

(2023) 02 OHC CK 0073
In the Orissa High Court
Case No : FAO No. 659 Of 2014

State Of Odisha & Another		APPELLANT
	Vs	
Minaketan Behera & Others		RESPONDENT

Date of Decision : 07-02-2023

Acts Referred:

Constitution of India, 1950 — Article 14, 136, 141, 226
Odisha Education Act, 1969 — Section 3(b), 7C, 24C
General Clauses Act, 1897 — Section 6

Citation : (2023) 02 OHC CK 0073

Hon'ble Judges : Sashikanta Mishra, J

Bench : Single Bench

Advocate : R.N. Mishra, B. Routray, K. Mohanty, S.K. Samal, S.P. Nath, S.D. Routray

Final Decision : Allowed

Judgement

Sashikanta Mishra, J.

1. The State of Odisha is the appellant and calls in question the correctness of judgment passed by the Presiding Officer, State Education Tribunal, Odisha, Bhubaneswar on 12.08.2013 in G.I.A. Case No. 217 of 2012. As per the said judgment, learned Tribunal directed the State of Odisha in its Higher Education Department and the Director, Higher Education Department (present appellants) to approve the appointment of the respondents and to release grant-in-aid in their favour as per Grant-in-Aid Order, 1994 from the date of their eligibility along with differential salary components.

2. Originally, the present appeal was filed on 11.11.2014 along with an interlocutory application being Misc. Case No. 896 of 2015 seeking condonation of delay of 397 days. By order dated 07.02.2018, this Court dismissed the Misc. Case and subsequently the appeal was also dismissed by the same order. The State carried the matter to the Supreme Court of India in S.L.P(C) No. 31148 of 2018. By order dated 16.11.2018, the Supreme Court allowed the SLP by holding

that ends of justice would be met if the delay (in filing of the FAO) is condoned subject to an order of costs. Accordingly, the following order was passed.

"(i) The petitioners shall deposit a sum of Rs.50,000/- (Rupees Fifty Thousand only) by way of costs within a period of four weeks from today before the Orissa High Court;

(ii) Conditional on the aforesaid deposit being made before the High Court, the delay in filing FAO No.659 of 2014 shall stand condoned;

(iii) The High Court would be at liberty to pass appropriate orders for the disbursement of the amount of costs to the private respondents;

(iv) In the event, the petitioners fail to deposit the costs within the time as stipulated, they shall lose the benefit of this order; and

(v) Upon the deposit of the costs, the impugned order of the High Court shall stand set aside."

3. In obedience to such order, the State deposited the amount of costs of Rs.50,000/- in favour of the respondents, which has since been disbursed to them. Thus, the appeal was restored to file and placed for hearing.

4. The facts of the case are that the respondents are the teaching and non-teaching staff of Vindhya Vasini Junior College, Paikamal in the district of Baragarh. The said College was established in the year 1989 and permission was accorded vide order dated 05.12.1992 for the academic session 1992-93. It received Government concurrence on 17.11.1993 and affiliation from the Council of Higher Secondary Education vide order dated 22.07.1994 from the academic Session 1992-93. The said college is an Aided Educational Institution within the meaning of Section 3(b) of Odisha Education Act, 1969.

5. The respondents filed GIA Case No. 217 of 2012 before the Tribunal alleging that though they are eligible for the benefit under the Grant in Aid Order, 1994, their appointments were not approved in terms of such order nor they are getting the financial benefits in accordance with such order. They claimed that they were eligible to get salary on the basis of 3+5+7 years principle from the date of Government concurrence.

The State did not file any counter affidavit.

The Tribunal observed that the college got recognition from the academic session from 1992-93 and as such, it is entitled to receive GIA in accordance with the GIA Order, 1994 on the principle of 3+5+7 years from the date of concurrence by the Government since it is situated in Baragarh district, which is an educationally backward district. As such, the Tribunal held that the college is entitled to receive GIA from 01.06.1995 and hence, the respondents are entitled to receive GIA @ 1/3rd, 2/3rd and full salary cost from 01.06.1995, 01.06.1997 and 01.06.1999 respectively. Thus, the impugned judgment was passed directing the authorities to approve the appointment of the respondents and to release

GIA in their favour as per the GIA Order, 1994 from the date of their eligibility along with the differential salary components. The said judgment is impugned in the present appeal.

