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IN THE HIGH COURT OF ORISSA AT CUTTACK

FAO Nos.568 of 2016 & FAO Nos.281,120,121,176,186, 187,198,218,267,291,293,294,363,392,580,655,685, 695 & 820 of 2018, FAO Nos.593,663,684,855,861, 1021 & 1022 of 2019, FAO Nos.6,93,118,204 & 642 of 2020,FAO No.9 of 2021 & FAO Nos.135 & 237 of 2022

In the matter of an application under Section 24-C of the Odisha Education Act, 1969

.....

FAO NO.281 of 2018

State of Odisha & Others .... **Appellants**

-versus-

Sadhana Pradhan & Others .... **Respondents**

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For Appellants : Mr. P.K. Panda,
Addll. Standing Counsel

For Respondents : Mr. B. Routray, Sr. Advocate along with Mr. J. Biswal, Adv.

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing:30.04.2025 and Date of Judgment:23.06.2025

Biraja Prasanna Satapathy, J.

1. Since the issue involved in the present batch of Appeals is identical, all the appeals were heard analogously and disposed of by the present common

order. However, for the sake of brevity and convenience, FAO No.281 of 2018 was taken as the lead case.

2. All these present Appeals have been filed challenging the judgment passed by the learned State Education Tribunal (in short, "the Tribunal") in different G.I.A cases so filed by the employees/concerned institutions seeking extension of the benefit of Grant-in-aid under G.I.A Order, 1994 (in short, "1994 Order"). While State is the appellant in all those cases where the claim has been allowed by the Tribunal, the employees/institutions are before this Court in different appeals where such claim has been rejected by the Tribunal.

3. Learned counsel appearing for the State-Appellant in FAO No.281 of 2018 contended that the respondents who happens to be the teaching and non-teaching staff of Jayadev Girls' High School, Barahipur in the district of Cuttack, moved the Tribunal in GIA Case No.43 of 2012 for release of Grant-in-aid in terms of the 1994 order w.e.f 01.06.1994. Such claim of the Respondents

was allowed by the Tribunal vide the impugned Judgment dt.04.10.2017. While assailing the judgment so passed by the Tribunal, learned Addl. Standing Counsel contended that prior to coming force of the 1994 Order, Government vide its resolution No.9760 dt.17.03.1979 prescribed that Grant-in-aid can be considered if the result of the school would be 50% above of the State average in the Annual High School Certificate Examination for a period of four (4) years continuously, besides other eligibility criteria and one (1) year in case the school is situated in backward areas and a Girls School. Resolution dt.17.03.1979 was modified by the Government in the erstwhile Education and Youth services Department vide its resolution dt.23.09.1981 and in the said resolution it was provided that Grant-in-aid to non-Government Aided High Schools need not be subject to qualitative and quantitative assessment of the schools' performance for the present. Such notification was also made applicable with retrospective effect from 01.04.1979.

3.1. It is contended that though in terms of the provisions contained under the 1994 Order, the respondents became eligible to get the benefit of Grant-in-aid w.e.f 01.06.1994, but in view of the provisions contained under Section 7-C (1) of the Orissa Education Act, 1969 (in short, "the Act"), 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 of the State. It is accordingly contended that in view of the provisions contained under Section 7-C of the Act, Government is not bound to provide Grant-in-aid to any private educational institutions on merely attaining/fulfilling the eligibility i.e presenting the students of the School in the Annual High School Certificate Examination for a period of 4 year and one (1) year in respect of Girls's School prior to 01.06.1994.

3.2. It is also contended that even though the Respondents-institution became eligible to get the benefit of Grant-in-aid under 1994 Order, but since the school was not found eligible to get the same because of

some deficiencies, the school was notified to receive Grant-in-aid w.e.f 01.01.2004 under G.I.A Order, 2004. It is contended that such extension of Block Grant in favour of the respondents under GIA Order, 2004 was duly accepted. But after accepting such benefit of Block Grant so released under GIA Order, 2004, the Respondents raised that claim to get the benefit of Grant-in-aid under 1994 Order by filing G.I.A Case No.43 of 2012 after 8 years of getting the benefit.

3.3. It is also contended that since by the time the Respondents raised such claim to get the benefit of Grant-in-aid under 1994 Order, GIA Order, 1994 was already repealed with issuance of the notification on 05.02.2004, in view of the decision of the Hon'ble Apex Court in the case of ***Anup Kumar Senapati and another Vs. State of Odisha & Another, (2019) 19 SCC 626,*** no such claim should have been entertained by the Tribunal. Hon'ble Apex Court in Para- 28, 32, 34, 35, 37 to 39 and 49 of the Judgment in the case of ***Anup Kumar Senapati*** has held as follows:

