

[O. H. C.-97-A]

TARUN PATNAIK, A.S.C

In the High Court of Orissa  
ORDER SHEET

BLA P. W. P. (C) No. 2743/2023 of 20 23




STATE OF ODISHA

Versus

PRAGATI PATTNAIK

P. O. R. Petitioner

Opposite-Party

Sl. No. of Order	Date of Order	ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
 FC148529  SCANNED			<p>PRESENTED ON 04/11/2023 Register and Put up for Orders</p> <p> Registrar (Judicial)</p> <p>for SR</p> <p>8 08.11.23</p> <p> Bikram Sethy Assistant Registrar (Judl.)</p>

# IN THE HIGH COURT OF ORISSA

Case No. WA-2743/23

## OFFICE NOTES

Sl. No. of Order for compliance	Date of Order for compliance	Notes and action taken on order with signature of Dealing Assistant and Superintendent
		<p>i) I.A. No.:- 8021/23 is at Flag 'A' for dispensing with filing of C-copy.</p> <p>ii) I.A. No.:- 8022/23 is at Flag 'B' for condonation of delay.</p> <p><u>For Orders</u></p> <p>Along with wpc-27904/23 (Disp. of case).</p> <p>Swagatika Subudhi 07.12.24</p> <p>D.B.</p> <p><u>Ref. WA-2310/24</u></p> <p><u>Handl</u> <u>2/10/24</u></p>



**ORISSA HIGH COURT**  
**FILING ACKNOWLEDGEMENT SLIP**

CNR

**ODHC010888322023**

Filing No

**WA/0002743/2023**

Date and Time

**04/11/2023-15:57:08**

Misc Case/IA

8021/2023,8022/2023,8023/2023

Petitioner Name

STATE OF ODISHA

Petitioner Advocate Name

TARUN PATNAIK,A.S.C

Respondents Name

PRAGATI PATTNAIK

Respondents Advocate

Amount

Police Station

FIR



Saturday 04th of November 2023 04:17:25 PM

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1. RF/RS/FAO/SAO/LPA/SPACRP/Review pe/VO.Re/EXFA/EXS/VSM/APP Tr.  
P(c) WP (c)/WA/SCLP/Co. App/Co. Pet/Co. Case/Co. App/Bkg. P/Mat. A/Mat  
Ref/RP (FAMCT) Test Case / Intest. Case/L.A. Ref/ RCFA/ L.A.A./RCSA/RE  
Rev/MAC/MAC APP/EL Pe/VELAPP/Arb. P/Arb. A/Arb. A/Insurance Ref/Cont.  
Cas(c)/Coud App (c) / MFA(name of the Act)/MSA/SP. JC (name of the Act) Cri  
A/Cri. Rev/CKl. M. C/ BLAP/Cal. MAPPIWP (cri) CUSREF STREV.  
Case Type N/A No 2743, 2023 Date of Regn. Mark

2. If 'State' is Party, Name of the Dept: (Pet/Res) [Put Mark]  
If Public Undertakings (Specify name): (Pet/Res) [Put Mark]

3. (a) Number of Category under which the matter falls:

3 1

1 9

0 0

If Others, Specify the subject Mark

(b) Which is applicable? [Put Mark]

(Single Bench/Div. Bench/Three Judge Bench/Five Judge Bench)

4. Article of the Constitution/Act (Central/State) [Put Mark]

An appeal under clause - 10

5. Section/Sub-Section Involved

6. Rules Involved

7. Whether any other matter is pending in this Court on the same point of law :  
If so, give the number of matter :

8. Whether any other matter is pending against the impugned order/Judgement?  
If so give the number of matter

9. Whether the matter is covered by any Judgement of the Supreme, Court this  
Court or any other High Court; If so give the details of the Judgement

10. Point of law involved in the matter An appeal challenging  
the order dt- 20.08.2023 passed  
by the Hon'ble single Judge

Signature of the Advocate

Date 03.11.2023

High Court of Orissa  
Acknowledgement



CNR	: ODHC010888322023		
Efiling No	: AOD20220001895C202300657		
Filing No.	: WA/2743/2023	Date of Filing	: 04-11-2023
Petitioner	: STATE OF ODISHA	Time of Filing	: 15:57:08
Petitioners	: TARUN PATNAIK,A.S.C	Respondent	: PRAGATI
Advocate			PATTNAIK
	: 0.00		



[Print](#)

# STAMP REPORT

WH CASE NO. 2743/2023

## LIMITATION

Date of Judgement Awards 30.08.2023  
Date of Valid Presentation 04.11.2023  
Total Period Occupied 66 day  
Limitation 30 day  
Certified Copy Period day  
Delay in filing 36 day

1. In time .....Expired on 29.09.2023
2. Period of delay 36 day, 94 for coordination of delay fee.
3. Court Fee Rs. 12/- paid.
4. Authentication fee due on the  
(a) Copy of Trial Court Judgement  
Rs. .... Decree Rs. ....  
(b) Appellate Court Judgement Rs. ....  
Decree Rs. ....
5. (a) Copy of Trial Court Judgement/Order  
(b) Appellate Court/Revisional Order e.o. of 29.09.2023 and he not file  
Judgement 94 for coordination with file.  
(c) Second Copy Petition filed  
(d) Receipt showing copy on A.G. X  
(e) Vakalatnama properly stamped, appearance memo filed  
Executed and accepted
6. (a) Cause Title In order  
(b) Provision of Law furnished.
7. Code In dilate
8. Single Judge/Division Bench Case DB
9. Other Defects

STAMP REPORTER

Bikram Sethy  
Assistant Registrar (Judl.)

IN THE HIGH COURT OF ORISSA:

CUTTACK

W.A. NO. <sup>2743</sup> OF 2023

(Arising out of WP(C) No. 27904 of 2023 disposed of on  
30.08.2023)

STATE OF ODISHA & OTHERS

... APPELLANTS

-VERSUS-

PRAGATI PATTNAIK & ANOTHER

... RESPONDENTS

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CUTTACK

DATE 03.11.2023

APPELLANTS THROUGH

ADDITIONAL STANDING COUNSEL

TARUN PATNAIK

B-663/2013

8447484424

A

**IN THE HIGH COURT OF ORISSA;  
CUTTACK**

**WA No. 2743 of 2023**

**(Arising out of WP(C) No. 27904/2023 disposed of on  
30.08.2023)**

**STATE OF ODISHA & OTHERS**

**.... APPELLANTS**

**- Vrs -**

**PRAGATI PATTNAIK & ANOTHER**

**.... RESPONDENTS**

**SYNOPSIS**

The present writ appeal has been preferred challenging the order dated 30.08.2023 passed by the Ld. Single Judge of this Hon'ble Court in W.P.(C) No. 27904 of 2023 whereby the Ld. Single Judge has directed the Appellants to extend the pensionary and other retiral benefits to the petitioner in light of the single judge bench judgment in Sarat Chandra Parida v. State of Odisha, 2015 (II) ILR-CUT 94.

The impugned order is liable to be set aside *inter alia* for the following reasons:

- The impugned order was passed on the very day of hearing for admission without issuance of notice to the Appellants herein.
- The ratio laid down in Sarat Chandra Parida v. State of Odisha, 2015 (II) ILR-CUT 94 has been rendered

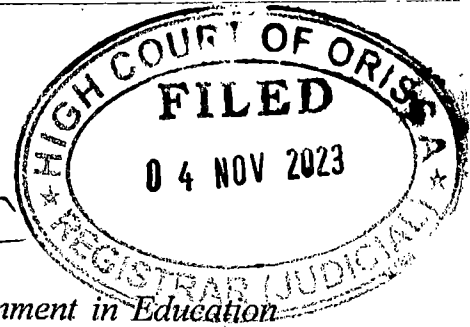




per incuriam in light of the case of State of Odisha v. Anup Kumar Senapati (2019) 19 SCC 626.

- The SLP preferred against the decision in Sarat Chandra Parida v. State of Odisha, 2015 (II) ILR-CUT 94 was dismissed by the Hon'ble Supreme Court on the ground of delay without taking cognizance of the grounds pleaded by the State Government.
- That it is a fact that the pension and other pensionary benefits to the employees of non-Government aided educational institutions are governed under the provisions of "Orissa Aided Educational Institutions Employees Retirement Benefit Rules, 1981". Application of such Rules to the employees (both teaching and non-teaching) of aided Non-Government Educational Institutions has been enshrined under Rule-3 of such rules which is produced below:-

*"These Rules shall apply to the teaching and non-teaching staff of all recognized Non-Government colleges, High Schools, Senior Schools and M.E. schools which come under the direct payment system and all the Non-Government primary schools including Sanskrit tolls and Junior Basic Schools*



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*fully aided by Government in Education and Youth Services Department directly or through Panchayat Samitis constituted under the Orissa Panchayat Samiti Act, 1959 or through a notified Area Council or Municipality constituted under Orissa Municipal Act, 1950;*

*Provided that Government may by general or special order as may be issued in that behalf, specify and other educational institution or category or institutions and the staff working there in to whom the rules shall apply."*

- Rule-3 of the Orissa Aided Educational Institutions Employees Retirement Benefit Rules, 1981 clearly provides that pension can be granted only in respect of fully aided posts.
- The Respondent No. 1 herein who is the petitioner in the connected writ petition was a recipient of block grant employee, is not covered under the definition of Direct Payment scheme as reflected under the provisions of Rule-3 of the Orissa Aided Educational Institutions Employees Retirement Benefit Rules, 1981 and is also not eligible to get a coverage under the provisions of Rule-3 as above to avail the benefit of the scheme.

