01.2014 or in the alternative to declare the said explanation as not applicable for giving placement to the petitioner in the grade of Lecturer Group-A.

2. We have heard Mr. B. Routray, learned Senior Counsel along with Mr. B. Mohanty, learned counsel appearing for the petitioner and Mr. D. Nayak, learned Addl. Government Advocate appearing for the Opposite Parties No.1 and 2.

3. Facts are mostly admitted. The petitioner was initially appointed as the Demonstrator in Chemistry by the Governing body of Adikabi Sarala Das College, Tirtol, hereinafter referred to as AS College, on 02.01.1990. Appointment of the petitioner was approved by the notification dated 07.08.1996, issued by the Director, Higher Education, Government of Odisha, in pursuance to G.O No.46209, with effect from 01.06.1990.

4. The petitioner was granted full salary w.e.f. 01.06.1994 as Demonstrator in Chemistry. In terms of the letter dated 07.08.1996 issued by the Director, Higher Education, in respect of the 4th post of Lecturer in Chemistry in AS College, the Governing body of the said College, by the resolution dated 17.10.1995 had approved the appointment of the petitioner as Lecturer in Chemistry, by invoking the power available under Rule 8(2)(b) of the Orissa Education (Recruitment and Conditions of Services of Teachers and Members of Staff of Aided Educational Institutions) Rules, 1974, hereinafter referred to as the Rules, 1974. The petitioner was eligible for payment under grant in aid (hereinafter referred to as GIA). After the appointment of the petitioner in the post of Lecturer in Chemistry, due steps were taken for necessary approval of the Government. The Government of Odisha, in the Higher Education Department, by their letter No.22849 dated 05.04.1999 accorded approval to the appointment of the petitioner as Lecturer in Chemistry with effect from 23.05.1995, by exercising the powers conferred under Rule-8(2)(b) of the Rules, 1974.

5. For appointment of the petitioner to the post of Lecturer in Chemistry, the payment of GIA against the post of the Demonstrator was stopped w.e.f. 23.05.1995. As the payment under the Grant-in-aid was

abruptly stopped by the order communicated by the letter dated 05.05.1999 and thereafter, the consequential order was passed by the Director, Higher Education (Orissa) on 30.07.1999. But the petitioner continued in service without the Grant-in-Aid discharging his duties as Lecturer in Chemistry w.e.f. 23.05.1995. As the petitioner was not getting the Grant-in-Aid scale and other benefits against the post of Lecturer w.e.f. 23.05.1995, the day when the petitioner was appointed as the Lecturer, he had approached this court by filing a writ petition being WP(C) No.8175/2004 claiming payment of Grant-in-Aid scale and other benefits against the post of Lecturer from the date of his appointment. The said writ petition was transferred to the State Education Tribunal for adjudication on merit. As per the procedure of the State Education Tribunal, the said case was registered as G.I.A. Case No.189/2011. The said case was finally heard and disposed of, by the Judgment dated 30.01.2012(Annexure-4 to the writ petition).

6. By the said Judgment, the Opposite Parties were directed to release the full salary to the petitioner in the post of Lecturer in Chemistry w.e.f. 23.05.1995, as per the Grant-in-Aid Order, 1994 within a period of 3 months from the date of receipt of the said order and to adjust the salary paid to him against the post of Demonstrator w.e.f. 23.05.1995.

7. By modifying the letter of approval under No.22895 dated 19.05.2005, a fresh order was issued by the Higher Education Department on 04.03.2013 directing release of full salary under the Grant-in-Aid w.e.f. 23.05.1995 in favour of the petitioner for his holding the post of Lecture in Chemistry. From the order dated 19.07.2005 (Annexure-3 to the writ petition), it appears that the Department of Higher Education had released the current salary as was admissible to the petitioner w.e.f. 01.03.2005, in pursuance to an interim order passed by the High Court of Orissa on 28.03.2005. Later on, the said order was modified.