"28. The next question which we take up for consideration is concerning the effect of the repeal of the Order of 1994, by the Order of 2004. The provisions contained in Paragraph 4 of the Order of 2004 has repealed the Order of 1994 save for the purposes in Paragraph 3(1). Paragraph 3(1) provides every private educational institution being a Non-Government College, Junior College or Higher Secondary School which has become eligible by 1.6.1994 to be notified as aided educational institution under the Order of 1994, shall be notified by the Government as required under Section 3(b) of the Act and shall be entitled to receive grant-in-aid by way of block grant in the manner provided in Paragraph 3(2). The proviso to Paragraph 3 makes it clear that a college to be eligible as an aided educational institution must not have more than two ministerial staff and two peons. There is no other saving of the Order of 1994. However, Paragraph 4(2) of the Order of 2004 provides notwithstanding the repeal of the Order of 1994, the private educational institutions which are in receipt of any grant-in-aid from the Government under the Order so repealed shall continue to receive the grant-in-aid as if the Grant-in-aid Order, 1994 had not been repealed. Thus, it is clear that in case a college is receiving grant-in-aid, with respect to a post, shall continue to receive it under the Order of 1994, however, in case it was not receiving the grant-in-aid as saving of the Order of 1994 is only entitled for block grant under Paragraph 3(1), not eligible for receiving the grant-in-aid under the Order of 1994. The saving of Order of 1994 is for a limited purpose that the institution shall continue to receive grant-in-aid concerning the posts which had been sanctioned before the repeal of the order of 1994.

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32. It is apparent from the aforesaid discussion that what is unaffected by the repeal of a statute is a right acquired or accrued and not mere hope or expectation of or liberty to apply for acquiring a right. There is a distinction in making an application for acquiring a 19 Karam Singh v. Pratap Chand, AIR 1964 SC 1305, p. 1309 (para 10) : (1964) 5 SCR 647 ; Ishverlal v. Motibhai, AIR 1966 SC 459, p.466 : 1966 (1) SCR 367. 20 By a subsequent statute a penal section in an earlier statute ceased to have effect and was also repealed. It was held that even such a double repeal did not show a contrary intention and prevent prosecution for an offence committed before the repeal; Commissioner of Police

v. Simeon, (1982) 2 All ER 813 : (1983) 1 AC 234 : (1982) 3 WLR 289 (HL). 21 State of Punjab v. Mohar Singh, AIR 1955 SC 84, p.88 : (1955) 1 SCR 833 ; Indira Sohanlal v. Custodian of E.P., AIR 1956 SC 77, p. 83 : (1955) 2 SCR 1117 ; Brihan Maharashtra Sugar Syndicate v. Janardan, AIR 1960 SC 794, p. 795 : (1960) 3 SCR 85; Mahadeolal v. Administrator General of WB, AIR 1960 SC 936, pp.938, 939 (para 7) : (1960) 3 SCR 578; State of Kerala v. N. Sami Iyer, AIR 1966 SC 1415, pp.1417, 1418; Jayantilal v. Union of India, AIR 1971 SC 1193, p.1196 : (1972) 4 SCC 174; T. Barai v. Henry Ah Hoe, AIR 1983 SC 150, p.156 : (1983) 1 SCC 177; Bansidhar v. State of Rajasthan, AIR 1989 SC 1614, p.1619 : (1989) 2 SCC 557; Manphul Singh Sharma v. Ahmedi Begum, JT 1994 (5) SC 49, p.53 : (1994) 5 SCC 465; D. Srinivasan v. The Commissioner, AIR 2000 SC 1250, p.1255 : (2000) 3 SCC 548. For the construction of a Saving Clause which opens with the words 'Save as expressly provided in this Act', see S.N. Kamble v. Sholapur Municipality, AIR 1966 SC 538 : (1966) 1 SCR 618. For a saving clause which preserves old rights but applies new procedure, see Ramachandra v. Tukaram, AIR 1966 SC 557: 1966 (1) SCR 594. 22 Kalawati Devi v. CIT, AIR 1968 SC 162, p.168 : (1967) 3 SCR 833; ITO, Mangalore v. Damodar, AIR 1969 SC 408, p.412 : (1969) 2 SCR 29; MahmadhusenAbdulrahimKalotaShaikh v. Union of India, (2009) 2 SCC 1 para 34 (f) : (2008) 13 Scale 398. But see TiwariKanhaiyalal v. Commissioner of Incometax, AIR 1975 SC 902 : (1975) 4 SCC 401, which holds that the detailed savings contained in section 297, of the Incometax Act, 1961 are not exhaustive. Recourse, in this case, was taken to section 6, General Clauses Act for holding that a person's liability for an offence under section 52 of the Incometax Act, 1922 continued even after its repeal. In Commissioner of Incometax, U.P. v. Shah Sadiq and Sons, (1987) 3 SCC 516, p.524: AIR 1986 SC 1217. Section 6 of the General Clauses Act was again applied to continue the right of setoff accrued under section 24(2) of the 1922 Act after its repeal by the 1961 Act.