- The Hon'ble Single Judge without conceiving the crux while disposing the writ petition (W.P(C) No.27904/2023) passed orders dtd.30.08.2023 directing the State appellants to extend the pensionary and other retiral benefits to the present Respondent No. 1 within a period of four months. Whereas extension of such benefit is not coming within the scope and ambit of Rule-3 of Orissa Aided Educational Institutions Employees Retirement Benefit Rules, 1981.

Hence, the present writ appeal

Filed by the appellants  
through

**CUTTACK**

**DATE: 02.11.2023**

**ADDL. STANDING COUNSEL**

**IN THE HIGH COURT OF ORISSA; CUTTACK**  
**WA No. 2443 of 2023**

(Arising out of WP(C) No.27904/2023 disposed of on 30.08.2023)

STATE OF ODISHA & OTHERS

.... APPELLANTS

- Vrs -

PRAGATI PATTNAIK AND ANOTHER

... RESPONDENTS

**LIST OF DATES**

Sl. No.	Date	Particulars
1	03.12.1980	The State Govt. published SRO No.824/1981 vide Gazette Notification No. 1759, dtd. 03.12.1980 introducing the Orissa Aided Educational Institutions Employees retirement Benefit Rules, 1981.
2	20.02.1982	SRO No. 118/1982 published in Orissa Gazette vide ext. No. 234, dtd. 20.02.1982. The said Rule was made operative from 01.04.1982. Rule-3 of the said rules defined the provisions for application of the said rules to the teaching or non-teaching staff of all recognised non Govt. colleges under the Direct Payment system.
3	1992-93	The respondent's college namely Binka Women's Higher Secondary School, Binka, Dist.-Subarnapur was opened during the academic session 1992-93.
4	26.08.1992	The Respondent No. 1 on being appointed against the post of Lecturer in History in the said college, joined against the post on 26.08.1992.
5	01.06.1994	The State Government introduced GIA Order, 1994 to regulate extension of Grant-in-Aid to the eligible teaching and non-teaching post in Non-Government Aided Colleges thereby notifying the concerned college as an Aided college under the said GIA Order with release of Grant-in-Aid from 01.06.1994. The prime condition imposed therein is that the college must present 5 continuous batches of students in the final CHSE or University exam (3 continuous batches in case of educationally backward arrears / women's educational institution) by the Academic Session 1992-93. The college in question being obtained concurrence and affiliation during 1992-93, it could not be notified as an aided college as per

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		GIA Order, 1994 for non-presentation of 5/3 (as the case may be) continuous batches of students in the Annual CHSE exam by 01.06.1994.
6	07.01.2009	The State Government introduced GIA order, 2008 for extension of Grant-in-Aid in shape of Block Grant @40% from 20.01.2009 to the left out colleges which were opened with due recognition and affiliation by 01.06.1998 (01.06.2000 in case of colleges situated in educationally backward district / women's colleges). Accordingly, the college in question being opened with due concurrence from Government and affiliation from CHSE during 1993-94, was notified as an Aided college under GIA Order, 2008 for receiving Grant-in-Aid @40% from 20.01.2009 vis-à-vis the eligible employees of the aforesaid junior college were approved to receive Grant-in-Aid in shape of 40% Block Grant from 20.01.2009.
7	03.06.2011	The college since satisfied the criteria prescribed under GIA Order, 2008 was notified as an aided college vide Government in Higher Education Department vide letter No.20671/HE dtd. 03.06.2011 to receive @40% Block Grant from 20.01.2009. Accordingly, the teaching and non-teaching staffs of the college who had satisfied the conditions/criteria prescribed under GIA Order, 2008 were approved by Government for receiving Grant-in-Aid in shape of Block Grant @40% from 20.01.2009.
8	16.06.2011	Since, the Respondent No.01 was appointed against 1 <sup>st</sup> post of Lecturer in History in the Binka Women's Higher Secondary School, Binka, Dist.-Subarnapur by the Governing Body and he joined against post on 26.08.1992, the post being an admissible post and filled up within the cut-off date i.e.01.06.1998, he was approved under GIA Order, 2008 for receiving Grant-in-Aid in shape of Block Grant @40% from 20.01.2009 as per GIA Order, 2008 vide Director, Higher Education office order No.23457 dtd.16.06.2011.
9	22.10.2017	Government in Higher Education Department issued notification No. 27578/HE, dtd. 22.10.2017 and 27584/HE, dtd. 22.10.2017 in Odisha Gazette in SRO No. 511/2017 and SRO No. 512/2017 dtd. 23.10.2017 introducing Grant-in-Aid Order, 2017 wherein the block grant holders of 2009 and 2008

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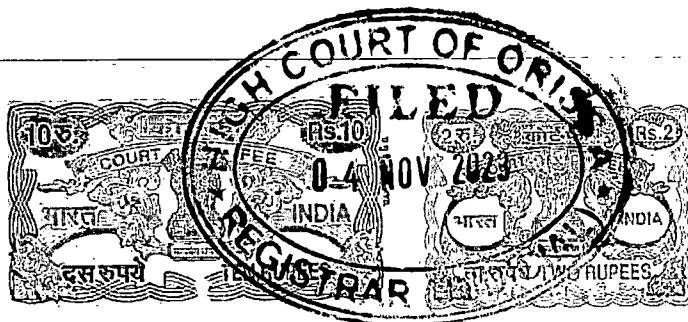
		GIA Orders were allowed the benefit of pay scale applicable to their post as per ORSP Rules, 2008 with 136% DA and 5 increments for 2009 GIA holders and 2 increments for 2008 GIA holders and such benefit was allowed to be received by such employees from 01.01.2018.
10	09.04.2019	The Respondent No. 1 being approved under GIA Order, 2009 earlier came within the domain of GIA Order, 2017 and was approved by Director, Higher Secondary Education for receiving a fixed sum of Rs.34,810/- under GIA Order, 2017 w.e.f. 01.01.2018 and this has no linkage with the direct payment scheme.
11	31.07.2022	The Respondent No. 1 on attaining the age of superannuation retired from service on 31.07.2022 remaining under the block grant scheme which was no linkage with direct payment scheme and hence, is not eligible to come within the coverage of the provisions of Rule-3 of Orissa Aided Educational Institutions Employees Retirement Benefit Rules, 1981.
12	25.08.2023	The said Respondent being the petitioner filed WP(C) No. 27904/2023 before this Hon'ble Court for issue of direction to allow him pension and other pensionary benefits consequent upon his superannuation.
13	30.08.2023	The Hon'ble Single Judge disposed of the matter vide order dtd. 30.08.2023 holding his claim to have been covered under the ratio of the case in the matter of Sarat Chandra Parida-vrs-State of Odisha, 2015 II ILR CUT 94 and directed to extend the pensionary another retiral benefits to the petitioners (presently Respondent No. 1), whereas his claim does not come within the purview of the provisions of Rule-3 of Orissa Aided Educational Institutions Employees Retirement Benefit Rules, 1981.
14		Hence, the present writ appeal is filed.

**CUTTACK**

**DATE: 03.11.2023**

Filed by the appellant through

**ADDL. STANDING COUNSEL**



**IN THE HIGH COURT OF ORISSA:**

**CUTTACK**

W.A. NO. <sup>2743</sup> OF 2023

(Arising out of WP(C) No. 27904 of 2023 disposed of on  
30.08.2023)

code no- 311900

**IN THE MATTER OF:**

Presented on 4/11/2023

*sm*  
Registrar (Judicial)

An appeal under Clause 10 of the Letters Patent of Patna High Court read with Article 4 of the Orissa High Court Order, 1948 challenging the order dtd. 30.08.2023 passed by the Hon'ble Single Judge in WP(C) No. 27904 of 2023.

And

**IN THE MATTER OF:**

1. State of Odisha, represented through its Commissioner-cum-Secretary to Govt., Higher Education Department, At-Loka Seva Bhawan, Bhubaneswar, District- Khurda.
2. Commissioner-cum-Secretary to Govt., School and Mass Education Department, Government of Odisha, Loka Seva Bhawan, Bhubaneswar, District: Khurda.
3. Director, Higher Education, Odisha, At. Heads of Department Building, Bhubaneswar, District: Khurda.

*1*

4. Director Higher Secondary Education,  
Odisha, At. AE for SRC Building, 1<sup>st</sup> Floor  
Unit-V, Bhubaneswar, Dist.-Khurda.
5. Controller of Accounts Odisha,  
Bhubaneswar, Dist.-Khurda.  
(O.P. No.1, 2, 3, 4 & 5 in the Writ petition)

.....Appellants

-Versus-

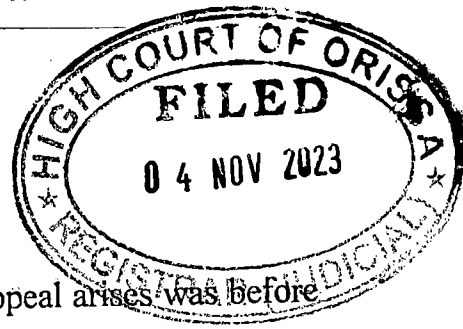
1. Pragati Pattnaik, aged about 61 years, W/o.  
Sanant Kumar Mohanty, At.Samaleswari  
Batika, Third Tower (2<sup>nd</sup> floor), Po.  
Remada Chaak, District. Sambalpur, retired  
as Lecturer in History/Principal-in-Charge,  
in Binka Women's junior College/Higher  
Secondary School, Phulmuthi, At/P.O.  
Binka, Dist: Subarnapur.  
(Petitioner in the writ petition)

..... Respondent

2. Governing Body of Binka Women's Junior  
College/Higher Secondary School,  
Phulmuthi, At/P.O. Binka, Dist.-  
Subarnapur, represented through its  
Principal-cum-Secretary.  
(O.P. No.6 in the writ petition)

..... Proforma Respondent





The matter out of which this appeal arises was before this Hon'ble Court in WP(C) No. 27904/2023 disposed of on 30.08.2023.

