(2021) 03 OHC CK 0011

In the Orissa High Court

Case No : Writ Petition (Civil) No. 26212 Of 2013

Prof. Nimain Charan Mohapatra — APPELLANT

Vs

State Of Orissa & Others — RESPONDENT

Date of Decision : 25-03-2021

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 21, 148(5), 226, 227, 300A, 309
Orissa Universities Act, 1989 — Section 22(1), 24(3)
Orissa Civil Services (Pension) Rules, 1992 — Rule 2(p)
Orissa Revised Scales Of Pay For University Teachers (UGC Scale Of Pay) Rules, 2010 — Rule 2, 2(1), 4
Orissa Pension Rules 1977 — Rule 73

Citation : (2021) 03 OHC CK 0011

Hon'ble Judges : Dr. B. R. Sarangi, J

Bench : Single Bench

Advocate : S. Patnaik, A.K. Mohanty, G.M. Rath, S.S. Padhy, P. Mishra, Y.S.P. Babu, B.S. Mishra-2, A.R. Mishra

Final Decision : Allowed

Judgement

Dr. B.R. Sarangi, J

1. Dr. Brajaraj Mohanty, as a pre-2006 retiree, having retired from Utkal University as Professor in Business Administration on 31.03.2005, has filed W.P.(C) No.8667 of 2014 seeking direction to the opposite parties to fix his pension by taking Rs.43,000/- as the minimum pay in the pay band with Academic Grade Pay (AGP) of Rs.10,000/- and accordingly release the arrear pensionary dues w.e.f. 2006 along with appropriate interest from the due date of entitlement.

Similarly, Prof. Nimain Charan Mohapatra, who is also a pre-2006 retiree, having retired from Berhampur University as Professor in Physics, has filed W.P.(C) No.26212 of 2013 to quash the office order dated 29.05.2010 at Annexure-4 passed by the Berhampur University-opposite party no.4 and issue direction to the opposite parties re-fix his pension by taking Rs.43,000/- as minimum pay in the pay band and release his arrear pension w.e.f. 2006 along with interest @ 18% per annum till payment.

2. Since both the writ petitions relate to fixation of pension taking into account Rs.43,000/- as minimum pay with AGP of Rs.10,000/- and essentially the relief sought therein is similar in nature, they are heard together and disposed of by this common judgment.

3. For the sake of convenience and brevity, the factual matrix as pleaded in W.P.(C) No.8667 of 2014 is referred to. The petitioner therein got selected by following due procedure and joined as Professor on 25.03.1990. As a directly recruited Professor, he continued as such till his retirement on 31.03.2005 from the Utkal University as Professor in Business Administration. Therefore, he is a pre-2006 retiree.

3.1 The Government of India constituted 6th Pay Commission on 05.01.2006, inter alia, to examine the principle, which should govern the structure of pension, death-cum-retirement gratuity, family pension and other terminal or recurring benefits having financial implications on present and former Central Government employees appointed prior to 01.01.2006. The Commission submitted its report by way of recommendation on 24.03.2008.

3.2 Chapter 5.1 of the said report under Annexure-1 deals with "Pensionary benefits of civilian employees and Defence Forces Personnel". Thereby, the Commission made a separate recommendation for revision of pension of pre-2006 pensioners and for determination of pension of those retiring after the date of implementation of its recommendations. Para 5.1.47 of the report, which was accepted by the Central Government as well as the State Government, deals with fitment benefit to the past pensioners. In the recommendation, the Commission, in adherence to the principles of modified parity, has broadly divided the pensioners into two categories, i.e., pre-2006 retirees and post-2006 retirees.

3.3 After publication of 6th Pay Commission Report, the Government of Odisha in its Department of Finance constituted a Fitment Committee, inter alia, to examine the recommendations of the Pay Commission. After the Fitment Committee report, the Government of Odisha in Finance Department vide office memorandum dated 19.01.2009 adopted the 6th Pay Commission report. Para-5 of the said office memorandum clearly specifies with regard to revision of pension in respect of pre-2006 pensioners. The said office memorandum dated 19.01.2009 was further clarified by the Finance Department in Government of Odisha letter no.6575 dated 06.02.2009 wherein the method of calculation of pension and family pension has been provided at para-3.

3.4 On the basis of recommendation of the 6th Pay Commission, the Government of Odisha in the Department of Higher Education passed a resolution on 14.12.2009 to revise the pay scale of teachers and equivalent cadres in receipt of UGC pay scale in Universities and Colleges. As per Clause 5.2(iv) of the said resolution, while the revised pay scale of Professors in Government Autonomous Colleges was fixed at the pay band of Rs.37,400-67,000/- with Rs.10,000/- as AGP, in respect of the directly recruited Professors the pay scale was fixed at Rs.43,000/- in the pay band with AGP of Rs.10,000/-. Meaning thereby, as per resolution dated 14.12.2009 adopted by the Higher Education Department, Professors in the Government Autonomous Colleges have been separated into two categories, i.e. Professor and directly recruited Professor. As per the said resolution, the minimum pay of directly recruited Professors was fixed at Rs.43,000/- in the pay band with AGP of Rs.10,000/-. For the University Professors in general and directly recruited Professors of the University in particular, pari materia provision to Clause 5.2 (iv) has been provided in Clause 5.3(b)(i) and 5.3(b)(ii) of the said resolution, which suggest that like in the case of pre-2006 retiree directly recruited Professors of the Government Autonomous Colleges, the minimum pay of such Professors of the University shall be fixed at Rs.43,000/- in the pay band. Clause-14.1 of the said resolution provides the procedure for calculation of pension payable to all pre-2006 retirees with a provision under Clause-14.1(ii).