[Note: For convenience, the cases/citations in the extracts has been renumbered.] right. If under some repealed enactment, a right has been given, but on investigation in respect of a right is necessary whether such right should be or should not be given, no such right is saved. Right to take advantage of a provision is not saved. After repeal, an advantage available under the repealed Act to apply and obtain relief is not a right which is saved when the

application was necessary and it was discretionary to grant the relief and investigation was required whether relief should be granted or not. The repeal would not save the right to obtain such a relief. The right of pre-emption is not an accrued right. It is a remedial right to take advantage of an enactment. The right of a Government servant to be considered for promotion under repealed rules is not a vested right unless repeal provision contains some saving and right has been violated earlier.

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34. In the present case, it is apparent that there is no absolute right conferred under the Order of 1994. The investigation was necessary for whether grant-in-aid to be released or not. It was merely hope and expectation to obtain the release of grant in aid which does not survive after the repeal of the provisions of the Order of 1994. Given the clear provisions contained in Paragraph 4 of the Order of 2004, repealing and saving of Order of 1994, it is apparent that no such right is saved in case grant-in-aid was not being received at the time of repeal. The provisions of the Order of 1994 of applying and/or pending applications are not saved nor it is provided that by applying under the repeal of the order of 1994, its benefits can be claimed. Grant was annual based on budgetary provisions. Application to be filed timely. As several factors prevailing at the relevant time were to be seen in no case provisions can be invoked after the repeal of the order of 1994. Only the block grant can be claimed.

35. The High Court in LoknathBehera has rightly opined that due to repeal, the provisions of the Order of 1994 cannot be invoked to obtain grantinaid. The High Court has rightly referred to the observations of this Court in State of Uttar Pradesh and others v. Hirendra Pal Singh, and others, (2011) 5 SCC 305, wherein it was observed:

"22. It is a settled legal proposition that whenever an Act is repealed, it must be considered as if it had never existed. The object of repeal is to obliterate the Act from the statutory books, except for certain purposes as provided under Section 6 of the General Clauses Act, 1897. Repeal is not a matter of mere form but is of substance. Therefore, on repeal, the earlier provisions stand obliterated/abrogated/wiped out wholly i.e. pro tanto repeal (vide Dagi Ram PindiLall v. Trilok Chand Jain, (1992) 2 SCC 13; Gajraj Singh v. STAT, (1997) 1 SCC 650; Property

Owners' Assn. v. State of Maharashtra, (2001) 4 SCC 455 and Mohan Raj v. DimbeswariSaikia, (2007) 15 SCC 115).

24. Thus, there is a clear distinction between repeal and suspension of the statutory provisions and the material difference between both is that repeal removes the law entirely; when suspended, it still exists and has operation in other respects except wherein it has been suspended. Thus, a repeal puts an end to the law. A suspension holds it in abeyance.

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37. Considering the various provisions of Section 7C of the Act and the Order of 1994, it is apparent that institutions which received grant-in-aid and post with respect of which grant-in-aid was being released, have been saved. The reference of the institution means and includes the posts. They cannot be read in isolation. It cannot be said that right to claim grant-in-aid has been fixed, accrued, settled, absolute or complete at the time of the repeal of the order of 2004. As per the meaning in Black's Law Dictionary, vesting has been defined thus:

"vest, vb. (15c) 1. To confer ownership (of property) upon a person.
2. To invest (a person) with the full title to property. 3. To give (a person) an immediate, fixed right of present or future enjoyment. 4. Hist. To put (a person) into possession of land by the ceremony of investiture.– vesting, n."

38. Thus, there was no vested, accrued or absolute right to claim grant-in-aid under the Act or the Order of 1994. Merely fulfilment of the educational criteria and due appointment were not sufficient to claim grant- in-aid. There are various other relevant aspects fulfilment thereof and investigation into that was necessary. Merely by fulfilment of the one or two conditions, no right can be said to have accrued to obtain the grant-in-aid by the institution concerning the post or individual. No right has been created in favour of colleges/individual to claim the grant-in-aid under the Order of 1994, after its repeal. No claim for investigation of right could have been resorted to after repeal of Order of 1994.

39. It was lastly submitted that concerning other persons, the orders have been passed by the Tribunal, which was affirmed by the High Court and grants-in-aid has been released under the Order of

1994 as such on the ground of parity this Court should not interfere. No doubt, there had been a divergence of opinion on the aforesaid issue. Be that as it may. In our opinion, there is no concept of negative equality under Article 14 of the Constitution. In case the person has a right, he has to be treated equally, but where right is not available a person cannot claim rights to be treated equally as the right does not exist, negative equality when the right does not exist, cannot be claimed.