To

The Hon'ble Acting Chief Justice of Orissa High Court and His Lordship's companion Justices of the said Hon'ble Court.

**The appellants named above  
humbly beg to state as follows:**

**MOST RESPECTFULLY SHEWETH:**

1. That the Appellants opt to file the present Writ Appeal being aggrieved by the order dtd.30.08.2023 passed by the Hon'ble single judge in W.P(C) No. 27904/2023 under Clause 10 of the Letters Patent of Patna High Court read with Article 4 of the Orissa High Court Order, 1948.
2. That, initially the Respondent No. 1 had filed WP(C) No. 27904/2023 before the Hon'ble Court seeking direction to release the pension and pensionary benefits in her favour w.e.f. 01.08.2022 (she has retired from service on 31.07.2022) in the light of the judgement in the case of Sarat Chandra Parida v. State of Odisha, (2015 (II) ILR-CUT 94) vide order dtd. 08.05.2014 passed in WP(C) No. 16425/2013 as well as in terms of

Rule-3 of the Orissa Aided Educational Institutions Employees Retirement Benefit Rules, 1981.

3. That, the Hon'ble Single Judge disposed of the writ petition on the very date of admission i.e. 30.08.2023 with the following orders which is quoted below:-

*"1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.*

*2. Heard learned counsel for the Petitioner and learned State Counsel for the Opposite Parties.*

*3. The Petitioner has filed the present Writ Petition with the following prayer: -*

*" It is therefore, most humbly prayed that this Hon'ble Court be graciously pleased to:-*

*i) Admit the writ application.*

*ii) Call for the record.*

*iii) Issue a writ in the nature of mandamus or any other writ/writs direction/directions directing the opposite parties to extend the pensionary and other retiral benefit in favour of the present petitioner on account of her retirement in terms of the Odisha Aided Educational Institution Employees Retirement Benefit Rule, 1981, keeping in view the ratio decided in the case of **Sarat Ch. Parida -vrs- State of Odisha and others reported in (2015)(II) ILRCUT page 94** as well as in terms of the order in **W.P.(C) No.22316 of 2018 disposed of on 20.08.2019 (Ananta Kishor Sahoo -vrs-State of Odisha and Others)** within a reasonable time to be stipulated by this Hon'ble Court."*

4. However, taking into account the claim raised in the present Writ Petition, liberty is granted to the Petitioner to make a detailed representation before Opp. Party No.1 by enclosing all the relevant

*documents and citations in support of his claim, if any, within a period three weeks hence.*

5. *It is observed that if such a representation is filed within the aforesaid period, Opp. Party No.1 shall do well to take a lawful decision on the same in the light of the order passed in the case of **Sarat Chandra Parida Vrs. State of Odisha, reported in 2015 (II) ILR-CUT-94** within a period of three months from the date of receipt of such representation. The order so passed by the Opp. Party No.1 be communicated to the petitioner.*

6. *With the aforesaid observation and direction, the Writ Petition is disposed of."*

Photo copy of the order dtd. 30.08.2023 passed in W.P.(C) No. 27904/2023 is filed herewith as **Annexure-1.**

4. That, it is humbly submitted that, the matter of pension and other retiral benefits of the employees of Non-Government aided educational institutions are being addressed under the provisions of "Orissa Aided Educational Institutions Employees Retirement Benefit Rules, 1981". Application of such Rules to the employees (both teaching and non-teaching) of aided Non-Government Educational Institutions has been enshrined under Rule-3 of such rules which is produced below:-

*"These Rules shall apply to the teaching and non-teaching staff of all*

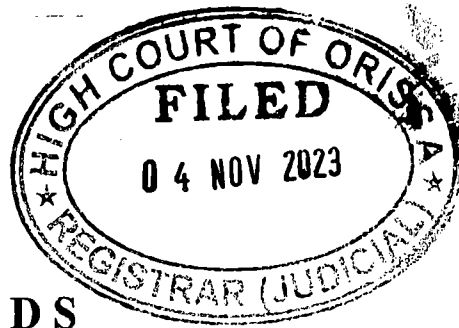
*recognized Non-Government colleges, High Schools, Senior Schools and M.E. schools which come under the direct payment system and all the Non-Government primary schools including Sanskrit tolls and Junior Basic Schools fully aided by Government in Education and Youth Services Department directly or through Panchayat Samitis constituted under the Orissa Panchayat Samiti Act, 1959 or through a notified Area Council or Municipality constituted under Orissa Municipal Act, 1950;*

*Provided that Government may by general or special order as may be issued in that behalf, specify and other educational institution or category or institutions and the staff working there in to whom the rules shall apply."*

The copy of extracts of Rule-3 of Orissa Aided Educational Institutions Employees Retirement Benefit Rules, 1981 is annexed and filed herewith as Annexure-2.

Being aggrieved by the order dtd. 30.08.2023 passed by the Hon'ble Single Judge in WP(C) No. 27904/2023, the Appellants humbly beg to prefer this writ appeal on the following amongst other:





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## G R O U N D S

- A. For that, the impugned order is illegal, runs contrary to the principles of natural justice, suffers from gross errors of law and the same is liable to be set aside.
- B. For that, the Hon'ble Single Judge did not take into consideration for analysis of the provisions of Rule-3 of Orissa Aided Educational Institutions Employees Retirement Benefit Rules, 1981. So far as the present Respondent No.1 is concerned, she does not come under the coverage of Rule-3 of the aforesaid rules of 1981. It is a fact that, Rule-3 as cited supra envisages that the same shall apply to the teaching and non-teaching staff of Non-Govt. aided Educational Institutions which come under direct payment system and are fully aided by Government. As per 1981 pension rules, fully aided means those employees of Non-Govt. aided educational institutions whose full salary cost is borne by the Government in shape of grant-in-aid and their salary is at par with Govt. employees. Therefore, the employees of Non-Govt. aided educational institutions, who are in receipt of 'Block Grant' are not the employees in receipt of Grant-in-Aid under direct payment system. In their case, a part of the salary cost is borne by Government and the rest part is borne by the Managing Committee. In the instant case, the Respondent namely, Pratati

Pattnaik, Retired Lect. in History (1<sup>st</sup> post) in Binka Women's Higher Secondary School, Binka, Dist.-Subarnapur is a recipient of block grant under Odisha (Aided Colleges, Aided Junior Colleges and Higher Secondary Schools) GIA Order, 2008 @ 40% Block Grant from 20.01.2009 vide Director, Higher Education Office Order No.23457, dtd.16.06.2011. Consequent upon introduction of Grant-in-Aid Order, 2017, she was approved under the said GIA order to receive a fixed amount from 01.01.2018 vide office order No.4577/ dtd.09.04.2019 of Director, Higher Secondary Education, Odisha and received a fixed sum of Rs.34,810/- per month w.e.f.01.01.2018 with 2% annual increment as per the provisions of the said GIA Order applicable to the employees in Non-Government Aided Colleges approved under GIA Order, 2008. As such, she retired on 31.07.2022 on attaining the age of superannuation.

- C. For that, the Respondent No.01 has been approved under Block Grant Scheme which has no linkage with the direct payment scheme as prescribed under Rule-3 of 1981 Pension Rules. So, she is not entitled to avail the pension and other pensionary benefits. To mention here, in the case of Sarat Ch. Parida, he was a block grant employee and had no legality to be considered u/r 3 of the Pension Rules, 1981. But against the orders



passed by the Hon'ble High Court in the related writ petition in the matter of Sarat Chandra Parida before the Hon'ble Supreme Court, the SLP got dismissed on the ground of delay. Because the merit lying in the SLP was not delved, rather the same was dismissed of the mechanical ground of delay, therefore, the order of the Hon'ble Supreme Court in the said matter cannot have application in rem. Therefore, such order of the Hon'ble Court passed in the related writ petition was implemented in case of Sri Sarat Chandra Parida. Accordingly, the pensionary benefit was extended to Sarat Chandra Parida. Thus, the directions of the Hon'ble Single Judge to allow the Respondent to avail pension and other pensionary benefits from the date of his superannuation in line with the ratio decided in the matter of Sarat Chandra Parida does not hold good and is liable to be quashed.

- D.** For that, this Hon'ble Court while dealing with a good number of writ appeals with similar question of law pertaining to coverage of the respective respondents (petitioners in the connected writ petitions) under the ratio decided in the matter of Sarat Chandra Parida-vrs.-State of Odisha (W.P.(C) No. 16425/2013). This Hon'ble Court in the captioned matters have granted interim stay.