3.5 The combined effect of resolution dated 14.12.2009 of the Higher Education Department and that of the Finance Department dated 06.02.2009 read with office memorandum dated 19.01.2009, is that the minimum pay in the pay band of Rs.37,400/-67,000/- of all directly recruited Professors of both the Government Autonomous Colleges and the Universities shall be Rs.43,000/- with AGP of Rs.10,000/-. The petitioner, being a pre-2006 pensioner, having retired as a directly recruited Professor of the University, his pension should be fixed at Rs.26,500/-, i.e. at the rate of 50% of sum of Rs.43,000/- and Rs.10,000/- AGP, subject to completion of maximum 33 years of qualifying service.

3.6 Vide notification dated 15.02.2010, the Chancellor of the Universities had been pleased to lay down the Orissa Revised Scales of Pay for University Teachers (UGC Scale of Pay) Rules, 2010. Rule-4 of the said Rules provides that the revised pay structure with the pay band, pay scale and academic grade pay as applicable; corresponding to existing scale of every post/grade specified in column (3) of Schedule-I shall be as specified against it in columns (5) & (6) thereof. Accordingly, Schedule-1 (at serial no.10) provides that the revised scale of pay of Professors, who are directly recruited, shall be Rs.37,400-67,000/- and not below Rs.43,000/- in the pay band and AGP of Rs.10,000/-. As per orders of the Chancellor, vide notification dated 30.03.2010, it was directed that the Finance Department Resolution/ circulars/ office memorandum regulating pension/family pension and other terminal benefits etc. issued from time to time shall be followed in determining pension/family pension in the Universities regulated by the Orissa Universities Act and statute thereunder.

3.7 In pursuance of the above, the petitioner raised grievance before the University and in turn the University sought clarification from the Government, vide letter dated 23.08.2010, upon re-fixation of pension of the petitioner along with all other similarly placed Professors of the University, but, no reply was received from the Government.

3.8 Pursuant to resolution dated 14.12.2009 of the Higher Education Department, the minimum pay in the pay band of directly recruited Professors in both the Government Autonomous Colleges and the Universities must have been fixed at a stage not below Rs.43,000/- with AGP of Rs.10,000/-. Although the Government, while implementing 6th Pay Commission report, has fixed pension of the pre-2006 pensioners, who were directly recruited Professors of Government Autonomous Colleges, taking 50% of Rs.43,000/- as minimum pay in the pay band with AGP of Rs.10,000/-, such benefit has not been extended to their counterparts of the Universities. Hence this application.

4. Mr. Pitambar Acharya, learned Senior Counsel appearing along with Mr. S.S. Tripathy, learned counsel for the petitioner in W.P.(C) No.8667 of 2014 contended that the petitioner, who is a directly recruited Professor of Utkal University and a pre-2006 retiree, as per 2006 revised pay scale pursuant to the recommendation of 6th Pay Commission, deserves pensionary benefits in 50% of the scale of pay of Rs.37,400-67,000/- (not below Rs.43,000/-) plus AGP of Rs.10,000/- relatable to maximum period of qualifying service. It is further contended that as clarified in office memorandum dated 19.01.2009 of the Finance Department of Government of Odisha in Annexure-2, the revised full pension of all pre-2006 State Government pensioners relatable to the maximum period of qualifying service shall in no case be less than 50% of the minimum of the pay band plus the grade pay of the revised scale of pay w.e.f. 01.01.2006 and, as such, 50% of sum of Rs.43,000/- and Rs.10,000/- AGP comes to Rs.26,500/-. After recommendation of 6th Pay Commission, as is evident from the Schedule-I of the notification issued by the Chancellor under Annexure-5, the revised scale of pay shall be Rs.37,400-67,000/- and pay of directly recruited professors shall be fixed at a stage (not below Rs.43,000/-) in the pay band and AGP of Rs.10,000/-. Therefore, the minimum scale of pay of the petitioner should have been fixed at Rs.43,000/-plus AGP of Rs.10,000/- and 50% thereof comes to Rs.26,500/-, which the petitioner is entitled to get as pension. Instead of doing so, the pension of the petitioner has been fixed taking into account the minimum scale of pay of Rs.37,400/- with AGP of Rs.10,000/- which comes to Rs.47,400/- and 50% thereof comes to Rs.23,700/-, and such fixation of pay is not in conformity with the provisions of law. It is further contended that so far as directly recruited Professors working in the Government Autonomous Colleges are concerned, they have been extended with the benefit of pension at Rs.26,500/- and, therefore, fixation of pay and consequential pension of the petitioner, who is a directly recruited Professor of the University, as has been already indicated has not been extended, thereby the action of the authority, is arbitrary, unreasonable and contrary to the provisions of law. It is further contended that the action of the State Government in the Department of Higher Education in not extending the benefit to the petitioner as claimed, is not only discriminatory but also violative of Articles 14, 16 and 39(d) of the Constitution

of India and also Article 21 read with Article 300-A of the Constitution of India.

To substantiate his contention, he has relied upon the judgments of the apex Court in D.S.Nakara v. Union of India, (1983) 1 SCC 305 and V. Sukumaran v. State of Kerala, (2020) 8 SCC 106.