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49. It is apparent on consideration of Paragraph 4 of order of 2004 that only saving of the right is to receive the block grant and only in case grant in aid had been received on or before the repeal of the Order of 2004, it shall not be affected and the Order of 1994 shall continue only for that purpose and no other rights are saved. Thus, we approve the decision of the High Court in LokNathBehera (supra) on the aforesaid aspect for the aforesaid reasons mentioned by us."

3.4. It is also contended that not only the impugned judgment passed by the Tribunal is contrary to the ratio decided in the case of ***Anup Kumar Senapati*** as cited (supra), but also the same is contrary to the law laid down by this Court in the case of ***Laxmidhar Pati and Others Vs. State of Orissa and Others, (1996 (I) OLR 152)***. This Court in para 22 of the judgment has held as follows:

22. The ratio of the aforesaid decisions is not in doubt or in dispute in any manner whatsoever. By construing and interpreting the Government resolutions and the Government circular as indicated above, we shall have to consider whether the scheme as framed by the State Government entitles the recipients to receive grant-in-aid from the date of their achieving the eligibility criteria and/or from the date of notification to

indicate that such eligible schools or their teaching and non-teaching staff are eligible to receive grant-in-aid by approving their eligibility, or whether the date of release of grant-in-aid to eligible schools and/or their teaching and non-teaching staff from the date of actual order of release having no nexus to the date of approval of the eligibility criteria/Looking at the scheme and in particular the provision of law that there is no absolute right to claim grant-in-aid and the financial capacity, the economic potentiality and other development work of Government have to be considered in interpreting Article 41 of the Constitution of India. We are of the considered view that the Bench decision of this Court reported in 1993 (I) OLR 77 is correct. The view taken by the subsequent Division Bench as to entitlement to grant-in-aid from the date of approval and/or from the date of achieving the eligibility criteria does not appear to be good law. The reference is answered accordingly.

We hasten to add here that we may not be understood to have laid down the law that the Government is a free-lancer in ordering release of grant-in-aid arbitrarily and denying fairplay and by encouraging favouritism. Its decision/order in the matter of grant/refusal of grant-in-aid must be based on sound principles and should not be whimsical or arbitrary.

3.5. It is also contended that since release of Grant-in-aid in favour of a private recognized institution is the prerogative of the State and subject to its financial capacity, the claim made by the Respondents to get the benefit of Grant-in-Aid under 1994 Order is also not entertainable.

3.6. It is also contended that the decision of the Hon'ble Apex Court in the case of ***Unni Krishnan J.P and Others Vs. State of Andhra Pradesh, AIR 1993 SC 2178***, Hon'ble Apex Court has held that no citizen or

person or institution has a right much less a fundamental right to affiliation or recognition or to receive Grant-in-aid from the State. It is also contended that while making the application for recognition and in terms of the provisions contained under Section 6-A(2) of the Act, the institution has given an undertaking that it has got adequate financial resources to meet the salary and other costs of the educational institutions and it shall not claim Grant-in-aid from the State Government. It is contended that on the face of such undertaking given by the Institution, claim made by the Respondents is also not entertainable.

3.7. A further submission was also made that in view of the provisions contained under Section 7-C of the Act, no right accrues in favour of the institutions/employees to raise any claim for release of Grant-in-aid as a matter of right. Since on the face of their eligibility, the institution was not notified to get the benefit of Grant-in-Aid under 1994 Order and subsequently benefit of Block Grant was allowed in terms of the provisions contained under GIA Order, 2004, in view of the

decision in the case of ***Anup Kumar Senapati*** so cited (supra), the Tribunal could not have allowed the claim. It is accordingly contended that claim so allowed by the Tribunal in the present batch of appeals while needs interference of this Court in setting aside the same, claim disallowed by the Tribunal in different GIA cases which are the subject matter of challenge in various appeals needs to be upheld.

4. Mr. B. Routray, learned Sr. Counsel appearing on behalf of the Respondents well assisted by other learned counsels in the present batch of appeals, on the other hand made his submission basing on the stand taken before the Tribunal in the GIA case.

4.1. It is contended that the school in question got the permission for opening of Class-VIII during the Academic Session 1988-89. The school got the recognition from the Board of Secondary Education, Orissa to present its 1st batch of candidate in the Annual HSC Examination, 1993.

4.2. It is contended that in view of the provisions contained under clause-12 of the 1994 Order, the school became eligible to get the benefit of Grant-in-aid under GIA Order, 1994. Clause-12 of the Order reads as follows:

> ***12***. *Irrespective of the date of eligibility, no grant-in-aid shall be payable to Aided Educational Institutions falling within Category II and III for any period prior to 1-6-1994. Arar payments towards grant-in-aid admissible for posts in educational institutions falling within Category I, may subject to funds being available in the Budget for this purpose be made in such manner and such form as the State Government may determine from time to time.*

4.3. It is contended that in terms of the provisions contained under clause-12 of the 1994 Order, Director Secondary Education vide his letter dt.05.01.1995 requested all the Inspector of Schools to send a list of unaided Girls High School, those who have presented the candidates directly at the HSC examination for one(1) year or more by 01.06.1994 along with details of the particulars of each individual institutions year-wise for onward transmission to the Government as desired.