E. For that initially, the State was bearing the financial liability in shape of Grant-in-Aid for the employees of the Non-Government aided educational institutions. Subsequently, in consideration of the financial implications of unregulated grant in aid, a statutory provision under the Odisha Education Act, 1969 was introduced by way of Odisha Education (Amendment) Act, 1994 and accordingly section 7-C was substituted, as follows;

- "1. 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 institution in the state.*
- 2. No order according permission or approval or recognition under this Act, whether prior to or after the commencement of the Odisha Education (Amendment) Act, 1994 shall entitle any private educational institution to receive grant in aid.*
- 3. Save as otherwise provided, no private Educational Institution which has not been recognized by the State Government under this Act shall be entitled to receive any aid from the State Government.*
- 4. Notwithstanding anything contained in any law, rule executive order or any judgment, decree or order any court, no grant in aid shall be paid and*





*no payment towards salary costs or any other expense shall be made to any private educational institution or for any post or to any person employed in any such institution after the commencement of the Odisha Education (Amendment) Act, 1994, except in accordance with an order or rule made under this Act. Grant in aid where admissible under the said rule 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."*

- F.** For that, the State Government in exercise of powers conferred in sub Section-4 of Section-7 (C) of Orissa Education Act, 1969 introduced Grant-in-Aid Order, 2009 and Grant-in-Aid Order 2008 to regulate payment of Grant-in-Aid in shape of Block Grant to the Aided Education Institutions.
- G.** For that, it is humbly submitted that the question of how to determine which employees of Non-Government aided educational institutions are to be treated under "direct payment system" was once before this Hon'ble Court in the case of **Patras Soreng v. State of Odisha and others reported in 1993 (II) OLR- 272**, wherein the Division Bench of this Hon'ble

Court in paragraph 4 of the said judgment held as follows:

*"The 1976 amendment, to which we have referred earlier, earlier, lives no manner of doubt in our mind that a school which is fully aided, as is the one at hand, has to be regarded as one under "direct payment system" to which mentioned has been made in Rule 3 of the rules."*

A perusal of the aforesaid paragraph clearly shows that the direct payment system is applicable only to employees of aided educational institutions receiving full salary cost as grant in aid. There is a distinction between full grant in aid and block grant and the latter does not come under the direct payment system.

H. For that, Sarat Chandra Parida was an employee who while receiving Block Grant retired from service. He preferred WP(C) No. 16425/2013 before this Hon'ble Court with prayer for issue of direction to the State opposite parties to grant pension and other pensionary benefits. Though the State controverted the averments made in the writ petition but due to wrong interpretation of the rules, this Hon'ble Court by order dtd. 08.05.2014 ordered to give pension and other pensionary benefits to Sri Parida. It is a fact that due to delay in proper analysis of the issue and decision-making process, the SLP preferred by State



Government against the order dtd. 08.05.2014 passed in WP(C) No. 16425/2013 vide SLP (C) CC No. 761/2016 was dismissed by order dtd. 19.01.2016 on the ground of delay. Thus, the merit involved in the issue could not be delved into by way of dismissal of the SLP on the reason of delay. **Therefore, the order of the Hon'ble Apex Court cannot be made operative in rem.** Therefore, where pension benefit has been ordered by Hon'ble Court in the light of Sarat Chandra Parida case, those have been put to challenge in a large number of Writ Appeals and interim stay has been ordered on operation of writ case orders and those are pending adjudication before the Division Bench of this Hon'ble Court.

- I. That, the Hon'ble Supreme Court in *State of Odisha v. Anup Kumar Senapati* (judgment dated 16.09.2019 in Civil Appeal No 7295 of 2019) reported in (2019) 19 SCC 626 has recognized that Grant-in-Aid is subject to the limits of economic capacity and held as follows:

*"It is apparent from the provisions contained in Section 7C (1) that the aid to be provided by the Government shall be within the limits of its economic capacity and for that purpose money had to be set apart annually to be disbursed to private Educational Institution."*



It is most respectfully submitted that in consideration of the financial implications of full Grant in Aid to teachers, the Government decided to repeal the Grant-in-Aid Order of 1994 and introduced the block grant regime under the Grant-in-Aid Order of 2004. In this light, the Hon'ble Supreme Court in Anup Kumar Senapati (supra) observed:

*"9. The Government considering the financial constraint has decided to repeal the Order of 1994 substituting it by Order of 2004 with effect from 5.2.2004, promulgated in exercise of powers conferred under Section 7C (4) of the Act. A significant departure had been made instead of salary cost to be given to the institution of the staff under the Order of 1994, the concept has been changed to block grant, which shall be a fixed sum of grant in aid determined by the taking into account salary and allowance as on 1.1.2004. The quantum of block grant has been made dependent upon the economic capacity of the Government as provided in Section 7C (1) of the Act and it shall not deal with the salary and allowance payable to any such employee by the Governing Body from time to time.....*

*12. .... It is apparent from the aforesaid Orders promulgated from time to time under the*

Sp

*provisions of Section 7C of the Act that initially the Government made the provisions of full cost salary in the Order of 1994. It was changed to Block Grant as specified in the Order of 2004. The Block Grant was as per criteria changed and specified further in the Orders of 2008 and 2009, depending upon the financial capacity of the State Government."*

It is most respectfully submitted that it was in consideration of these financial constraints that the State Government also discontinued the direct payment system in so far as employees receiving Block Grant were concerned.

That, it is respectfully submitted that at the time of Odisha Aided Educational Retirement Benefit Rules, 1981 came into effect w.e.f. 01.04.1982, there was no concept of block grant. The concept block grant came into force after subsequent amendment of Section 7(C) of Orissa Education (Amendment) Act, 1994 basing on which the GIA order, 2004 was introduced. In the circumstances, it is submitted that the 1981 Rules were extinguished in so far as employees receiving block grant were concerned. The 1981 Rules may be treated as non-existent in so far as employees receiving block grant in concerned.

**J.** For that, it is humbly submitted that as per doctrine of *contemporanea-expositio* while interpreting the provisions of a statute, the meaning of a particular

word must be construed as it would have been at the time of coming into force of the statute. Since at the time of coming into force of the 1981 rules, aided educational institutions meant recognized private educational institutions in respect of full grant in aid, it is quite improbable that when the 1981 rules came into force by way of subordinate legislation, the authors of the legislation had no concept of block grant in their minds. In view of the above said doctrine for the purpose of 1981 rules aided educational institutions means recognized private educational institutions in receipt of full grant in aid under the direct payment system.

In view of the aforesaid facts and circumstances, it is humbly submitted that the petitioner being a block grant employee, receiving a fixed remuneration and not a regular scale of pay like that of employees of aided educational institutions in receipt of full salary cost under the direct payment system, the employee, being a block grant recipient does not come under the purview of the 1981 rules. In view of the same the impugned order dtd.30.08.2023 passed by the Hon'ble Single Judge in W.P.(C) No. 27904/2023 for payment of pension and other pensionary benefits under the Odisha Aided Educational Retirement Benefit Rules, 1981 is not sustainable in the eye of law and the same deserves to be quashed.



- K. For that implementation of the orders dtd. 30.08.2023 passed in W.P.(C) No. 27904/2023 holding the same as a covered up matter within the ratio decided by this Hon'ble Court in the matter of Sarat Chandra Paridavrs.-State of Odisha & Others in W.P.(C) No. 16425/2013 (disposed of on 08.05.2014) will have a wide ramification and will cause a serious impact on the State's Exchequer as such implementation will open a flood gate for nearly more than 7000 Block Grant holder employees of Non-Govt. aided colleges to avail a sweep of coverage of the aforesaid ratio. Therefore, the impugned orders dtd. 30.08.2023 passed by the Hon'ble Single Judge requires intervention by this Hon'ble Court to safe guard the interest of public exchequer.
- L. For that the Appellants crave leave to take any additional/further grounds if required, at the time of hearing of the instant Writ Appeal.
- M. For that the impugned order is otherwise illegal, contrary to the principles of natural justice and the same is liable to be set aside.



### P R A Y E R

The humble appellants, therefore, pray that this Hon'ble Court may graciously be pleased to admit this appeal, call for the original record of the writ petition and

after hearing the counsel for the parties, set aside the impugned order dtd. 30.08.2023 passed by the Hon'ble Single Judge in WP(C) No. 27904/2023 and further to pass appropriate orders to allow this Appeal or may pass any other order (S)/ direction (S) as is deemed proper to the facts of the case in the interest of justice.

And for this act of kindness, the appellants, as in duty bound, shall ever pray.

Cuttack

By the Appellants through

Date: 08.11.2023

  
ADDL. STANDING COUNSEL

### CERTIFICATE

Certified that the grounds set-forth are good grounds for the appeal and I under take to support the same at the time of hearing.

Further certified that due to want of Cartridge papers, plain papers are used.

CUTTACK

DATE: 08.11.2023  ADDL. STANDING COUNSEL

TARUN PATNAIK

0-663 / 2013

8447484424



19.  
High Court of Orissa

ANNEXURE 1

High Court of Orissa  
Case Details

Case Type	: WP(C)	
Filing Number	: 27904/2023	Filing Date: 25-08-2023
Registration Number	: 27904/2023	Registration Date: 26-08-2023
CNR Number	: ODHC01-067790-2023	

Case Status

First Hearing Date	:
Decision Date	: 30th August 2023
Case Status	: CASE DISPOSED
Nature of Disposal	: Contested-Disposed Off
Coram	: 3052MR. JUSTICE BIRAJA PRASANNA SATAPATHY
Bench	: Single Bench
State	: ORISSA
District	: Sonapur
Judicial	: Civil Section
Causelist Name	: Supplementary(Daily)
Last Page Number	: 19
Next Page Number	: 20

Petitioner and Advocate

1) PRAGATI PATTNAIK

Advocate- SANGRAM JENA,B.MISHRA

Respondent and Advocate

- 1) STATE OF ODISHA
- 2) COMMISSIONER-CUM-SECY TO GOVT,SCHOOL AND MASS EDUCATION DEPT
- 3) DIRECTOR,HIGHER EDUCATION DEPT,ODISHA
- 4) DIRECTOR HIGHER SECONDARY EDUCATION ODISHA
- 5) CONTROLLER OF ACCOUNTS,ODISHA

Acts

Under Act(s)	Under Section(s)
CONSTITUTION OF INDIA, 1950	226,227

History of Case Hearing

Cause List Type	Judge	Business On Date	Hearing Date	Purpose of hearing
Supplementary(Daily)	MR. JUSTICE BIRAJA PRASANNA SATAPATHY		30-08-2023	FRESH ADMISSION
	MR. JUSTICE BIRAJA PRASANNA SATAPATHY			Disposed

Orders

Order Number	Judge	Order Date	Order Details
1	MR. JUSTICE BIRAJA PRASANNA SATAPATHY	30-08-2023	

Category Details

Category	SERVICE MATTERS ( 31 )
Sub Category	RETIRAL BENEFITS ( 1 )

MR. J. 27/8/23  
Additional Secretary to Govt.  
Higher Education Deptt.