5. Mr. G.M. Rath, learned counsel appearing for the petitioner in W.P.(C) No.26212 of 2013 supported the contention raised by Mr. Pitambar Acharya, learned Senior Counsel appearing for the petitioner in W.P.(C) No.8667 of 2014 and further contended that while implementing the recommendation of 6th Pay Commission, the University fixed the pension far below the rank which the petitioner is entitled to. It is further contended that the Finance Department of Government of Odisha, vide office memorandum dated 19.01.2009, categorically fixed the guidelines in para-5 that the revised full pension of all Pre-2006 State Government pensioners relatable to maximum period of qualifying service shall in no case be less than 50% of minimum pay band plus the grade pay of revised scale of pay w.e.f. 01.01.2006 for the post last held by the pensioner on the date of retirement. Applying the above guidelines, the Department of Higher Education by resolution dated 14.12.2009 fixed the salary of directly recruited Professors at a stage not below Rs.43,000/- with AGP of Rs.10,000/- and consequentially pension has been determined at 50% of such amount as Rs.26,500/- subject to completion of maximum qualifying service. But the University, vide office order dated 29.05.2010, fixed the pension of the petitioner at Rs.23,700/-. Thereby, there is gross discrimination between the class of people working in the same condition, as they are all directly recruited Professors. Consequentially, the action so taken by the authority is arbitrary, unreasonable and contrary to the provisions of law.

To substantiate his contention, he has relied upon the judgment of the Delhi High Court in the case of Union of India v. Central SAG and others, (W.P.(C) No.1535 of 2012 and batch disposed of on 29.04.2013) and that of the Punjab and Haryana High Court in the case of R.K. Agarwal v. State of Haryana (CWP No.3452 of 2010 and batch disposed of on 21.12.2012). 6. Mr. Y.S.P. Babu, learned Addl. Government Advocate appearing for the State-opposite parties contended that no counter affidavit has been filed in W.P.(C) No.8667 of 2014, but counter affidavit has been filed in W.P.(C) No.26212 of 2013. Therefore, for just and proper adjudication, as both the matters are interlinked, the counter affidavit filed in W.P.(C) No.26212 of 2013 be adopted to decide the same. Referring to the counter affidavit, he contended that consequent upon introduction of ORSP Rules, 2008 by the Finance Department for the employees of the State, the Department in Higher Education issued a resolution dated 14.12.2009 by making provision for revision of pay scales of the teachers and equivalent cadres in respect of UGC scale of pay in Universities and Colleges following the recommendation of 6th Central Pay Commission. It is contended that as per para-5(3)(b)(i)(ii) of the said resolution the Professors of the Universities, who were in receipt of pay scales of

Rs.16,400-450-20900-500-20400/-, shall be entitled to get revised pay scale of Rs.37,400-67000/- plus AGP of Rs.10,000/-. For directly recruited Professors, the revised pay scale shall be fixed at a stage not below Rs.43,000/- in pay band of Rs.37,400-Rs.67000/- plus AGP of Rs.10,000/-. Adhering the same principles, a communication was made by the Department of Higher Education, Govt. of Odisha on 26.12.2016 to the Berhampur University for fixation of pension of directly recruited Professors retired before 01.01.2006 as per the provisions contained in clause 14.1. It is contended that with regard to pension and family pension, as per the revised UGC scale of pay vide resolution dated 29.12.2012, which has been annexed as Annexure-8 to W.P.(C) No. 8667 of 2014, the pension of some of the pre-2006 retiree directly recruited Professors of the Government Colleges was fixed at Rs.26,500/- and, as such, the benefit has already been extended to them. It is contended that the University has to examine the same and comply the instructions issued vide letter dated 26.12.2016 under Annexure-B to the counter affidavit filed in W.P.(C) No.26212 of 2013.

7. Mr. K.K. Jena, learned counsel for the opposite party-Utkal University in W.P.(C) No. 8667 of 2014 contended that in view of the anomaly with regard to grant of pensionary benefits to the directly recruited Professors, the University sought clarification from the government regarding implementation of Revised Scale of Pay (UGC Teachers) Rules, 2010 for teachers and pensioners, vide letter dated 23.08.2010. But till date no such clarification has been received. Therefore, the pension of the petitioner has been fixed at the rate of 50% of minimum pay band plus AGP, i.e., Rs.37,400/- plus Rs.10,000/- AGP, subject to maximum qualifying service, which comes to Rs.23,700/- w.e.f. 01.01.2006. But the anomaly with regard to fixation of pension, as per the revised UGC scale of pay, so far as the Professors of the Government Colleges are concerned, has been resolved by letter dated 29.12.2012 by fixing the pension at Rs.26,500/-, which is 50% of minimum pay of Rs.43,000/- plus AGP of Rs.10,000/-. It is contended that since no decision has been taken at government level to extend such benefit to the pre-2006 retired Professors of the University, the same has not been extended.

8. Mr. B.S. Mishra, learned counsel appearing for the opposite party-Berhampur University in W.P.(C) No.26212 of 2013 contended that in view of the resolution dated 14.12.2009 of the Govt. of Orissa in the Department of Higher Education, as per clause-14, pension is admissible to the employees. Under clause-14.1, pension of pre-2006 pensioners and family pensioners has to be calculated. As per sub-clause-(ii) of clause-14.1, the revised full pension of pre-2006 pensioners relatable to maximum period of qualifying service shall in no case be less than 50% of the minimum of the pay band plus the grade pay of the revised scale of pay w.e.f. 01.01.2006 for the last post held by the pensioner on the date of retirement. The same is based on the Government of Orissa, Finance Department letter dated 06.02.2009 in Annexure-3 with regard to revision of pension/family pension of Pre-2006 pensioners/family pensioners. It if further contended that unless government extends the benefit, the claim of the petitioner with regard to fixation of pension cannot sustain in the eye of law. It is

contended that as per the office memorandum, pension has been fixed on the basis of minimum basic pay plus Rs.10,000/- AGP, subject to maximum period of qualifying service, which comes to Rs.23,700/-. Thereby, no illegality or irregularity has been committed by the authority in fixing such pension. It is thus contended that the writ petition so filed by the petitioner cannot sustain in the eye of law and the same is liable to be dismissed.