4.4. It is contended that basing on such letter issued by the Director Secondary Education on 05.01.1995 and on receipt of the required information from the concerned

Inspector of Schools, Director, Secondary Education vide his letter dt.29.06.1995 submitted the list of 109 unaided Girls' High Schools which have presented candidates directly at the HSC Examination for one (1) year or more by 01.06.1994 to take further action, as desired.

4.5. It is contended that on receipt of such information from the Director Secondary Education in respect of all those 109 unaided Girls' High Schools of the State, Government in the Department of School and Mass Education vide notification dt.04.07.1998 held five(5) of those 109 unaided Girls High Schools eligible to get the benefit of Grant-in-aid under GIA Order 1994 vide notification dt.04.07.1998.

4.6. It is contended that on the face of such extension being made in favour of five (5) out of 109 unaided Girls' High School vide notification dt.14.07.1998, claim of the respondent-institution along with the other 104 eligible Girls' School when was kept pending, Director, Secondary Education vide his letter dt.28.10.2002,

requested the Department to consider sanction of Grant-in-aid to the rest 104 Girls' High School under GIA Order, 1994.

4.7. It is however contended that while the matter stood thus, GIA Order 1994 was repealed with introduction of GIA Order, 2004 so notified on 05.02.2004. However, GIA Order 2004 was further amended vide notification dt.10.09.2007 i.e (Orissa Education Payment of Grant-in-aid to High Schools, Upper Primary Schools etc.) Amendment Order 2007. Vide the said amendment, the following provision was included in para 4(1) of the Order.

> *"In the said order, for sub-Para (1) of Para 4 the following sub Para along with the explanation shall be substituted namely -*
>
> *1) The quantum of grant in-aid to 100 Girls High Schools notified by the Government in & Mass Education Department Notification No 3335, dated the 20th February 2004 being educational institutions de sub-section (b) of Section 3 of the Orissa Education Act. 1969 which have presented at least one batch of students in High School Certificate Examination by a day of June 1994, shall be the amount representing the initial pay of the teaching and non-teaching employees of such schools on that date in the pre-revised scale of pay including increments notionally accrued on the date of notification plus the Dearness Allowance as admissible thereon.*
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> *explanation- The 100 Girls High Schools coming under category of sub-Para (1) of Para. 4 and High Schools coming under category of sub-Para (4) of Para 3 of GIA*

Order. 2004, notified by the Government in School & Mass Education Department Notification No. 3325, dated the 20th February 2004, which warrants cancellation and notification pursuant to the relaxation allowed under the Orissa Education (Payment of Grant-in-aid to High Schools, Upper Primary Schools, etc) Amendment Order, 2007, enabling them to be eligible under this amendment order irrespective the date from which such educational institutions would have become eligible under G I. A Order, 1994, GIA Order, 2004, as the case may be, may be paid grant-in-aid and the quantum of Block Grant as determined under sub-Para. (1) and (2) of Para 4 of G I.A. Order, 2004 as the case may be with effect from the date of issue of the renotification under the Orissa Education (Payment of Grant-in-aid to High Schools, Upper Primary Schools, etc.) Amendment Order, 2007."

4.8. It is contended that in terms of the amendment so notified on 10.09.2007, vide notification dt.22.09.2007, Government in the Department of School and Mass Education published the list of 100 Girls' High School eligible to receive Grant-in-Aid under GIA Amendment, Order, 2007. While publishing such notification on 22.09.2007, the earlier notification issued by the self-same Department vide Notification dt.20.02.2004 was cancelled.

4.9. It is however contended that though initially 109 unaided Girls High School were held eligible to get the benefit of Grant-in-Aid under GIA Order, 1994 and out of those 109, five (5) Girls High Schools were held entitled to get the benefit vide Notification

dt.04.07.1998, but another four (4) Girls High School were also held entitled to get the benefit under GIA Order, 1994 and thereby leaving 100 unaided Girls High Schools to get the benefit, so notified initially vide notification dt.20.02.2004 and subsequent notification issued on dt.22.09.2007.

4.10. It is contended that in terms of the amended provisions contained under 2007 Amendment Order and the notification issued by the Department on 22.09.2007, services of the respondents was approved w.e.f 01.06.1994 vide Office Order dt.08.02.2008 of the then Inspector of Schools, Cuttack Circle, Cuttack. Even though services of the Respondents were approved w.e.f 01.06.1994, but they were held eligible to receive Grant-in-aid in shape of Block Grant w.e.f 22.09.2007 i.e. the date of notification issued by the Government in declaring 100 unaided Girls High Schools to receive the benefit under the Amendment Order, 2007.