OBJECTION

Sr.No.	Scrutiny Date	OBJECTION	Compliance Date	Receipt Date
1	26-08-2023	All Objections are Complied	26-08-2023	-

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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.27904 of 2023

**Pragati Pattnaik** .....

**Petitioner**

Mr. S. Jena, Advocate

-versus-

**State of Odisha and  
Others** .....

**Opposite Parties**  
State Counsel

**CORAM:**  
**JUSTICE BIRAJA PRASANNA SATAPATHY**

**ORDER**  
**30.08.2023**

**Order No.**

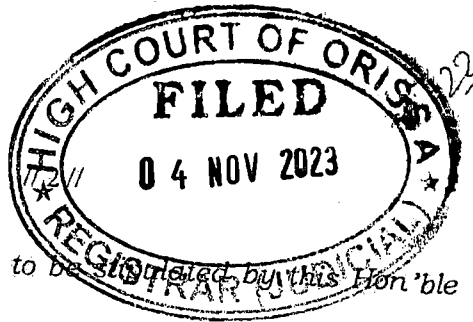
01. 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Heard learned counsel for the Petitioner and learned State Counsel for the Opposite Parties.
3. The Petitioner has filed the present Writ Petition with the following prayer: -

"It is therefore, most humbly prayed that this Hon'ble Court be graciously pleased to:-

- i) Admit the writ application.  
ii) Call for the record.

iii) Issue a writ in the nature of mandamus or any other writ/writs direction/directions directing the opposite parties to extend the pensionary and other retiral benefit in favour of the present petitioner on account of her retirement in terms of the Odisha Aided Educational Institution Employees Retirement Benefit Rule, 1981, keeping in view the ratio decided in the case of **Sarat Ch. Parida -vrs- State of Odisha and others reported in (2015)(II) ILR-CUT page 94** as well as in terms of the order in **W.P.(C) No.22316 of 2018 disposed of on 20.08.2019 (Ananta Kishor Sahoo -vrs- State of Odisha and Others)** within a

*[Signature]*  
4/11/2023  
Additional Secretary to  
Higher Education Deptt.



reasonable time to be granted by this Hon'ble Court."

4. However, taking into account the claim raised in the present Writ Petition, liberty is granted to the Petitioner to make a detailed representation before Opp. Party No.1 by enclosing all the relevant documents and citations in support of her claim, if any, within a period three weeks hence.

5. It is observed that if such a representation is filed within the aforesaid period, Opp. Party No.1 shall do well to take a lawful decision on the same in the light of the order passed in the case of *Sarat Chandra Parida Vrs. State of Odisha, reported in 2015 (II) ILR-CUT-94* within a period of three months from the date of receipt of such representation. The order so passed by the Opp. Party No.1 be communicated to the petitioner.

6. With the aforesaid observation and direction, the Writ Petition is disposed of.

Sd/(Bisaya Prasanna Satapathy)  
Judge

Basudev

TRUE COPY

21-9-2023  
Superintendent

Alb  
27/11/2023  
Additional Secretary to Govt.  
Higher Education Deptt.

# High Court of Orissa

## High Court of Orissa Case Details

Case Type	: WP(C)	
Filing Number	: 22316/2018	Filing Date: 26-12-2018
Registration Number	: 22316/2018	Registration Date: 28-12-2018
CNR Number	: ODHC01-064267-2018	

## Case Status

First Hearing Date	:	
Decision Date	: 20th August 2019	
Case Status	: CASE DISPOSED	
Nature of Disposal	: Uncontested--Disposed Off	
Coram	: 2822DR. JUSTICE B.R.SARANGI	
State	: ORISSA	
District	: Jagatsinghapur	
Judicial	: Civil Section	
Causelist Name	: Supplementary(Daily)	
Short Order	: ADJOURNED	

## Petitioner and Advocate

1) ANANTA KISHORE SAHOO	
Advocate- M/S.J.K.KHUNTIA,H.K.ROUT,H.S.DEO,H.K.ROUT	

## Respondent and Advocate

1) STATE OF ODISHA	
2) DIRECTOR, HIGHER EDUCATION	
3) PRINCIPAL, SALIPUR COLLEGE	

## Acts

Under Act(s)	Under Section(s)
CONSTITUTION OF INDIA, 1950	226,227

## Sub Matters

Case Number :	WA/595/2019
Case Number :	CONTC/693/2020
Case Number :	CONTC/5002/2020

## History of Case Hearing

Cause List Type	Judge	Business On Date	Hearing Date	Purpose of hearing
Supplementary(Daily)	DR. JUSTICE B.R.SARANGI		25-06-2019	FRESH ADMISSION
	DR. JUSTICE B.R.SARANGI			Disposed
	DR. JUSTICE B.R.SARANGI			FRESH ADMISSION
	DR. JUSTICE B.R.SARANGI			FRESH ADMISSION

## Orders

Order Number	Judge	Order Date	Order Details
1	DR. JUSTICE B.R.SARANGI	20-08-2019	
2	DR. JUSTICE B.R.SARANGI	25-06-2019	
3	DR. JUSTICE B.R.SARANGI	23-07-2019	

## Category Details

Category	SERVICE MATTERS ( 31 )
Sub Category	PENSION ( 19 )

Additional Secretary to Govt.  
Higher Education Deptt.

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W.P.(C) No. 22316 of 2018


04. 20.08.2019

Heard Mr. J.K. Khuntia, learned counsel for the petitioner and Mr. B. Senapati, learned Addl. Government Advocate.

The petitioner has filed this application assailing the order dated 17.01.2018 passed by the Director, Higher Education, Odisha in compliance of the order dated 24.01.2017 passed in W.P.(C) No.23008 of 2016 rejecting his claim for grant of pensionary benefits.

Mr. J.K. Khuntia, learned counsel for the petitioner contended that the petitioner, who was working as a Laboratory Attendant in Salipur College, Salipur retired on 31.12.2012, claims for pensionary and other retiral benefits, as his service particulars shows that the petitioner was allowed block grant by the State Government w.e.f. 01.02.2009 in terms of GIR Order, 2009. It is further contended that the petitioner claims such benefit in view of the judgment of this Court rendered in the case of **Sarat Chandra Parida v. State of Odisha** (W.P.(C) No.16425 of 2015, disposed of 08.05.2014), but while rejecting his claim the Director specifically mentioned that the case of **Sarat Chandra Parida** would not be cited as a precedent. Therefore, the reasons assigned by the Director cannot sustain in the eye of law.

Mr. B. Senapati, learned Addl. Government Advocate contended that no rules have been framed by the Government for extension of pensionary benefits to

  
Additional Secretary to Govt.  
Higher Education Deptt.

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2

the petitioner, therefore he is not entitled to get such benefit. More so, the claim of the petitioner at par with **Sarat Chandra Parida** (supra) is not available, as the same cannot be treated as precedent.

Considering the contention raised by learned counsel for the parties and after going through the records, it appears that the petitioner, who was working as a Laboratory Attendant in Salipur College, Salipur retired from service on 31.12.2012 and he claims for pensionary benefits at par with **Sarat Chandra Parida**, (mentioned supra) who had been granted such benefits in view of the judgment dated 08.05.2014 passed in W.P.(C) No.16425 of 2015. It appears that on scrutiny of the service particulars of the petitioner, it is made clear that the petitioner has been allowed block grant by the State Government w.e.f. 01.02.2009 in terms of GIA Order, 2009. The service conditions of employees of Aided Educational Institutions under Block Grant fold have not yet been framed by the State Government, but the petitioner has claimed retirement benefits in terms of the Odisha Aided Educational Institutions Employees Retirement Benefits Rules, 1981. The denial of grant of pensionary benefits to the petitioner is based on the fact that **Sarat Chandra Parida's** case cannot be cited as a precedent to extend the benefit to the petitioner. But fact remains, State has preferred appeal against the order dated 08.05.2014 passed in W.P.(C) No.16425 of

24/11/2015  
Additional Secretary to Govt.  
Higher Education Deptt.  
Bhubaneswar

25<sup>3</sup>

2015 (*Sarat Chandra Parida v. State of Odisha*)  
before the apex Court in SLP (c) CC No.761 of 2016,  
which was dismissed confirming the judgment passed  
by this Court. Once the said SLP dismissed and that too  
the pleadings indicated in paragraph-13 of the writ  
petition, no specific denial has been made in the  
counter affidavit, save and except in Annexure-A/2 to  
the counter affidavit it has been indicated that the  
State has preferred SLP against the judgment passed  
by this Court, the admitted fact that *Sarat Chandra  
Parida* case has confirmed by the apex Court and, as  
such, nothing more remains to be decided by this Court  
at this stage. Thereby, the petitioner having stood in  
the same footing is also entitled to the benefits at par  
with *Sarat Chandra Parida* (supra). Consequentially,  
the opposite parties are directed to extend the  
pensionary and other retiral benefits of the petitioner  
within a period of four months from the date of  
communication/production of a certified copy of this  
order.

With the aforesaid observation and direction,  
the writ petition stands disposed of.