9. This Court heard Mr. Pitambar Acharya, learned Senior Counsel appearing along with Mr. S.S. Tripathy, learned counsel for the petitioner in W.P.(C) No.8667 of 2014; Mr. K.K. Jena, learned counsel for the opposite party-Utkal University in W.P.(C) No. 8667 of 2014; Mr. Y.S.P. Babu, learned Addl. Government Advocate appearing for the State-opposite parties in both the writ petitions and Mr. B.S. Mishra, learned counsel appearing for the opposite party-Berhampur University in W.P.(C) No.26212 of 2013 in virtual/hybrid mode. Pleadings between the parties having been exchanged, with the consent of learned counsel for the parties, these writ petitions are disposed of finally at the stage of admission.

10. On the basis of the pleadings available on record and arguments advanced by the learned counsel for the parties as mentioned above, it is to be determined whether the pre-2006 retiree directly recruited University Professors are entitled to get pension at 50% of Rs.43,000/- + Rs.10,000/- AGP = Rs. 26,500/- or Rs.37,400/- + Rs.10,000/- AGP = 23,700/- as per the revised pay scale rules applicable to them.

11. The Government of India constituted the 6th Pay Commission on 05.01.2006 inter alia to examine the principle which should govern the structure of pension, death-cum-retirement gratuity, family pension and other terminal or recurring benefits having financial implications on present and former Central Government employees appointed prior to 01.01.2006. Accordingly, the Commission submitted its report on 24.03.2008. In the report, the Commission made separate recommendations for revision of pension of the pre-2006 pensioners and for determination of the pension of those retiring after the date of implementation of its recommendations. With regard to the revision of pension of the pre-2006 pensioners, the Commission made its recommendation at para-5.1.47 of the report, which reads as follows:

"5.1.47 The Commission notes that modified parity has already been conceded between pre and post 1/1/1996 pensioners. Further, full neutralization of price rise on or after 1/1/1996 has also been extended to all the pensioners. Accordingly, no further changes in the extant rules are necessary. However, in order to maintain the existing modified parity between present and future retirees, it will be necessary to allow the same fitment benefit as is being recommended for the existing Government employees. The Commission, accordingly, recommends that all past pensioners should be allowed fitment benefit equal to 40% of the pension excluding the effect of merger of 50% dearness allowance dearness relief as pension (in respect of pensioners retiring on or after 1/4/2004) and dearness pension (for other pensioners) respectively.

The increase will be allowed by subsuming the effect of conversion of 50% of dearness relief/ dearness allowance as dearness pension/dearness pay. Consequently, dearness relief at the rate of 74% on pension (excluding the effect of merger) has been taken for the purposes of computing revised pension as on 1/1/2006. This is consistent with the fitment benefit being allowed in case of the existing employees. A table (Annex 5.1.1) showing fixation of the pension of the existing pensioners in the revised dispensation consequent to implementation of the recommendations of this Commission has been prepared and should be used for fixing the revised pension of the existing pensioners. The fixation as per this table will be subject to the provision that the revised pension, in no case, shall be lower than fifty percent of the sum of the minimum of the pay in the pay band and the grade pay thereon corresponding to the prerevised pay scale from which the pensioner had retired. To this extent, a change would need to be allowed from the fitment shown in the fitment table."

The above recommendation of the Commission was also accepted by the Central Government as well as State Government. In the recommendation, the Commission in adherence to the principle of modified parity, has broadly divided the pensioners into two categories i.e. pre-2006 retirees and post-2006 retirees.

12. The Government of Odisha after publication of the 6th Pay Commission Report, in its Department of Finance, constituted a Fitment Committee, inter alia, to examine the recommendations of the Pay Commission. After the Fitment Committee Report, the Government of Odisha in Finance Department vide their office memorandum dated 19.01.2009 at Annexure-2 adopted the 6th Pay Commission Report in Para-5 of the said memorandum, which reads as follows:

"Provided that the revised full pension of all Pre-2006 State Government Pensioners relatable to the maximum period of qualifying service shall in no case be less than 50% of minimum of the Pay Band plus the Grade Pay of the revised scale of pay w.e.f. 01.01.2006 for the post last held by the Pensioner on the date of retirement."

The aforesaid office memorandum dated 19.01.2009 was further clarified by the Finance Department, Government of Odisha in its letter dated 06.02.2009 at Annexure-3, wherein the method of calculation of pension and family pension has been provided at para-3, which reads as follows:

"3. For calculation of pension/family pension @ 50% & 30% respectively of the minimum pay in the Pay Band plus the Grade Pay, the Pensioner/Family Pensioner will have to submit a application to AG (A&E), Orissa for revision of pension/family pension in the prescribed form (Annexure-1 attached to the said OM) as referred in Para-5,6 & 7 of the OM dated 19.01.2009."

13. On perusal of the aforesaid provision, it is made clear that the pension in respect of a pre-2006 pensioner should be 50% of the minimum pay in the pay band plus grade pay. Thereby, there is no iota of doubt with regard to calculation of pension in respect to pre-2006 pensioners, which to be calculated in terms of

para-3 of the letter dated 06.02.2009 at Annexure-3.