4.11. Learned Sr. Counsel appearing for the Respondents vehemently contended that since in terms

of Para 12 of the GIA Order, 1994, the School was held eligible to get the benefit under GIA Order 1994 and correspondences were accordingly made in between the Government, Director Secondary Education as well as concerned Inspector of Schools,(now DEOs) but no final decision was taken in respect of 104 such Girls High Schools in extending the benefit.

4.12. It is however contended that out of 109 unaided Girls High School whose case were recommended at different point of time, five (5) Girls High Schools were held eligible to receive Grant-in-aid under GIA Order, 1994 w.e.f. 01.06.1997 vide notification dt.04.07.1998 of the Government. Not only that, four (4) other Girls High Schools in the meantime were also held eligible to get the benefit under GIA Order 1994, leaving 100 unaided Girls High Schools in the lurch. It is accordingly contended that claiming extension of the benefit under GIA Order 1994, not only the private respondents moved the Tribunal in GIA Case No.43 of 2012, but also similar claim was made by other concerned employees /institutions by filing different GIA

cases before the Tribunal, which is the subject matter of challenge in either way before this Court in the present batch of appeals.

4.13. It is also contended that when such claim was allowed by the Tribunal in respect of 29 Girls' High Schools, the same was challenged by the State machinery before this Court and subsequently before the Hon'ble Apex Court by filing Civil Appeal No.2443 of 2017 and batch. It is contended that all those appeals filed before the Apex Court when were dismissed vide different orders passed on 06.02.2017,21.03.2017 and 17.04.2017, Government in the Department of School and Mass Education vide letter dt.24.06.2017 held the concerned 29 Girls High School eligible to get the benefit under GIA Order, 1994, in modification of the earlier notification issued by the Department on 22.09.2007. Relevant extract of letter dt.24.06.2017 reads as follows :

> *"Pursuant to orders dated 06.02.2017, 21.03.2017,17.04.2017 passed by the Hon'ble Supreme Court of India in the aforesaid cases, Govt. in School and Mass Education Department have decided to comply the orders. Accordingly, notional benefits are allowed to the Petitioners of following schools w.e.f the*

dates mentioned against their names the employees are entitled to get arrear financial benefit w.e.f the date mentioned against their names and accordingly Govt. Notification No.3325/SME dated 20.02.2024 and No.19463/SME 22.09.2007 relating to grant in aid are modified."

4.14. It is contended that not only out of the rest 100 Girls' High Schools, 29 Girls High Schools were extended with the benefit of Grant-in-aid under GIA order, 1994 vide notification dt.24.06.2017, but also similar benefit was allowed after confirmation of the order by this Court, vide orders issued by the District Education Office, Jajpur in respect of the claim in GIA Case No.425 of 2011.

4.15. Not only that, vide notification dt.16.08.2018, claim of the Girls High School in GIA Case No.219 of 2011 was also allowed by extending the benefit of 1994 Grant-in-aid Order. It is accordingly contended that out of the 109 unaided Girls High Schools who were held eligible to receive the benefit of Grant-in-aid under 1994 Order, nine (9) Girls High Schools initially were allowed the benefit and accordingly 100 schools were notified to get the benefit vide notification dt.20.02.2004. However, basing on the Amendment Order 2007, vide notification

dt.22.09.2007, the self-same 100 unaided Girls' High Schools were held eligible to receive the benefit of Grant-in-aid under the Amendment Order, 2007. Vide such notification issued on 22.09.2007, the earlier notification issued on 20.02.2004 was cancelled.

4.16. In terms of such notification issued on 22.09.2007, though the respondent-institution was extended with the benefit vide Office Order dt.08.02.2008 by taking the date of appointment as 01.06.1994, but Block grant was released with effect from 22.09.2007. However, out of those 100 Girls High Schools basing on the order passed by the Tribunal so confirmed by this Court as well as by the Hon'ble Apex Court, 29 Girls High Schools on the face of extension of the benefit under the Amendment Order, 2007, were extended with the benefit of 1994 order vide notification dt.24.06.2017.

4.17. Not only that while implementing similar order passed by the Tribunal so confirmed by this Court, benefit has been extended in favour of other Girls

High Schools similarly situated. It is accordingly contended that since out of 109 Schools, initially 9 Schools and subsequently another 29 Girls High Schools have been extended with the benefit of Grant-in-aid under GIA Order, 1994 on the face of their entitlement to get the benefit under the Amendment Order 2007 so notified on 22.09.2007, the respondents are eligible and entitled to get the benefit which has been rightly allowed by the Tribunal vide its judgment dt.06.02.2017 in GIA Case No.43 of 2012.