8. By the order dated 04.03.2013, the full Grant-in-Aid salary was released in favour of the petitioner w.e.f. 23.05.1995 for his occupying the post of Lecturer in Chemistry. The petitioner had been continuing as the Lecturer in Chemistry (Grant-in-Aid) w.e.f. 23.05.1995 uninterruptedly. As the petitioner had completed 9 years of continuous service in the post of Lecturer (Chemistry), he was entitled to get the benefits of Lecturer Group-A w.e.f. 01.06.2003, instead of 01.06.2016, as provided by the notification dated 24.01.2017 (Annexure-7 to the writ petition) with all consequential service and financial benefits, in terms of Rule 4(1)(b) of the Orissa Non-Government Aided College Lecturers

Placement Rules, 2014. For purpose of reference the said Rule-4 is extracted hereunder:

***“4. Eligibility Criteria for placement:***

*(1) In order to be eligible for placement to the grade of Lecturer ((Group-A)) Scale of pay under Rule 9, a lecturer as covered under rule-3 must have-*

*(a) completed at least 08 (eight) years of service as such from the approved date of joining, in case of SSB sponsored Lecturers/Junior Lecturers;*

*(b) completed at least 08(eight) years of service from the date of receiving of full GIA in the post of Lecturer in case of appointment by the management;*

*(c) completed at least 08 (eight) years of service from the date of eligibility for full GIA in case of Lecturers whose services have been validated under the Validation Act;*

*Explanation – For the purpose of clause (b) and clause (c) of this rule, the expression full GIA shall mean completion of 09 (nine) years of continuous service from his/her approved date of joining.*

*(d) satisfactory performance as a Lecturer/Junior Lecturer supported with CCRs or ACRs by whatever name called.*

*(2) A lecturer placed under Lecturer (Group-A) Scale of pay under rule 9 in order to be eligible for consideration for placement to Reader (State Scale) scale of pay under rule 9 must have completed at least 10 years of continuous service in the said Lecturer ((Group-A)) Scale of pay.”*

**[Emphasis Added]**

9. Rule 9 of the said Rules 2014 provides the pay matrix for the post of Lecturer (Group-A’) which is as follows:

*Rs.9,300-34,800/-+Grade Pay Rs.5,400/-*

**10.** The petitioner is claiming for the said pay scale from the date when he had completed 9 years of service, in terms of Rule 4 (c) of the said Rules i.e. 01.06.2004.

**11.** The Opposite Parties No.1 and 2 have filed their counter affidavits. The first one was filed on 12.12.2018 and the second one was filed on 09.09.2022. It has been contended by the Opposite Parties No.1 & 2 that in case of an SSB sponsored Lecturer/Junior Lecturer, the benefits are given from the very date of appointment in the same manner, as applicable to the DP vacant post. The petitioner was to complete 17(9+8) years of service from the approved date of his joining as the Lecturer for being considered as the Lecturer (Group A Scale). From the above Rule 4, according to the Opposite Parties, it is clear that Lecturers who are appointed by the Management in the Grant-in-Aid scale and on their completion of 17 years of service shall be considered for placement to the grade of Lecturer (Group-A Scale) as the explanation appended below Rule 4 (1) (c) stipulates 9 years of continuous service from the approved date of joining is required to have full GIA. But an SSB Lecturer is considered for placement in the grade of Lecturer (Group-A Scale) on completion of 8 years of service.

12. The Opposite Parties No.1 and 2 have referred to the clarification given by the Letter No.22523/HE dated 07.10.2015. It has been clarified by the said letter that the above benefit can be availed by the lecturers only from 01.01.2014. Those who have retired or passed away prior to 31.12.2013, their case shall not be considered.

Those lecturers who have already acquired the eligibility for such benefit prior to 01.01.2014, they may get the financial benefit on notional basis till 01.01.2014 and actual benefits w.e.f. 01.01.2014.

13. It has been further asserted in the counter affidavit filed by the Opposite Parties No.1 and 2, having referred to the said Letter No.22523/HE dated 07.10.2015 (Annexure-A1 to the counter affidavit) that a non SSB Lecturer gets, as per GIA principles, the full Grant-in-Aid under normal situation after 9 years. His case is to be considered for Lecturer (Group-A Scale) after 17 (9 +8) years and for Reader (SS) after 27 (9 + 8 + 10) years from the date of his approved joining. Since an SSB lecturer receives Grant-in-Aid full salary from the very date of his joining against a sanctioned and approved Direct Payment (DP) vacant post, his case for Lecturer (Group-A Scale) and Reader (SS) is considered after



completion of 8 years and 18 (8 + 10) years of continuous service from the approved date of joining.

**14.** By applying the said principle to the case of the petitioner, he was not considered for the said benefit on his completion of 9 years of service, in accordance with Rule-4 (1)(c) of the said Placement Rules read with the explanation as referred above.

**15.** According to the Opposite Parties No.1 & 2, the petitioner has been correctly given the placement as Lecturer (Group-A Scale) from 01.06.2012 by the Notification No.2354 dated 24.01.2017 (Annexure-7 to the writ petition). No discrimination was meted out. The clarification is unambiguous and hence, no interference is called for.