14. On the basis of the recommendation of the 6th Pay Commission, the Government of Odisha in its Department of Higher Education passed a resolution on 14.12.2009 to revise the pay scale to teachers and equivalent cadres in receipt of UGC scale of pay in Universities and Colleges. Clause 5.2(iv) of the said resolution states as follows:

"5.2 Government Colleges:-

xx xx xx

(iv) Professor (Government Autonomous Colleges)

Existing Scale-Rs.16,400-450-20,000/-

Revision of Pay Scale - Rs.37,400-67,000/- + AGP-Rs. 10,000/-

Pay of the directly recruited Professor shall be fixed at a stage not below Rs.43,000/- in this pay band and the AGP of Rs.10,000/-.

As per the above mentioned clause-5.2(iv) of the resolution, the revised pay scale of Professors in Government Autonomous Colleges has been fixed at the pay band of Rs.37,400-67,000/- with AGP of Rs.10,000/- , but in respect of all directly recruited Professors, it is stated in the resolution that the pay shall be fixed at a stage not below Rs.43,000/- in the pay band plus the AGP of Rs.10,000/-. Meaning thereby, as per the aforesaid resolution dated 14.12.2009 adopted by the Higher Education Department, Professors in Government Autonomous Colleges have been separated into two categories, i.e., Professor and directly recruited Professor. As per the said resolution, the minimum pay of the directly recruited professors has been fixed at Rs.43,000/- in the pay band with AGP Rs.10,000/-. Similarly, the Professors of the University in general and directly recruited Professors of the University, their pay has been fixed as per Clause -5.3(b)(i) and (ii), which reads as follows:-

"5.3 Revised Scales of pay of Teachers in the Universities

Xx xx xx

(b)Professor in the Universities

(i) Professor

Existing scale - Rs.16,400-450-20,900-500-22,400/-

Revision of Pay Scale- Rs.37,400-67,000/-+ AGP - Rs.10,000/-

(ii) Pay of the directly recruited Professor shall be fixed at a stage not below Rs.43,000/- in this pay band and the AGP of Rs.10,000/-"

On perusal of the provisions contained in Clause 5.2 (iv) vis-à-vis Clause 5.3 (b) (i) and (ii), it is apparently clear that both the Professors of Government

Autonomous Colleges as well as Professors in the Universities are treated alike by giving pay those who are directly recruited.

15. In the resolution dated 14.12.2009, Clause- 14 deals with "pension". The relevant parts of Clause-14.1 (i)(ii), which are required for proper adjudication, are extracted hereunder:

"14.1. Pre-2006 Pensioners & Family Pensioners :

(i) The revised and consolidated pension and family pension for Pre-2006 Pensioners will be the existing basic pension as on 31.12.2005 inclusive of commuted portion, if any, multiplied by a factor of 1.86+fitment weightage of 40% on existing basic pension and family pension. If the pension and family pension comes to less than Rs. 3,500 per month as per above calculation the same will be stepped up to Rs. 3,500 and additional pension, if any, admissible to the pensioners will be merged with the minimum pension raising to Rs. 3,500/-

(ii) Provided that the revised full pension of all Pre-2006 pensioners relatable to the maximum period of qualifying service shall in no case be less than 50% of the minimum of the Pay Band plus the Grade Pay of the revised scales of pay with effect from the 01.01.2006 for the post last held by the pensioner on the date of retirement."

In view of Clause-14.1(ii), revised full pension of all pre-2006 pensioners relatable to maximum period of qualifying service shall in no case be less than 50% of the minimum of the pay band plus grade pay of revised scales of pay with effect from 01.01.2006. In view of clause 5.3(b)(ii), pay of the directly recruited professor shall be fixed at a stage not below Rs.43,000/- in the said pay band and the AGP of Rs.10,000/- which comes to Rs.43,000/- + Rs.10,000/- = Rs.53,000/-, 50 % of which comes to 26,500/-, which will be applicable to the pre-2006 pensioners w.e.f. 01.01.2006.

16. When the matter stood thus, the Chancellor, vide notification dated 15th February, 2010, in pursuance of sub-section (1) of Section 22 of Orissa Universities Act, 1989 (Orissa Act 5 of 1989), prepared a Rule, called the Orissa Revised Scales of Pay for Universities Teachers (UGC Scale of Pay) Rules, 2010. Rule 2 deals with application and Rule 4 deals with Scale of pay. Rule 2(1) and Rule 4 read as follows:

"2. Application -

(1) Save as otherwise provided by or under these rules, these rules shall apply to University Teachers (UGC Scale of Pay) in whole time employment of the Utkal University, Berhampur University, Sambalpur University, Shree Jagannath Sanskrit Vishvavidyalaya, North Orissa University, Fakir Mohan University, and Ravenshaw University."

xxx xxx xxx

4. Scale of Pay - The revised pay structure with the pay band, pay scale and

academic grade pay as applicable, corresponding to the existing scale of every post/grade specified in Column (3) of Schedule -1 shall be as specified against it in Column (5) and (6) thereof."

A schedule was attached to the rule fixing scale of pay under O.R.S.P (For University Teachers) Rules, 2001 and corresponding Revised Scale of Pay For University Teachers (UGC Scale of Pay) Rules, 2010 in pay band with academic grade pay. Relevant clause-10 of the Schedule-I is quoted below:

Schedule-I

Sl. No.