4.18. It is contended that since Petitioners are similarly situated as like the 9 Girls' High School who are initially extended with the benefit by the Government suo moto, and the 29 Girls' High Schools so extended with the benefit in terms of the Order passed by the Tribunal, so confirmed by this Court and the Apex Court vide Notification dt.24.06.2017, the respondents being similarly situated, they cannot be discriminated. In support of the same, reliance was placed to a decision of the Hon'ble Apex Court in the case of ***State of Uttar Pradesh & Others Vs. Arvind Kumar Srivastav and***

Others. Hon'ble Apex Court in para 22 in the case of ***Arvind Kumar Srivastav*** has held as follows:

> *"22 . Holding that the respondents had also acquiesced in accepting the retirements, the appeal of U.P. Jal Nigam was allowed with the following reasons:*
>
> *"13. In view of the statement of law as summarised above, the respondents are guilty since the respondents have acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter. Therefore, whenever it appears that the claimants lost time or whiled it away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted. In the present case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two years. That will definitely require the Nigam to raise funds which is going to have serious financial repercussions on the financial management of the Nigam. Why should the court come to the rescue of such persons when they themselves are guilty of waiver and acquiescence?"*

4.19. Reliance was also placed to a decision of the Apex Court in the case of ***State of Karnataka & Others Vs. C. Lalitha, (2006) 2 SCC 747***. Hon'ble Apex Court in para 29 of the decision in the case of ***C. Lalitha*** has held as follows:

> *"29. Justice demands that a person should not be allowed to derive any undue advantage over other employees. The concept of justice is that one should get what is due to him or her in law. The concept of justice cannot be stretched so as to cause heart-burning to more meritorious candidates. Moreover, at the end of the day, the Respondent has got what could be given to her in law. As of now, she had already been enjoying a higher scale of pay than what she would have got if she was to join the post of Assistant Controller. We, therefore, are of the opinion that interest of justice would be sub-served if she is allowed to continue in her post and direct the Appellant to consider her seniority in the Administrative Service in terms of the order of this Court dated 15th March, 1994 that she would be the last in the seniority list of the appointees in the post of Category I Assistant Commissioner (Karnataka Administrative Service)."*

4.20. Reliance was also placed to a decision of the Apex Court in the case of ***Rushibhai Jagdishchandra Pathak Vs. Bhavnagar Municipal Corporation***, ***(2022) 18 SCC 144***. Hon'ble Apex Court in para 17 of the decision in the case of ***Rushibhai Jagdischchandra Pathak*** has held as follows:

> *xxx xxx xxx*
> *Normally, and as a model employer, on accepting the said decision, the respondent-Corporation should have uniformly applied and granted the benefit to all its similarly situated employees affected by the order dated 28th October 2010.*
> *Xxx xxx xxx*

4.21. Reliance was also placed to a decision of the Apex Court in the case of ***Khunjamayum Bimoti Devi VS. The State of Manipur & Others, 2024 INSC 733.***

Hon'ble Apex Court in para 21 of the decision in the case of ***Khunjamayum Bimoti Devi*** has held as follows:

> ***21.*** *The principles laid down in the case of Arvind Kumar Srivastava (supra) are referred by this Court in Shoeline Vs. Commissioner of Service Tax& Others. Reported as (2017) 16 SCC 104 to observe that when there is a declaration of law by Court, the judgment can be treated as judgment in rem and require equities to be balanced by treating those similarly situated, similarly.*

4.22. Reliance was also placed to a decision of the Apex Court in the case of ***Chairman/Managing Director, U.P., Vs. Ram Gopal, AIRONLINE 2020 SC 93***. Hon'ble Apex Court in para 18 of the decision in the case of ***Ram Gopal*** has held as follows:

> *Xxx xxx xxx*
> *The State and its instrumentalities are expected in such category of cases to themselves extend the benefit of a judicial pronouncement to all similarly placed employees without forcing each person to individually knock the doors of courts."*
>
> *Xxx xxx xxx*

4.23. It is also contended that similar claim allowed by the Tribunal in GIA Case No.368 of 2011 was not only confirmed by this Court vide judgment dt.06.12.2016 in FAO No.552 of 2013, but also after such dismissal of the appeal, benefit of Grant-in-aid

under GIA Order, 1994 has been extended in respect of the applicants in GIA Case No.368 of 2011. Not only that, similar claim allowed by the Tribunal in GIA Case No.347 of 2018 was also upheld by this Court vide order dt.12.04.2023 in FAO No.949 of 2019. Challenge made to order dt.12.04.2023 in FAO No.949 of 2019 by the State was also rejected by the Apex Court vide order dt.19.03.2024 in Special Leave Petition Civil (Diary)No.32258 of 2022.