**16.** Mr. Routray, learned Senior Counsel appearing for the petitioner has contended that the said decision of the Opposite Parties No.1 and 2 is grossly arbitrary and in contrast to Rule 4 (c) of the Placement Rules, in as much as the full salary cost of the petitioner was sanctioned at 100% GIA w.e.f. 23.05.1995, in the same manner as provided in the case of an SSB sponsored candidate under Rule 4 (1) (a) of the said Placement Rules.

17. Mr. Routray, learned Senior Counsel has submitted that as no distinction can be made between two classes of lecturers, there cannot be differential treatment. There is no distinction on the basis of qualification and the duties they are to discharge. The said order granting the pay scale of Lecturer (Group-A Scale) in favour of the petitioner from a posterior date deserves to be interfered with as that stands in contradiction to the equality clause. He has also contended that the petitioner is entitled to get the said benefit w.e.f. 01.06.2003, instead of 01.06.2012. Mr. Routray, learned Senior Counsel has contended that by the executive order [Annexure-A] the basic provision of the Rules cannot be truncated. If such attempts are made that will amount to overriding without exercising the rule making power.

18. Mr. Routray, learned Senior Counsel has referred to a decision of this court in *Akshaya Kumar Swain Vs. State of Orissa & Ors.* (Order dated 27.10.2005 delivered in OJC No.9242 of 2000). In that case, a lecturer in English was appointed by the Management of a Grant-in-Aid College and he was allowed to receive Grant-in-Aid Scale w.e.f. 04.11.1989. But the lecturers who were appointed on the basis of the selection made by the Service Selection Board (SSB) were granted the UGC scale of pay w.e.f. 01.04.1989. Those who were appointed by the

Management, were not favoured with the said benefit. In this backdrop, it has been observed in *Akshaya Kumar Swain (supra)* as follows:

*“We are also not in a position to find any ground to deny such benefit to the petitioner. The ground for such denial only being that he was recruited by the Management. As the petitioner has satisfied the requirements so far as they relate the qualification in Annexure-3 and 5 and as there is nothing contrary to show in the record that the petitioner is not eligible to get grant-in-aid save and except saying that this is the reason he was recruited through the Governing Body, we are convinced that the petitioner shall be entitled to get the benefit as has been given to the similarly situated Lecturers like the ones sponsored by the Selection Board and adjusted against the direct payment post after 01.04.1989 as detailed in Annexure-4 to the application.”*

[Emphasis Added]

19. Mr. Routray, learned Senior Counsel has submitted that the centrality of controversy is identical and hence, the said principle will apply to the present case. Whether the clarification can take away the core of the principal clause or not, on that aspect, Mr. Routray, learned Senior Counsel has placed his reliance on a few decisions of the Apex Court.

In *V.B. Prasad Vs. Manager, P.M.D.U.P. School and Other: AIR 2007SC2053*, the apex court has quite succinctly held that it is well settled principle of law that the note appended to a statutory provision or the subordinate legislation must be read in the context of the

substantive provision and not in derogation thereof. Five years' teaching experience for appointment to the post of Head Master in that case was a sine qua non. Such teaching experience was to be 'teaching experience' and not a deemed teaching experience.

20. We are persuaded to observe that the Opposite Parties even did not claim that the petitioner's appointment was a deemed appointment w.e.f. 23.05.1995. As such, we do not find any relevance of the said report in the present context. However, what the Apex Court has observed in ***S. Sundaram Pillai Vs. V.R. Pattabiraman & Others; AIR 1985 SC 582*** may have some ramification as in that report, the Apex Court has interpreted various aspects viz. words and phrases including the explanation [in Para 45]. The apex court has dwelled on the impact of the *Explanation* on the proviso which deals with the question of wilful default. Before, we appreciate the said delicate question, we may appreciate the intent, purpose and legal effect of an *Explanation*. It is now well settled that an *Explanation* added to a statutory provision is not a substantive provision in any sense of the term, but it purports to explain or clarify certain ambiguities which may emerge from the statutory provision.

21. In *Burmah Shell Oil Storage and Distributing Co. of India Ltd. Vs. Commercial Tax Officer: (1961) 1 SCR 902: AIR 1961 SC 315,*

a Constitution Bench had occasion to observe as follows:

*“Now, the Explanation must be interpreted according to its own tenor, and it is meant to explain cl. (1)(a) of the Article and not vice versa. It is an error to explain the Explanation with the aid of the Article, because this reverses their roles.”*

22. Thereafter, the Apex Court in *S. Sudaram Pillai (supra)* has enunciated the object of an Explanation to a statutory provision in the following terms:

*“(a) to explain the meaning and intendment of the Act itself.*

*(b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to sub serve.*

*(c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,*

*(d) an explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and*

*(e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same.*

*Therefore, only when there is some ambiguity or get explanation may be the aid otherwise not, explanation is*

always subordinate to the main clause, it cannot alter or reverse the meaning of the main clause.”