Name of the Post

Existing Scale of Pay under ORSP for (College Teachers) Rules, 2001

Pay Band

Revised Scale of Pay

Academic Grade Pay

1

2

3

4

5

6

xx

xx

xx

xx

xx

xx

10

Professor (Directly Recruited)

16400-450- 29900-500- 22400

PB-2

37400-67000 (not below Rs.43000)

10000

On perusal of clause-10 of the Schedule-I, read with Rule 2(1) and Rule 4 of the 2010 Rules, as mentioned above, it is made clear that the revised scale of pay of the Professor (Directly Recruited) was fixed at Rs.37,400-67,000/- (not below Rs.43,000) and AGP of Rs.10,000/-. Thereby, the directly recruited University Professors are entitled to get revised scale of pay admissible to them. In addition to the above rules, a notification was issued on 30th March, 2010 by the Chancellor vide Annexure-6, wherein it was notified that the Finance Department Resolution/circulars/office memorandum regulating pension/family pension and other terminal benefits etc. issued from time to time shall be followed in determining pension/family pension in the universities regulated by the Orissa Universities Act and Statute thereunder.

17. In pursuance of the power conferred by sub-section (3) of Section 24 of the Orissa Universities Act, 1989 (Orissa Act 5 of 1989), the State Government framed the statute, namely, the Orissa Universities First Statutes, 1990. Statute-290 deals with "pension and gratuity", Statue-291 deals with "entitlement to pension, family pension and gratuity"- service reckoned up to 58 years in case of employees other than Class-IV and Statute-292 deals with the "qualifying service". Statutes-290, 291, 292 are quoted below:

"290. (1) Subject to Sub-Statute (3) infra, the employees of the University who opt for Pension Scheme shall be entitled to the pensionary benefits including Family Pension as provided under Orissa Pension Rules, 1977, as amended from time to time, alongwit1 the increases, if any, as admissible from time to time.

(2) Subject to Sub-Statute (3) infra, the employees shall also be entitled to gratuity including Death Gratuity at the same rates and subject to the same terms and conditions as applicable from time to time to the State Government employees.

(3) In the case of existing employees opting or deemed to have opted for the Pension Scheme the amount contributed by the University to their Contributory Provident Fund together with interest accrued thereon till the date of their exorcising option shall be credited to the Pension Fund of the University.

4) The employees under the Pension Scheme shall subscribe to the General Provident Fund Account which shall be opened and operated in accordance with the provisions contained in the Provident Fund Act and the Orissa General Provident Fund Rules.

291. Notwithstanding the age of superannuation, the period of qualifying service of employees other than the Class IV employees upto the time when they complete 58' years of age shall be taken into consideration to determine the quantum of their Pension,. Family Pension and Gratuity. In the case of Class IV employees the period of service upto the age of superannuation shall be reckoned for the purpose.

292. The total qualifying service rendered in any or all of the institutions enumerated in Statute 260 shall count for pension subject to the conditions laid down therein."

18. As per the resolution dated 14.12.2009 of the Higher Education Department under Annexure-4, the minimum pay in the pay band of Rs.37,400-Rs.67,700/- of all directly recruited Professors of both the Government Autonomous Colleges and Universities must have been at a stage not below Rs. Rs.43,000/- plus AGP of Rs.10,000/- . The Government, while implementing the same, has calculated pension of some of the pre-2006 retiree directly recruited Professors of Government Autonomous Colleges taking into account Rs.43,000/- as minimum pay in the pay band, but, while calculating pension of pre-2006 directly recruited professors of the University, such benefit has not been extended. Thereby, a clarification was sought by the University, vide letter dated 23.08.2010, with regard to fixation of pensionary benefits to such Professors, but the State Government maintained a sphinx silence over the matter. Thereby, finding no other alternative, the petitioners have approached this Court by filing the writ petition and contend that they should not be discriminated from the pre-2006 retiree Professors of Government Autonomous Colleges. In the meantime, on 29.12.2012 vide Annexure-8, the Government of Odisha in its Department of Higher Education has communicated to the Accountant General (A & E) Odisha BBSR resolving the anomalies in the fixation of pension as per the revised U.G.C. scale of pay so far as pre-2006 retiree professors of Government Autonomous Colleges are concerned indicating that the applicants (Pensioners), being directly recruited Professors through O.P.S.C. vide open advertisement no. 26 of 1991-92 in the pre revised scale of pay of Rs.4,500-150-5700-200-6300/-, their pension has to be fixed as per the revised U.G.C. Scale of Pay and as per the guidelines issued in the Government Office Memorandum dated 22.02.2010. Accordingly vide Annexure-8 series they have been paid revised pension of Rs.26,500/-, which is 50% of Rs. 43,000/- minimum pay and AGP of Rs.10,000/- and also allowed to draw their arrear pension.