4.24. Making all these submissions and placing reliance on the decisions in the case of ***Arvind Kumar Srivastav, C. Lalitha*** as well as ***Rushibhai Jagdishchandra Pathak, Khunjamayum Bimoti Devi and Ram Gopal*** as cited (*supra*) learned Sr. Counsel appearing for the Respondents contended that the Tribunal has rightly allowed the claim and the same requires no interference. A further submission was also made that this Court while disposing a similar batch of claim in respect of High Schools and Colleges in FAO No.509 of 2014 and batch also clearly held that decision in the case of ***Anup Kumar Senapati*** is not a complete

bar to consider the extension of the benefit under 1994 order. View expressed by this Court in para 6.3 of the judgment dt.19.03.2025 passed in FAO No.509 of 2014 & batch reads as follows:

> *"6.3. Therefore, it is the view of this Court that decision in the case of **Anup Kumar Senapati** cannot be taken as a complete Bar in those cases where the employees and/or institutions were otherwise eligible to get the benefit of grant-in-aid under GIA Order, 1994 and recommendation has been made by the respective Directorate prior to such repealing of GIA Order, 1994 in respect of unaided Schools, Girls Schools or Higher Secondary Schools and Colleges."*

5. Similar submission was also made by Mr. Sangram Jena, learned counsel appearing in FAO No.368 of 2018, Mr. Mahendra Kumar Sahoo, learned counsel appearing in FAO No.199 of 2018 and Mr. D.N. Rath, learned counsel appearing in FAO No.182 of 2018.

6. Having heard learned counsel for the parties and considering the submission made, this Court finds that claim in the present batch of appeals is with regard to claim of the employees and/or institutions of different unaided Girls' High Schools functioning in the State to get the benefit of Grant-in-aid under GIA Order 1994.

6.1. As found in terms of para 12 of 1994 Order, 109 Girls' High Schools were initially held eligible to get the benefit of Grant-in-aid under the 1994 Order. Accordingly, proposal was submitted by the Director, Secondary Education before the Government vide its letter dt.29.06.1995.

6.2. Basing on such recommendation made by the Director, out of those 109 unaided Girls High Schools, 5 Girls' High Schools were held eligible to get the benefit of Grant-in-aid under GIA Order, 1994 vide notification dt.04.07.1998. Not only that, four (4) other Girls High Schools were also held eligible to get the benefit under GIA Order, 1994.

6.3. On repeal of the 1994 Order, with coming into force of GIA Order, 2004 on 5.2.2004, leaving aside those 9 Girls High Schools vide notification dt.20.02.2004, 100 unaided Girls High Schools were held eligible to get the benefit of Grant-in-aid under GIA Order, 2004. But taking into account the amendment of 2004 Order with the Amendment Order, 2007, a fresh

notification was issued by the Department on 22.09.2007, making eligible 100 unaided Girls' High Schools to get the benefit of Block Grant under Amendment Order, 2007. Basing on such notification issued on 22.09.2007, services of the respondents though was approved w.e.f 01.06.1994, but they were held eligible to get the benefit of Block Grant w.e.f 22.09.2007.

6.4. However, it is found that in terms of the order passed by the Tribunal so confirmed by this Court as well as by the Hon'ble Apex Court in different Civil Appeals, Government vide notification dt.24.06.2017 extended the benefit of Grant-in-Aid under 1994 Order in favour of another 29 Girls' High Schools. It is also found that in terms of the order passed by the Tribunal so confirmed by this Court as well as by the Apex Court, such benefit has been extended in favour of the employees in GIA Case No.425 of 2011, GIA Case No.219 of 2011 and GIA Case No.281 of 2009, so on and so forth. On the face of such notification issued on 22.09.2007 and the extension of the benefit under 1994

Order in favour of 29 unaided Girls' High Schools and some other Girls High Schools vide different orders so cited (supra), it is the view of this Court that the respondents herein are liable to get similar benefit as has been allowed by the Tribunal.

6.5. This Court placing reliance on the decision in the case of ***Arvind Srivastav, C. Lalita*** as well as ***Rushibhai Jagdishchandra Pathak, Khunjamayum Bimoti Devi and Ram Gopal*** as cited (supra) is of the view that the respondents herein being similarly situated as like the 29 schools who were extended with the benefit in terms of similar order passed by the Tribunal, cannot be discriminated.

6.6. Therefore, this Court is not inclined to interfere with the impugned judgment dt.06.02.2017 so passed by the Tribunal in GIA Case No.43 of 2012. While not inclined to interfere with the said order, this Court dismiss the appeal.

6.7. In view of the aforesaid analysis, this Court is inclined to dismiss all those appeals filed by the State

where similar order passed by the Tribunal is under challenge. This Court is also inclined to set aside the judgment in such appeals where similar claim has been rejected by the Tribunal. While allowing and/or dismissing the appeals, this Court directs the State machineries to extend the benefit benefit of Grant-in-aid under GIA Order, 1994 in respect of the employees and/or institutions in the present batch of appeals so extended vide notification dt.24.06.2017. This Court directs the State machineries to complete the entire exercise within a period of four (4) months from the date of receipt of this order.

6.8. All these appeals are accordingly stand disposed of.

6.9. Photocopy of the judgment be placed in the connected cases.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 23rd June,2025/ Sangita