

**ORISSA HIGH COURT: CUTTACK**

**WPC(OAC) NO. 1096 of 2014**

In the matter of an application under Article 226 of the  
Constitution of India.

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**AFR** Bijayalaxmi Mishra ..... Petitioner

-Versus-

State of Odisha and others ..... Opp. Parties

For Petitioner : M/s. Anup Kumar Bose  
and P.K. Das, Advocates

For Opp. Parties : Mr. S. Jena,  
Standing Counsel for  
S & ME Department

**P R E S E N T:**

**THE HONOURABLE DR. JUSTICE B.R.SARANGI**

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**DECIDED ON : 23.06.2021**

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**DR. B.R. SARANGI, J.** The petitioner, who is working as  
Assistant Teacher against Trained Graduate Post in  
Budhnath High School, Balipatna in the district of

Khurda, by means of this writ petition, seeks to quash the communication dated 15.07.2013 under Annexure-IV, and issue direction to the opposite parties to allowing her Trained Graduate Teacher scale of pay from 13.12.1986, i.e. from the date of passing B.Ed. examination till the date she was actually promoted to the post of Junior SES during the year 2006, instead of notionally.

2. The factual matrix of the case, in hand, is that as per the revised yardstick issued by the Government on 01.06.1983, an additional section post was created in Class-X-C of "Sri Budhanath High School, Balipatna" in the district of Khurda. The petitioner was appointed against the additional section post. In the meantime, the Government upgraded trained intermediate post to that of trained graduate post, vide Govt. Order No. 37536/E dated 14.08.1991. The petitioner, having possessed B.Ed. qualification with

effect from 13.12.1986, claimed that she should be granted trained graduate scale of pay from the date of passing of the examination, but the same was not considered. Therefore, she approached this Court by filing OJC No. 7792 of 1995, which was disposed of on 01.02.1996 with the direction to consider her representation pending with the Inspector of Schools and on examination if it is found that the petitioner is entitled to the trained graduate scale of pay, as claimed by her, necessary recommendation to the Director of Secondary Education shall be made within two months and the Director of Secondary Education in his turn shall pass necessary orders thereafter within two months from the date of receipt of the recommendation. In compliance of the above order, the Inspector of Schools, by its letter dated 05.07.1996, recommended the case of the petitioner along with others to the Director, enclosing therewith the copy of the statement of the concerned teachers requesting the Director to

allow them to draw trained graduate scale of pay w.e.f. 01.06.1983 or from the date of passing of their B.Ed. examination. But the Director did not take any steps and sat over the matter.

2.1 Consequentially, the petitioner filed OCRMC No. 549 of 1997, which was disposed of on 10.04.2001 by this Court expressing displeasure on the conduct of opposite parties and granted eight weeks time for compliance of the order of this Court as a last chance. But the opposite parties, in spite of the order passed by this Court, did not take any steps. Consequentially, the petitioner was compelled to file CONTC No. 216 of 2011, wherein the Director, Secondary Education, Odisha, Bhubaneswar filed compliance affidavit on behalf of the contemnor/opposite parties stating that the Commissioner-cum-Secretary to the Government, School and Mass Education Department, Orissa allowed the TGT sale of pay in

favour of the petitioner from the date of passing of the B.Ed examination notionally till she was actually promoted to the promotional post keeping in view the G.O. No. 37536 dated 14.08.1991. Aggrieved by such grant of TGT scale of pay to the petitioner notionally, the petitioner approached the Orissa Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 1096 (C) of 2014. But, on abolition of the said tribunal, the said original application has been transferred to this Court and registered as writ petition.

3. Mr. P.K. Das, learned counsel for the petitioner contended that once the authority is satisfied that the petitioner is entitled to trained graduate scale of pay from the date of passing of B.Ed. examination i.e. from 13.12.1986, the same should not have been granted notionally, but should have been granted actually for the period from 13.12.1986 till 06.06.2006, as the petitioner has been receiving regular scale of pay

after such date. It is further contended that from the date of acquiring B.Ed. qualification, the petitioner has been discharging the duty of trained graduate post and continuing in the additional section post in Class-X-C and, as such, the Government has allowed similarly situated 284 teachers of the trained matric/trained intermediate of ten circles and 150 teachers of 3 circles, including Khurda circle, for receiving their salary in TGT scale of pay w.e.f. 01.06.1983 or from the date of passing B.Ed. examination, whichever is applicable. It is further contended that as a matter of policy decision, the Government has extended the above benefit allowing the TGT scale of pay to so many similarly situated teachers, but the petitioner has been discriminated and, as such, it violates Article 14 of the Constitution of India. It is further contended that the impugned communication does not indicate that the petitioner is not entitled to TGT scale of pay, rather having satisfied that the petitioner is entitled to get TGT scale of pay w.e.f.