19. The above fact has been duly admitted in the counter affidavit filed by opposite party no.1 in W.P.(C) No.26212 of 2013, paragraphs-6 and 8 whereof read as follows:-

"6. That, it is humbly submitted that consequent upon introduction of ORSP Rules, 2008 for Government Employees of the State by Finance Department, the Department of Higher Education have issued a Resolution No.34492/HE dated 14.12.2009 for making provision of revision of the pay scales of the teachers and equivalent cadres in receipt of UGC scales of pay in University and colleges following the revision of pay scales of Central Government Employees on recommendation of 6th Central Pay Commission. The said resolution at paragraph-5 (3)(b)(i)(ii) provides for revision of pay scales of the professors of the Universities who were in receipt of the pay scale of Rs.16,400-450-20900-500-22400/- in the revision pay scale of

Rs.37,400-67,000/- + AGP Rs.10,000/-. However, for the directly recruited professor the revision of pay shall be fixed at a stage not below Rs.43,000/- in the pay band of Rs.37,400-67000/- and the AGP of Rs.10,000/-.

xxx

xxx xxx

8. That, it is further humbly submitted that Higher Education Department have already given clarification for fixation of the pension in the revised scales of pay as per recommendation of 6th Pay Commission in respect of the retired employees and in this respect the said Department Letter No.36292/HE dated 26.12.2016 has given necessary clearance to the Registrar, Berhampur University to adhered the provisions contained the paragraph 14(1) of the Govt. Resolution dated 14.12.2009 for the pre, 2006 pensioners and family pensioners and further the Registrar, Berhampur University has been emphasized to refix the pension of the Pre, 2006 pensioners including the present petitioners at an early date as per clarification given to the said University vide Letter referred to above. The copy of the Letter No.36292/HE dated 26.12.2016 is filed and marked as Annexure-B/1 for kind perusal.

20. The counter affidavit filed in W.P.(C) No.26212 of 2013 has also been duly adopted in W.P.(C) No.8667 of 2014. Therefore, it can be inevitably concluded that if the directly recruited Professors of Government Autonomous Colleges retired pre-2006 retiree are entitled to get the pensionary benefits fixing their pay at Rs.43,000/- in the pay band of Rs.37,400-67000/- plus AGP Rs.10,000/-, 50% of which comes to Rs.26,500/- and the same has already been paid to them along with arrears, there is no justifiable reasons not to extend such benefit to the similarly situated pre-2006 retiree directly recruited Professors of the universities, which clearly violates the provisions under Articles 14, 16, 21 as well as Article 300-A of the Constitution of India.

21. In Concise Oxford Dictionary, 8th Edition (1990), page- 874, the word 'pay' in its ordinary significance in relation to service means "to give what is due for services done".

22. Rules-33 of Orissa Service Code deals with 'pay', which reads as under:-

"33.(a) Pay means the amount drawn monthly by a government servant as-

(i) the pay, other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officating capacity or to which he is entitled by reason of his position in the cadre.

(ii) special pay and personal pay, and

(iii) any other recurring emoluments which may be specially classed as pay by the State Government."

23. In service jurisprudence, the expression "pay" and "pay scale" are

conceptually different connotations.

In State Bank of India v. K.P. Subbaiah, AIR 2003 SC 2016, the apex Court held that pay is essentially a consideration for the services rendered by an employee and is the remuneration which is payable to him. Remuneration is the recurring payment for services rendered during the tenure of employment. Pay and salary are necessarily not interchangeable concepts. Their meanings vary depending upon the provision providing for them.

A pay scale has different stages starting with initial pay and ending with ceiling pay. Each stage in the scale is commonly referred to a basic pay. The emoluments which an employee gets is not only the basic pay at a particular stage, but also the additional amounts to which he is entitled as allowances e.g. D.A. etc. The basic feature is that the fitment or fixation of pay in a particular scale must be such as to ensure that the total emoluments are not reduced.

24. Similarly, "pension" has been provided under Rule-33 (3) of Orissa Service Code, which reads as under:

"(3) Pension & Gratuities:- In case of employees who have retired on or after 1.7.86, the dearness pay shall count as emoluments for pension and gratuity in terms of Rule 73 of the Orissa Pension Rules 1977. The doses of temporary increase totaling to 8% of the pension subject to minimum of Rs.25/- and maximum of Rs.80/- will not however be admissible in these cases. These pensioners shall be entitled to further dose of temporary increase as may be declared effective after 1.1.86 from time to time. If however, the pension admissible without taking into account the dearness pay but the adhoc increase in pension is more favourable that the benefit under this order the individual can be granted the former. The dearness pay will also count as pay for the purpose of Family Pension Scheme, as amended from time to time."

25. Section (2)(p) of Orissa Civil Services (Pension) Rules, 1992 states as under:-

"(p) "Pension" includes gratuity except where the term pension is used in contradiction to gratuity."

26. Taking into consideration the broad meaning of "pension" as mentioned above, as it appears pension is nothing but a periodical payment of money for past service.

27. In D.S. Nakara as mentioned supra, the apex Court held as follows:

"Pension" is neither a bounty nor a matter of grace depending upon the sweet will of the employer, nor an ex gratia payment but it is a payment for the past service rendered; and it is social welfare measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly toiled for the employer on as assurance that in their old age they would not be left in lurch. Pension as a retirement benefit is in consonance with and furtherance of the goals of the Constitution. The most practical raison d'etre for pensions is the inability to provide for oneself due to old age. It creates a vested right and is governed by the statutory rules such as the Central Civil Services (Pension) Rules which are enacted in exercise of power conferred by Articles 309 and 148(5) of the Constitution."

28. In Poornamal v. Union of India, AIR 1985 SC 1196 : (1985) 3 SCC 345, wherein the apex Court referring the judgment in Deakinandan Prasad v. State of Bihar, AIR 1971 SC 1409, held that "Pension" is not merely a statutory right but it is the fulfillment of a constitutional promise inasmuch as it partakes the character of public assistance in case of unemployment, old-age, disablement or similar other cases of undeserved want. Relevant rules merely make effective the constitutional mandate. Pension is a right not a bounty or gratuitous payment.