Issue urgent certified copy as per rules.

.....  
(DR. B.R. SARANGI)  
JUDGE

Ashok

*[Signature]*  
Additional Secretary to Govt.  
Higher Education Deptt.

# The Orissa Aided Educational Institutions' Employees Retirement Benefit Rules, 1981

## CHAPTER I

### PRELIMINARY

1. Short title and commencement – (1) These rules may be called the Orissa Aided Educational Institutions Employees' Retirement Benefit Rules, 1981.  
(2) They shall come into force on such date <sup>1</sup> as the Government may order/appoint in that behalf.
2. Definitions – (1) In these Rules, unless there is anything repugnant in the subject or context –
  - (a) Act means the Orissa Education Act, 1969 (Orissa Act 15 of 1969);
  - <sup>2</sup>[(a-1) Death-cum-Retirement Gratuity means the death-cum-Retirement gratuity payable under Rule 9;]
  - (b) Director means the Director of Public Instruction, Orissa and includes such other officer not below the rank of a deputy Director of Public Instruction who may be authorized by the State Government from time to time, by general or special order to perform all for any of the functions and exercise all or any of the powers of the Director;
  - (c) Employees means an employee of an educational institution of the category specified under Rule 3;
  - <sup>2</sup>[(c-1) gratuity means gratuity payable under Sub-rule (1) of Rule 8;]
  - (d) Institution means an educational institution as defined in Clause (e) of Section 3 of the Act;
  - <sup>3</sup>[(e) Pension means pension payable under Sub-rule (2) of Rule 8;]
  - <sup>4</sup>[(e-1) family pension means the family pension payable under Rule 8;]

Made in exercise of the powers conferred by Sec.17(i) read with Sec.10(i) of O.E. Act 1969 (Ori. Act 15 of 1969) Published vide Orissa Gazette Ext. No. 1759, Dt.3.12.1980, S.R.O. No.824/81.

1. Came in force on 1.4.1982 vide S.R.O. No.118/82 published vide Orissa Gazette Ext. No.234, Dtd.20.2.1982.
2. Inserted vide S.R.O. No.802, Dtd.16.11.1983.
3. Substituted Ibid.
4. Substituted vide O.G.E. No.2035 dated.20.10.2001

*[Handwritten signature]*  
21/10/2001  
Secretary to Govt.  
Orissa



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[(f) Pension Sanctioning Authority means the District Inspection of Schools in case of employees of Primary schools, Junior Basic Schools, Senior Basic Schools and Middle Schools; Inspector of Schools in case of employees of High School; <sup>2</sup>[Director, Higher Education], Orissa in case of employees of College and Superintendent, Sanskrit Studies in case of employees of Sanskrit Tols.]

(2) All other words and expressions used but not defined herein shall have the same meanings as are respectively assigned to them in the Act.

3. Application of the rules-These rules shall apply to the teaching and non-teaching staff of all recognized non-Government Colleges, High Schools, Senior Basic Schools and M.E. Schools (which come under the direct payment system and all non-Government Primary Schools including Sanskrit Tols and Junior Basic Schools fully aided by Government in Education and Youth Services Department direct or through Panchayat Samitis constituted under the Orissa Panchayat Samiti Act, 1959 or through a Notified Area Council or Municipality constituted under the Orissa Municipal Act, 1950;

Provided that Government may, by general or special order as may be issued in that behalf, specify and other educational institution or category of institutions and the staff working therein to whom the rules shall apply.

#### CASE LAW :

Rule 3 read with Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 (as amended in 1976). According to them amended rule, a member of the staff of an aided educational institution receives salary directly from Govt. – Such school has to be regarded as under “the direct payment system” – Govt. Resolution No.25001/E, dated 13.7.1978 stating about Christian Minority community school not coming under direct payment system cannot override the Rule as amended in 1976 : Patras Soreng v. State of Orissa and others 1993 (II) OLR 272.

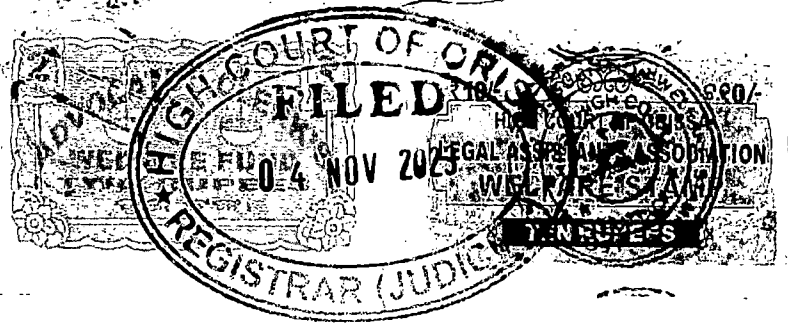
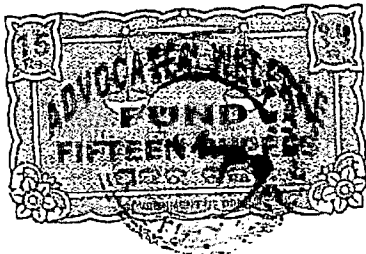
#### CHAPTER II

#### <sup>3</sup>[PENSION, GRATUITY AND DEATH-CUM-RETIREMENT GRATUITY]

4. Subject to the conditions in other rules under this Chapter, an employee shall be, eligible for pension or gratuity, as the case may be.

1. Substituted vide S.R.O. No.69/83-Published In Orissa Gazette Ext. No.102 Dtd.15.3.1983.
2. Substituted vide Orissa Gazette No.344, SRO No.112/98, Dt.25.3.1998.
3. Substituted vide S.R.O. No.802/83, Dtd.16.11.1983.

*[Signature]*  
Additional Secretary to Govt.  
Higher Education Deptt.



IN THE HIGH COURT OF ORISSA: CUTTACK

ME M O

W.A. No. 2743 OF 2023

State of Orissa & ORS...

APPELLANTS...  
PETITIONERS

-Versus-

Prerajati Pattnaik & Anr

RESPONDENTS  
OPP. PARTIES

W.A. No. 2743 OF 2023

State of Orissa & ORS

... APPELLANTS  
PETITIONERS

-Versus-

Prerajati Pattnaik & Anr

RESPONDENTS  
OPP. PARTIES

Sir,

I have the honour to state that, I have been authorised by the Government to appear on behalf of the Appellants in the above mentioned case and to request that (a) the fact may be noted

(b) a copy of the paper book may be supplied to me.

Yours faithfully

Cuttack

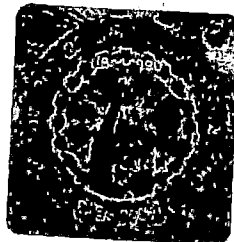
Date- 03.11.2023

Atul Standing Counsel

TARUN PATNAIK

0-663/2013

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IN THE HIGH COURT OF ODISHA : CUTTACK

W.A NO. 2743 OF 2023

State of Orissa & Ors

.... Petitioners /  
Appellants

-Versus-

Pragati Pattnaik & Anr

.... Opp. Party

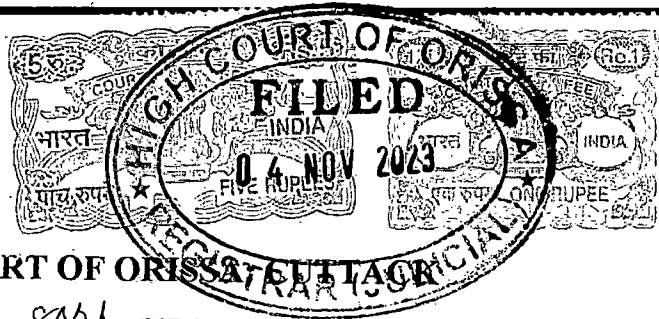
U N D E R T A K I N G

The Petitioner do hereby undertake to submit neat, legible, attested copy  
in A4 size of all annexures as and when required by the Hon'ble Court

CUTTACK

Date: 03.11.2023

*Surya Nalini*  
DEPONENT  
Additional Secretary to Govt.  
Higher Education Deptt.



IN THE HIGH COURT OF ORISSA, CUTTACK

I. A. NO. 8024 OF 2023

(Arising out of WA No. 2743 of 2023)

IN THE MATTER OF:

An application under Chapter-VI,  
Rule-27 (A) of the Orissa High  
Court Rules.

AND

IN THE MATTER OF :

An application for dispensing with  
filing of certified copy of impugned  
order dtd. 30.08.2023 passed in  
WP(C) No. 27904/2023.

AND

IN THE MATTER OF:

State of Odisha and Others

.....Appellants/Petitioners

-Vrs-

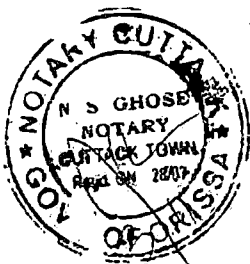
Pragati Pattnaik & Another

....Respondents/Opposite Parties

To

The Hon'ble Acting Chief Justice of Orissa High  
Court and His Lordship's companion Justices of  
the said Hon'ble Court.

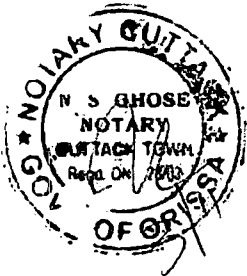
The humble petition of the  
Petitioners above named.