13.12.1986, i.e., from the date she passed the B.Ed examination, but granted the benefit notionally, instead of actually. Therefore, the order impugned is liable to be quashed. To substantiate his contention he has relied upon the judgment of this Court in **(Sri) Madhab Chandra Podh vs. State of Orissa**, 1998 (II) OLR 334 and **Jasobanta Mohanty vs. State of Orissa**, 2016 (II) ILR -CUT- 384.

4. Mr. S. Jena, learned Standing Counsel for School and Mass Education Department, referring to the counter affidavit filed by opposite party no.3, contended that on introduction of revised yardstick, the government upgraded the trained intermediate post to that of T.G. post. After the government decision for up-gradation of the post of T.I. to T.G., the petitioner had approached this Court by filing OJC No. 7792 of 1995 seeking direction for grant of TGT scale of pay from the date of publication of B.Ed result, i.e. 13.12.1986. The

said OJC was disposed of directing to consider the representation of the petitioner, but the same was not considered. When the contempt application was moved, a compliance affidavit was filed allowing the petitioner TGT scale of pay notionally from the date of passing of the B.Ed. examination. Thereby, no illegality or irregularity has been committed by the authority concerned by passing the order impugned so as to cause interference of this Court at this stage.

5. This Court heard Mr. P.K. Das, learned counsel for the petitioner and Mr. S. Jena, learned Standing Counsel for School and Mass Education Department through virtual mode, and perused the record. Pleadings having been exchanged between the parties and with the consent of the learned counsel for the parties, this writ petition is being disposed of finally at the stage of admission.

6. There is no dispute with regard to the factual matrix, as narrated above. As such, the communication dated 15.07.2013 under Annexure-IV, which has been impugned herein, clearly states as follows:

*“I am directed to invite a reference to your letter No. 29121 dt. 08.07.2012 on the subject cited above and to say that the petitioner Smt. Bijayalaxmi Mishra may be allowed TGT scale of pay from 1986 i.e. from the date of passing B.Ed. examination on notionally till the date she was actually promoted to the post of Junior SES during the year 2006 keeping in view of the G.O. No.37536 dt.14.08.1991.*

*You are, therefore, requested to take action accordingly and file compliance affidavit before the Hon’ble High Court on 15.07.2013 positively.*

*This may be treated as Most Urgent.*

*Yours faithfully,*

*Sd/-*

*Additional Secretary to Govt.”*

In view of such letter, with regard to entitlement of the petitioner TGT scale of pay from the date of passing the B.Ed. examination, there is no dispute, but ‘notional’ fixation of such scale of pay is only in controversy, which is to be considered in the present writ petition.

7. In **Madhab Chandra Podh** (supra), this Court has already held that the Government had no objection to the grant of higher scale of pay to the teachers who had acquired trained qualification while holding their appointments against the Trained Graduate Posts. If as a result of a teacher acquiring trained qualification there was a surfeit of Trained Arts Graduate Teachers or the Trained Science Graduate Teachers in the school, as the case may be, the obvious thing to be done is to transfer the required teachers to some other institutions and in their place get the teachers as are necessary for the purposes of the school. It is for such reason that the petitioner therein must succeed to the declaration that he is entitled to be granted the Trained Graduate scale of pay from the date of acquisition of trained qualification and the same should be paid within a period of three months.

8. In **Jasobanta Mohanty** (supra), this Court, relying upon the letter dated 07.02.1983 addressed to the Deputy Director of Public Instructions, Orissa and relying upon the ratio decided in **Madhab Chandra Podh** (supra) held that the teachers continuing against trained graduate posts are entitled to get the trained graduate scale of pay from the date they acquired the qualification and, as such, the letter dated 15.07.2013, referred to above, clearly indicates that the petitioner is entitled to get the scale of pay from the date of passing of the B.Ed. examination w.e.f. 1986, but fixation of such pay notionally is on a different context altogether and, as such, the letter dated 01.06.1983 has not been taken into consideration. Therefore, the petitioner is entitled to get trained graduate scale of pay actually from 13.12.1986 to 06.06.2006 and, after adjusting the amount already received for the said period, the balance differential amount should be released in favour of the petitioner within a period of

three months from the date of communication of this judgment.

9. In the result, the writ petition is allowed. However, there shall be no order as to cost.

As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the judgment available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020 as modified by Court's Notice No. 4798 dated 15th April, 2021.

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**DR. B.R. SARANGI,**  
**JUDGE**

**Orissa High Court, Cuttack**  
**The 23<sup>rd</sup> June, 2021, Ajaya/GDS**