29. In Kerala State Road Transport Corporation v. K.O. Varghese, AIR 2003 SC 3966, it has been held that the title 'pension' includes pecuniary allowances paid periodically by the Government to persons who have rendered services to the public or suffered loss or injury in the public service, or to their representative; who are entitled to such allowances and rate and amount thereof; and proceedings to obtain and payment of such pensions. Pension means a periodical payment or lump sum by way of pension, gratuity or superannuation allowance as respects which the secretary of state is satisfied that it is to be paid in accordance with any scheme of arrangement having for its object or one of its objects to make provision in respect of persons serving in particular employments for providing with retirement benefits and, except in the case of such a lump sum which had been paid to the employee.

In the aforesaid judgment the word 'pension' has also been analyzed, which reads as under:

"On analysis of the word 'pension' three things emerge; (i) that the pension is neither bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to the statute, if any, holding the field; (ii) that the pension is not an ex gratia payment but it is a payment for the past service rendered; and (iii) it is social welfare measure rendering socio-economic justice to those who in the 'hey days' of their life ceaselessly toiled for employers on an assurance that in their ripe old age they would not be left in lurch. It must also be noticed that the quantum of pension is a certain percentage correlated to the emoluments earlier drawn. Its payment is dependent upon additional condition of impeccable behavior even subsequent to retirement.

Pension is not a bounty of the State. It is earned by the employee for service rendered to fall back, after retirement. It is a right attached to the office and cannot be arbitrarily denied.

Conceptually, pension is a reward for past service. It is determined on the basis of length of service and last pay drawn. Length of service is determinative of eligibility and quantum of pension."

30. In V. Sukumaran mentioned supra, it has been held that pension is succor for post retirement period, which is not a bounty payable at will, but social welfare measure as post-retirement entitlement to maintain dignity of employee.

31. In Col. B.J. Akkara v. Govt. of India, (2006) 11 SCC 709, the apex Court held that the pay of an employee does not remain static. This is almost an universal rule in public services. An employee starts with a particular pay (commonly known as initial pay); then journeys through periodical increases (commonly known as increments) to reach the highest point that he is entitled to (commonly known as the ceiling). This is what a pay scale signifies. A 'pay scale' has basically three elements. The first is the minimum pay or initial pay in the pay scale. The second is the periodical increment. The third is the maximum pay in the pay scale. An employee starts with the initial pay in the pay scale and gets periodical increases (increments) and reaches the maximum or ceiling in the pay scale. Each stage in the pay scale starting from the initial pay and ending with the ceiling in the pay scale, when applied to an employee is referred to as 'basic pay' of the employee. Whenever the Government revises the pay scales, a fitment exercise takes place as per the principle of fitment (formula) provided in the rules governing the revision of pay so that the basic pay in the old scale is converted in to a "basic pay" in the revised pay scale.

32. In Gurupal Tuli v. State of Punjab, 1984 (Supp) SCC 716 : AIR 1984 SC 1901, the apex Court held that to be entitled to draw a particular pay scale the employee must fulfill the eligibility conditions whether by way of qualification or otherwise.

33. Keeping in view the above parameters and applying the same to the present context, the Professors of the Universities whose existing scale of pay was Rs.16,400-450-20,900-500-22,400/-, which was revised to Rs.37,400-67,000/- plus AGP of Rs.10,000/-, the pay of such directly recruited professors was fixed not below Rs.43,000/- in the pay band and AGP of Rs.10,000/-. Meaning thereby, even though the pay of a Professor of the University was revised to Rs.37,400-67,000/-, but a directly recruited Professor is entitled to scale of pay not below Rs.43,000/- plus AGP of Rs.10,000/-. Thereby, the minimum basic pay has to be fixed at Rs.43,000/- in the pay band of Rs.37,400-67,000/- plus AGP of Rs.10,000/-. Consequentially, pension has to be determined as per clause-14(ii) at the rate of 50% of minimum pay band plus grade pay of revised scale of pay w.e.f. 01.01.2006 for post last held by the pensioner on the date of retirement. Thereby, the minimum pay of Rs.43,000/- plus AGP of Rs.10,000/- totaling to Rs.53,000/-, 50% of which comes to Rs.26,500/-, which a pre-2006 retired directly recruited Professor is entitled to get. Admittedly, as a matter of principle, Government has already extended such benefits to the pre-2006 retiree directly recruited Professors of Government Autonomous Colleges vide Annexure-8 dated 29.12.2012 and consequentially they have also been allowed to draw the revised pension along with arrears as indicated in Annexure-8 series. This fact has not been disputed in paragraphs-6 and 8 of the counter affidavit

filed in W.P.(C) No.26212 of 2013. Therefore, this Court comes to inevitable conclusion that pre-2006 retiree directly recruited Professors of the University, having stood in the same footing at par with the pre-2006 retiree Professors of the Government Autonomous Colleges, are also entitled to get pension at the basic pay of Rs.43,000/- plus AGP of Rs.10,000/- and 50% of which comes to Rs.26,500/- relatable to the maximum period of qualifying service.

34. Taking into consideration the factual and legal aspects, as discussed above, this Court is of the considered view that pre-2006 retiree directly recruited Professors of the University are entitled to get the differential pensionary benefits of Rs.26,500/- w.e.f. 01.01.2006 after deducting the pension already paid to them. Accordingly, this Court directs the opposite party-authorities to extend the differential pensionary benefits to the petitioners as expeditiously as possible, preferably within a period of four months from the date of communication/ production of this judgment, failing which it will carry interest at the rate of 12% per annum from the date of due till actual payment is made.

35. In the result, the writ petitions are allowed. However, there shall be no order as to costs.