**[Emphasis Added]**

23. In order to repel the submission of Mr. Routray, learned Senior Counsel, Mr. D. Nayak, learned Addl. Government Advocate appearing for the Opposite Parties No.1 and 2 has stated that by the Clarification, as embodied in the communications dated 07.10.2015 and 20.01.2016 (Annexures-A and B1 to the counter affidavit), it is intended to say that Lecturers who are eligible for the post of Lecturer (Group-A Scale) and Reader (State Scale) prior to 01.01.2014, they can get the benefit notionally from the date of eligibility without any financial benefit. Their pay will be fixed notionally from the date of eligibility up to 01.01.2014.

It has been further clarified that a non-SSB lecturer can get the benefit of Lecturer (Group-A Scale) and Reader (State scale) under the Rules after completion of 17 years and 27 years of continuous service from the approved date of joining and an SSB lecturer can get the similar benefits after completion of 08 years and 18 years of continuous service respectively from the approved date of joining.

The lecturers who were eligible for placement as Lecturer (Group-A Scale) and Reader (State Scale) prior to 01.01.2014, their pay will be fixed in the corresponding prevailing scale, but they will not be eligible to claim any arrear.

**24.** Mr. Nayak, learned Addl. Government Advocate has drawn our further attention to the Clarification regarding interpretation of the Odisha Non-Government Aided College Lecturer Placement Rules, 2014, circulated by the Communication No.HE-FE-VI-PLAN-126/2015 dated 07.10.2015, Annexure-A to the counter affidavit filed by the Opposite Parties No.1 and 2. Para-3 of the clarification is similar to the proposition as advanced by the explanation as aforesaid [as reproduced in Para-8 before]. For that reason, no elaborate reference is made in respect of clarification dated 07.10.2015.

**25.** Having appreciated the submissions of the learned counsel appearing for the parties, we would like to refer, at the threshold, to Rule 8 (2) (b) of the Orissa Education (Recruitment and Conditions of service of Teachers and Members of Staff of Aided Educational Institutions) Rules, 1974, whereby it is provided *inter alia* as follows:

*“(b) the vacancy in a post, carrying higher scale of pay, is filled up with prior approval of Government in case of a College and the concerned Director in case of an institution other than a college, by an employee of the same institution who possesses the prescribed qualifications and experience and whose performance in respect of the post he holds, has been found satisfactory. Such appointment shall be treated as regular appointment from the date, the same is filled up on ad hoc basis by the Managing Committee or the Governing Body, as the case may be, in the event of its approval by the competent authority.”*

26. From the undisputed facts, we have seen that the petitioner was appointed as the Lecturer in Chemistry as he was found suitable. His qualification and experience conformed to the prescribed eligibility criteria. Thereafter, the appointment of the petitioner was approved by the Director of Higher Education, Government of Odisha. As such, his appointment has to be treated as the regular appointment w.e.f. 23.05.1995. Moreover, the Opposite Parties have not disputed that the petitioner had been holding the post from the date of his appointment i.e. 23.05.1995. The petitioner has asserted that he has been discharging the duties of the Lecturer of Chemistry from 23.05.1995 to the entire satisfaction of the authority. Above all, by the Judgment dated 30.01.2012 delivered in G.I.A. Case No.189/2011, the State Education Tribunal held that the petitioner is entitled to GIA full salary with effect from his initial



date of appointment i.e. 23.03.1995. In compliance thereof, full GIA salary was paid to the petitioner.