TARUN PATNAIK  
0-663/2013  
8447484424

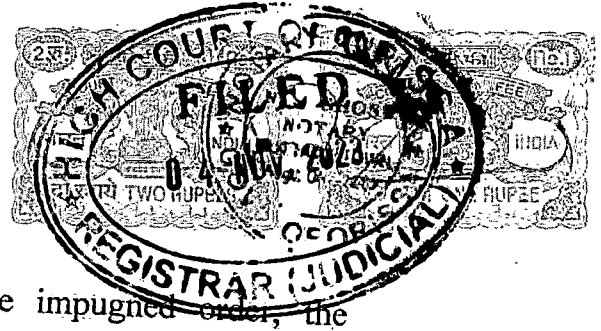
**MOST RESPECTFULLY SHEWETH:**

1. That the petitioners have filed the present Writ Appeal to assail the order dtd. 30.08.2023 passed in WP(C) No.27904/2023.
2. That, it is humbly submitted that the certified copy of the order dtd. 30.08.2023 could not be applied due to non-receipt of any intimation either from the office of the Advocate General or from the respondents concerned till 05.10.2023. Further, since the writ petition was disposed of on the date of admission, it was beyond the capacity of the present appellants to be aware of the disposal of the case and to apply the certified copy of the order.
3. That, the certified copy of the order is being applied soon and the same will be produced before the Hon'ble Court after it is obtained from the Registry.
4. That in view of exigency, the present Writ Appeal has been filed with the photo copy of the order dtd. 30.08.2023 passed in WP(C) No. 27904/2023.
5. That, on the facts substantiated above and the circumstances narrated in the Misc case, unless the State is allowed to file the Writ Appeal with



A handwritten signature, possibly of the petitioner or their legal representative.

A handwritten signature, possibly of the Advocate General or a respondent.



the photo copy of the impugned order, the appellants will sustain irreparable loss and substantial injury which cannot be compensated by any other means.

### PRAYER

The humble Appellants/ petitioners, therefore, fervently pray that Hon'ble Court may graciously be pleased to allow this IA and pass necessary orders to dispense with filing of certified copy of the order dtd. 30.08.2023 passed in WP(C) No. 27904/2023 at present in the Writ Appeal.

And for this act of kindness, the humble appellants as in duty bound shall ever pray.

By the petitioners  
through

CUTTACK

DATE: 02.11.2023 ADDL. STANDING COUNSEL

### AFFIDAVIT

I, Sri Suryanarayn Mohapatra, aged about 59 years, Son of Late Parsuram Mohapatra at present working as Additional Secretary to Government, Department of Higher Education, Odisha, At.- Secretariat Building, Po. & Town: Bhubaneswar, Dist.-

Khurdha do hereby solemnly affirm and state as follows:

1. That, I have duly been authorized by the Appellants to swear this affidavit on their behalf.
2. That, the facts stated above are true to the best of my knowledge and based on official records.

Identified by

*Dr. K. D. Das*  
A.C., A.G.'s Office

*[Signature]*  
**DEPONENT**

Additional Secretary to Govt.  
Higher Education Deptt

### CERTIFICATE

Certified that due to non-availability of cartridge paper, this matter has been typed in thick white paper.

Place: Cuttack

Date : 03.11.2023 ADDL. STANDING COUNSEL

*[Signature]*  
**TARUN PATNAIK**

0663/2013  
8447484424

The above named deponent being seen by Mr./Ms. *[Signature]* Advocate appears before me at *[Signature]* AM/PM on this the *3/11* day of *2023* solemnly affirms that the facts stated are true to his/her knowledge and belief.

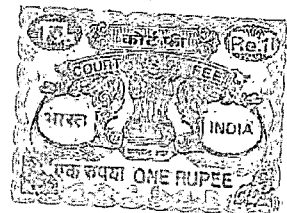
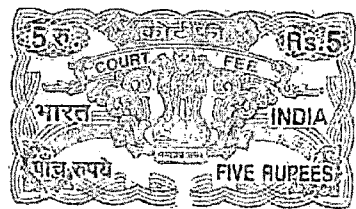
*[Signature]*  
NOTARY  
CUTTACK

*3/11/23*



**IN THE HIGH COURT OF ORISSA,  
CUTTACK**

**L.A. NO. 8022 OF 2023**  
(Arising out of W.A. No. 2743 of 2023)



IN THE MATTER OF:

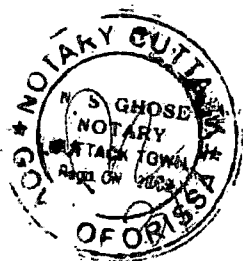
An application under Section 5 of the  
Limitation Act,  
AND

IN THE MATTER OF

1. State of Odisha, represented through its  
Commissioner-cum-Secretary to Govt., Higher  
Education Department, At-Loka Seva Bhawan,  
Bhubaneswar, District-Khurda.
2. Commissioner-cum-Secretary to Govt., School  
and Mass Education Department, Government  
of Odisha, Loka Seva Bhawan, Bhubaneswar,  
District: Khurda.
3. Director, Higher Education, Odisha, At. Heads  
of Department Building, Bhubaneswar,  
District: Khurda.
4. Director Higher Secondary Education, Odisha,  
At. AE for SRC Building, 1<sup>st</sup> Floor Unit-V,  
Bhubaneswar, Dist.-Khurda.
5. Controller of Accounts Odisha, Bhubaneswar,  
Dist.-Khurda.

(O.P. No.1, 2, 3, 4 & 5 in the Writ petition)

.... Appellants/Petitioners



TARUN PATNAIK

0-663/2013

8447484424



-Versus-

1. Pragati Pattnaik, aged about 61 years, W/o. Sanant Kumar Mohanty, At.Samaleswari Batika, Third Tower (2nd floor), Po. Remada Chaak, District. Sambalpur, retired as Lecturer in History/Principal-in-Charge, in Binka Women's junior College/Higher Secondary School, Phulmuthi, At/P.O. Binka, Dist: Subarnapur.

(Petitioner in the Writ petition)

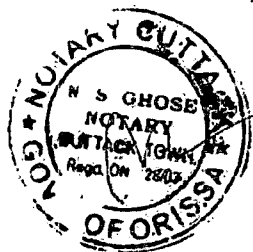
**...Respondent/Opp. Party**

2. Governing Body of Binka Women's Junior College/Higher Secondary School, Phulmuthi, At/P.O. Binka, Dist.-Subarnapur, represented through its Principal-cum-Secretary.

(O.P. No.6 in the writ petition)

**...Proforma Respondent/Opp. Party**

To

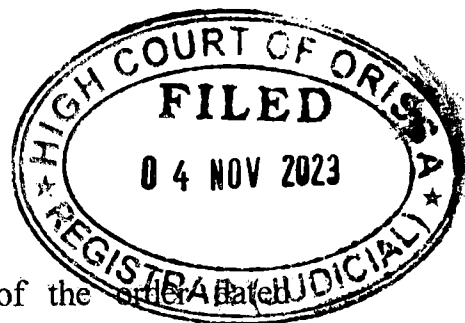


The Hon'ble <sup>Acting</sup> Chief Justice of Orissa High Court and His Lordship's companion Justices of the said Hon'ble Court.

The humble petition of the  
above named petitioners.

**MOST RESPECTFULLY SHEWETH:**

1. That, the petitioners are the functionaries of the Government of Odisha who have filed the present writ appeal under Clause 10 of the letters of patent of Patna High Court read with Article-4 of the Orissa High Court Order, 1948

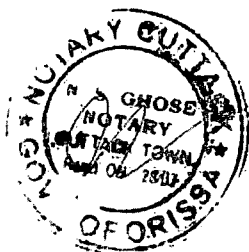


challenging the legality and validity of the order dated 30.08.2023 passed in W.P.(C) No. 27904/2023 of the Ld. Single Judge before this Hon'ble Court.

2. That, as per statutory provisions, the writ appeal is required to be preferred within the limitation period of 30 days. However, the Hon'ble Single Judge disposed of the writ petition by order dtd. 30.08.2023 with direction to the present petitioners to extend the pensionary and other retiral benefits to the Opp. Party in line with the ratio and benefit granted in the case of Sarat Chandra Parida reported in 2015 (II) ILR-CUT-94 within a period of four months from the date of communication/production of a certified copy of the order.

3. That, it is humbly submitted that the writ petition was disposed of on 30.08.2023 at the stage of admission without taking any response in shape of counter reply from the present appellants/ petitioners. Moreover, the writ petition was disposed of on the very date of admission and the State petitioners did not get any scope to be aware of disposal of the case. More so, it was directed by the Hon'ble Single Judge that the order is to be implemented within four months from the date of communication/ production of a certified/ authenticated copy of the order. However, the present petitioners/ appellants could be aware of the disposal of the writ petition only when on 05.10.2023 they received the copy of the impugned order dtd. 30.08.2023 passed in WP(C) No. 27904/2023 from the Respondent No. 1.

4. That, soon after receipt of the photo copy of the order dtd. 30.08.2023 passed in WP(C) No. 27904/2023 on

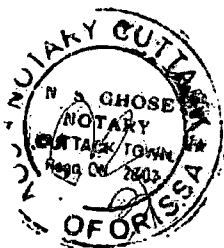


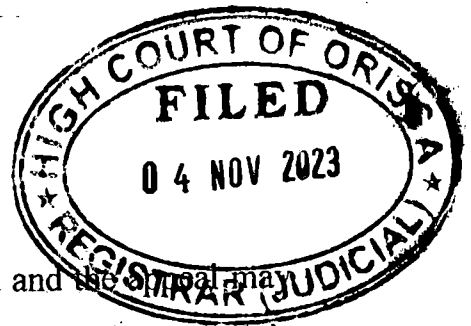
05.10.2023, appropriate action there on was initiated on 13.10.2023 and on 17.10.2023 relevant file was processed examining the merit involved in the case by the Administrative Branch in the office of the petitioner/ Appellant No. 1. Appellant No. 1 took decision on 12.10.2023 for challenging the impugned orders dtd. 30.08.2023 passed in WP(C) No. 27904/2023 before the Hon'ble Court by filing writ appeal.