27. There had been a judicial scrutiny and by the Judgment dated 30.01.2012, the State Education Tribunal had directed the Opposite Parties to release the full salary to the petitioner for the post of Lecturer w.e.f. 23.05.1995 as per the Grant-in-Aid Order, 1994, within a period of 3 months from the date of receipt of the said order. The said order was never challenged by the Opposite Parties. Hence, this court cannot observe anything contrary to the finding as returned by the said Judgment dated 30.01.2012. Therefore, the only question that remains to be addressed to is whether the petitioner has conformed to the requirement of Rule-4(b) read with *Explanation* provided by the Rules called the Odisha Non-Government Aided College Lecturer Placement Rules, 2014. Rule 4 (b), op. cit., is according to us, the relevant rule for purpose of determining the relief as prayed by the petitioner in this writ petition. Rule 4 (b) provides that in order to be eligible for placement in the grade of Lecturer (Group-A Scale under Rule-9), a lecturer covered by Rule 3 of the said Rules must have ***“completed at least 08 (eight) years of service from the date of receiving of full GIA in the post of Lecturer in case of appointment by the management.”***

28. As stated, there is no dispute that the petitioner was appointed as the Lecturer in Chemistry by the Management and such appointment was approved by the Director of Higher Education, Government of Odisha. We find from the facts as averred in the writ petition that AS College was brought under the Grant-in-Aid rules much prior to the appointment of the petitioner in the post of Lecturer in Chemistry and the petitioner himself was enjoying the Grant-in-Aid (GIA) Scale in the post of Demonstrator. Reference has been made to Rule 4(1)(c) of the said Rules but that rule, in our considered opinion, may not be the appropriate provision under which the petitioner's case is to be considered.

29. Mr. Nayak, learned Addl. Government Advocate has strenuously contended that Clauses (b) and (c) of Rule 4 clearly provide that such benefits can only be availed on completion of 9 years of continuous service from the approved date of joining and coming over to the full GIA scale. Even if, we accept the proposition as provided by *Explanation*, the requisite period for the petitioner to get into the post of the Lecturer (Group-A Scale) is 9 years [of continuous service from the approved date of joining]. But we cannot accept the proposition in as much as the said explanation is in contrast to the basic provisions of Rules

4 (1) (b) and (c) of the said Rules. To obviate the effect of the explanation, we read down and hold that an explanation can provide many thing but not in contrast to the basic rules.

**30.** In view of the discussion as made above, there cannot be any ambivalence that the petitioner's approved date of appointment is 23.05.1995 and the same was approved by a posterior order. We are constrained to observe that the Clarification dated 07.10.2015 (Annexure-A to the counter affidavit filed by the Opposite Parties) and the Clarification dated 20.01.2016 (Annexure-B to the counter affidavit filed by the Opposite Party No.2) cannot be sustained so far as the interpretation as provided in Para 3 is concerned. It has been provided by Para 3 that a non-SSB lecturer can avail the benefit of Lecturer (Group-A Scale) and Reader (State Scale) only after completion of 17 years and 27 years of continuous service respectively from the approved date of joining. We read down the said provision for being contrary to the provision of Rule-4(1) (b) of the Orissa Non-Government Aided College Lecturers Placement Rules, 2014. That apart, a clarification, cannot take away any benefit granted by the substantive rule. The placement of a Non-SSB Lecturer to the grade of Lecturer (Group-A Scale) will be guided by the provision of Rule-4 (1)(b) of the said Rules [of 2014].

**31.** Hence, we declare that the petitioner is entitled to get the benefit of the Lecturer (Group-A Scale) from the date when he had completed 8 years of service in the post of Lecturer from the date of getting the GIA scale. But so far the policy of the Government to pay notionally for a certain period is not intervened by us. That part of the notification dated 20.01.2016 (Annexure-B to the counter affidavit filed by the Opposite Parties), therefore, stands good. The pay of the petitioner in the post of Lecturer (Group-A Scale) shall be fixed notionally from the date of his eligibility till 01.01.2014, but it is made absolutely clear that the petitioner's pay shall be fixed in the said scale in the manner as provided under Rule 9 of the said Rules, as reproduced above, in the post of Lecturer (Group-A Scale) on the date of eligibility i.e. 23.05.2003.

**32.** It is made absolutely clear that the petitioner will not be entitled to actual financial benefits till 01.01.2014 as per the Government policy, but his pay and allowances shall be notionally counted till 01.01.2014. The petitioner's arrear pay and allowances, in terms of this order shall be paid to him within a period of 3 (three) months from the date when the petitioner will submit a copy of this order to the Opposite Parties. The Opposite Parties shall be at liberty to adjust the amount already paid to the petitioner on account of pay and allowances. The

petitioner shall, however, be entitled to the other service benefits from the date of eligibility.

As corollary to the observations made above, this writ petition stands allowed.

There shall be no order as to costs.

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(*S. Talapatra, J*)

*Savitri Ratho, J.* I agree.

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(*Savitri Ratho, J*)



*Orissa High Court, Cuttack.  
The 3<sup>rd</sup> day of April, 2023.  
Rati Ranjan Nayak, Junior Stenographer.*