5. The delay caused in processing the file and to take a decision to challenge the impugned orders is due to procedural delay occurred in the Administrative Branch which is neither intentional nor deliberate but due to bonafide reasons as stated above. Therefore, the bonafidencess of the delay may kindly be accepted in the greater interest of justice.

6. That, soon after the decision was taken on 12.10.2023 to file the writ appeal, the office of the Advocate General was moved for preparation of appeal grounds and to file the same before the Hon'ble Court. Thereafter, steps were taken at their level to prepare the appeal grounds and to file the appeal soon. Finally on 2.11.2023, the appeal grounds were prepared and such grounds were verified on 2.11.2023. Thereafter, the writ appeal was finalized and filed on 3.11.2023 causing 35 days delay.

7. That, the delay in filing the appeal is unintentional and unavoidable and the prime cause of such delay is due to late receipt of disposal order of the W.P.(C) No.27904/2023 and taking subsequent processes thereon which resulted filing of the writ appeal at a delayed stage. In the above premises particularly in the interest of Justice, the delay of 35 days in





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filing the appeal may kindly be condoned and the appeal may be heard on merit. Unless the delay in filing the appeal is condoned, the public interest will be highly prejudiced and sustain irreparable loss.

8. That, the petitioner's prima-facie have good grounds and fair chances of success on the grounds set forth in the Appeal Memorandum and it is, therefore, desirable for the ends of justice that the Hon'ble Court graciously be pleased to condone the aforesaid delay of 35 days.

9. That, unless the said 35 days of delay caused in filing of the appeal is condoned, the petitioners will suffer irreparable loss which cannot be compensated by any other means.

### PRAYER

It is therefore, humbly prayed that the Hon'ble Court may be graciously pleased to condone the aforesaid delay of 35 days after taking into account the circumstantial position and the inconvenience on the part of the present petitioner in the greater interest of justice.

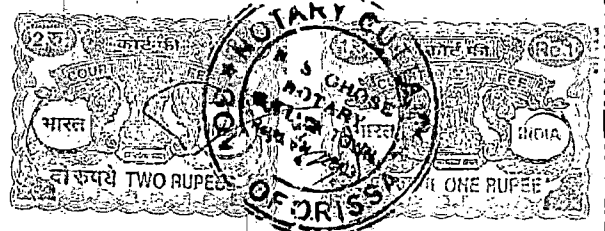
And pass such other order/orders as would be deemed fit and proper in the interest of justice. And for which act of kindness, the present petitioners as in duty bound shall ever pray.

By the petitioners  
through

CUTTACK

DATE: 03/11/2023 ADDL. STANDING COUNSEL





## AFFIDAVIT

I, Sri Suryanarayan Mohapatra, aged about 59 years,  
Son of Late Parsuram Mohapatra at present working as  
Additional Secretary to Government, Department of Higher  
Education, Odisha, At-Secretariat Building, Po. & Town:  
Bhubaneswar, Dist.-Khurdha do hereby solemnly affirm and  
state as follows:

1. That, I have been duly authorized by the  
Appellants in the present appeal to swear this  
affidavit on their behalf.
2. That, the facts stated in the Misc. Case are true to  
the best of my knowledge and based on official  
records.

Identified by

*Pravej Klemor Dees*  
AC, A.G's Office

*Suryanarayan Mohapatra*  
**DEPONENT**

Additional Secretary to Govt.  
Higher Education Deptt.

## CERTIFICATE

Certified that due to non-availability of cartridge paper,  
this matter has been typed in thick white papers.

CUTTACK

DATE: 03.11.2023 ADDL. STANDING COUNSEL

*TARUN PATNAIK*

0-663/2013

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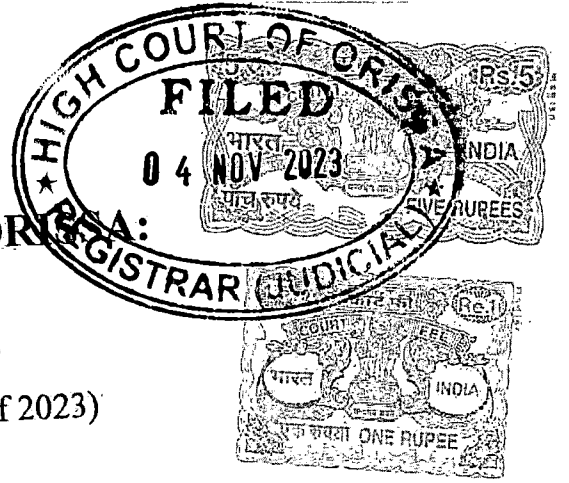
the above named deponent, *Pravej Klemor Dees*  
Mr./Ms. *Pravej Klemor Dees* appears before me at *AM/PL*  
on this the *3/11/23* of *2023*  
solemnly affirms that the facts stated  
are true to his/her knowledge and belief.

*Mr. 3/11/23*  
NOTARY  
CUTTACK TOWN



IN THE HIGH COURT OF ORISSA  
CUTTACK

I.A. No. 8022 of 2023  
(Arising out of W. A. No. 2443 of 2023)



IN THE MATTER OF:

An application under Chapter-VI, Rule-27  
of the Orissa High Court Rules for stay of  
operation of Order dtd. 30.08.2023 passed  
in W.P.(C) No. 27904/2023;

AND

IN THE MATTER OF:

State of Odisha & Others

... Petitioners/Appellants

-VERSUS-

Pragati Pattnaik & Another

... Opp. Parties/Respondents

To

*Arising*  
The Hon'ble Chief Justice of Orissa High Court  
and His Lordship's companion Justices of the  
said Hon'ble Court.

The humble Petition of the  
Appellants named above:

**MOST RESPECTFULLY SHEWETH:**

1. That, the Petitioner as Appellant in the  
accompanying Appeal seek to assail the Order  
dtd. 30.08.2023 passed by the Hon'ble Single



*Signature of Tarun Pattnaik*

TARUN PATNAIK

0-663 / 2013

8447484424

Judge in W.P.(C) No. 27904/2023 filed by the present Opp. Party/Respondent No.1 on various grounds.

2. That, the contents of the accompanying Appeal as well as the Grounds urged therein may be read as a part of this application for stay and those are not reiterated again for the sake of brevity.
3. That, the Petitioner / Appellant has a prima facie Case and a fair chance of success in the accompanying Appeal, in the event the Appeal is decided on merit.
4. That, for the ends of justice unless the operation of order dtd. 30.08.2023 passed in W.P.(C) No. 27904/2023 is stayed, the Petitioners / Appellants would suffer irreparable loss and injury which cannot be compensated by any other means.
5. That, this application is made bonafide.

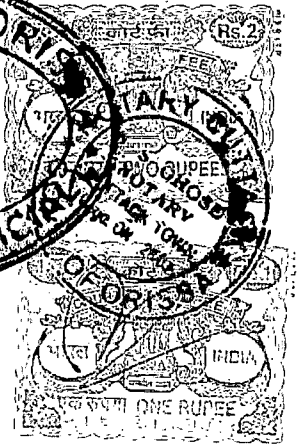
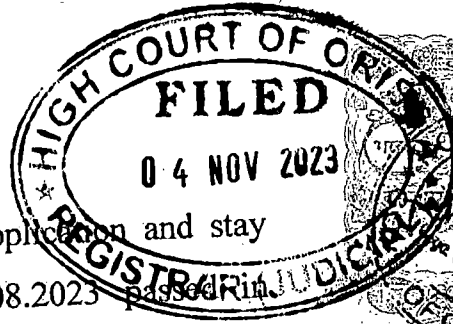
*Prayer*



*Prayer*

### PRAYER

In the circumstances stated above, it is therefore humbly prayed that this Hon'ble Court may be



graciously pleased to allow this application and stay the operation of Order dtd. 30.08.2023 passed in W.P.(C) No.27904/2023 till disposal of the accompanying Writ Appeal;

And, pass such other / Orders as this Hon'ble Court may deem just and proper in the facts and circumstances of the present Case;

And, for this act of kindness the Petitioner/ Appellant shall as in duty bound ever pray.

By the Petitioners/Appellants through,

CUTTACK

DATE 02.11.2023

ADDL. STANDING COUNSEL

### AFFIDAVIT

I, Sri Suryanarayan Mohapatra, aged about 59 years, Son of Late Parsuram Mohapatra at present working as Additional Secretary to Government, Department of Higher Education, Odisha, At.- Secretariat Building, Po. & Town: Bhubaneswar, Dist.- Khurdha do hereby solemnly affirm and state as follows:

1. That, I have been duly authorized by the Appellants in the present appeal to swear this affidavit on their behalf.



2. That, the facts stated in the Misc. Case are true to the best of my knowledge and based on official records.

Identified by

*Pravej Kumar Des*  
AC, A.G.'s Office

*[Signature]*  
**DEPONENT**

Additional Secretary to Govt  
Higher Education Deptt

### CERTIFICATE

Certified that due to non-availability of cartridge paper, this matter has been typed in thick white papers.

CUTTACK

DATE: 08-11-2023 ADDL. STANDING COUNSEL

*[Signature]*  
TARUN PATNAIK

0-663/2013

8447484424

he above named deponent, *AC AG*  
by Mr./Ms. *P.K. Des* *Adv.*  
appear/s before me at.....AM/PM.  
on this the.....day of.....20.....  
solemnly affirms that the facts stated  
are true to his/her knowledge and belief

*[Signature]*  
NOTARY

CUTTACK