6. Heard Mr. R.N. Mishra, learned Addl. Government Advocate for the State appellants and Mr. B. Routray, learned Senior Counsel along with Mr. S.D. Routray, learned counsel for the respondents.

7. Mr. R.N. Mishra, assails the impugned judgment mainly on three grounds- firstly, that the cut-off date for eligibility of the post for receipt of GIA as per GIA Order, 1994 is 01.06.1994 and as the college got Government concurrence and affiliation from the Council from the academic session 1992-93, the respondents had not completed three years of qualifying service as on 01.06.1994 and hence, are not eligible to receive GIA. Secondly, the College was notified to receive Block Grant as per GIA Order, 2009 and therefore, the claim of the respondents to receive the benefits under the repealed GIA Order, 1994 is not at all tenable. Thirdly, in view of the authoritative pronouncement of the Apex Court in the case of State of Odisha and another vs. Anup Kumar Senapati and another, reported in (2019) 19 SCC 626, the claim for GIA as per GIA Order, 1994 is not maintainable after repeal of the said order because no vested right had accrued in favour of the respondents under the said repealed order.

8. Per contra, Mr. B. Routray, learned Senior Counsel would argue that the institution in question is one which comes under category-III of paragraph-4 of the GIA Order, 1994 since admittedly Government concurrence and affiliation by the Council was granted to it from the academic session 1992-93 and the respondents had been appointed against admissible posts long before coming into force of the Amendment Act, 1994. As such, the institution was eligible for being notified an aided educational institution and the respondents were entitled to receive GIA as per GIA Order, 1994 consequently. But as the authorities concerned did not do the needful, the respondents had to approach the Tribunal, which very rightly passed the impugned judgment holding them entitled to receive such benefits and directed the authorities accordingly. Mr. Routray further submits that the ratio of Anup Senapati (supra) would not be applicable to the facts of the present case since the entitlement of the respondents to receive GIA stood already established and was not a matter left to be determined. Alternatively, Mr. Routray argues that even otherwise, notwithstanding the judgment passed in Anup Senapati (supra), the Government has extended the benefit of GIA as per GIA Order, 1994 to several similarly placed employees including the employees of Vindhya Vasini Junior College. He has referred to several orders passed by the Government in this regard. It is also contended by him that such orders were passed pursuant to the directions issued by the Apex Court wherein the challenge made by the State to similar orders passed by the Tribunal as in the present case was refused to be entertained by the Apex court on merits even after passing of the judgment in Anup Senapati's case.

9. In order to appreciate the contentions raised by the parties it would be

apposite to refer to the relevant statutory provisions at the outset since the basic facts of the case are undisputed as regards the date of Government concurrence (17.11.1993) and affiliation (22.07.1994) of the college in question from the academic session 1992-1993.

10. Section 7-C of the Odisha Education Act, 1969 which was inserted by Odisha Education (Amendment) Act, 1994 deals with Grant-in-aid, sub-section (4) of which reads as follows:

“(4) Notwithstanding anything contained in any law, rule, executive order or any judgment, decree or order of 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 Orissa 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:

Provided that pending framing of such rule or issue of order, the State Government may, without prejudice to such rule or order, direct that private educational institutions which were receiving grant-in-aid and the posts in such educational institutions in respect of which grant-in-aid was being released shall continue to be paid such amount as grant-in-aid as was being paid to them immediately prior to commencement of the Orissa Education (Amendment) Act, 1994.”

11. In exercise of power conferred by the aforementioned provision, the State Government promulgated the Odisha (Non-Government Colleges, Junior Colleges and Higher Secondary Schools) Grant-in-Aid, Order, 1994 (in short “GIA Order, 1994”). Para-4 of the said order refers to classification of Non-Government Educational Institutions into the following three categories for the purposes of the said order:

“A- Category-I (i) Non-Government Educational Institutions and approved Posts in such institution which have received grant-in-aid from Government or in respect of which grant-in-aid has been sanctioned by Government prior to the commencement of the Amendment Act;

(ii) Other posts in Non-Government Educational Institutions covered under Category-I(i) which were admissible on the basis of workload and prevalent yardstick and had been filled up prior to commencement of the Amendment Act, but in respect of which no grant-in-aid had been sanctioned.

Note : If a question arises whether a post was admissible on the basis of workload and prevalent yardstick, the decision of the Director shall be final.

B- Category II (i) Colleges imparting instructions in and presenting regular candidates for the B.A., B.Sc. or B.Com. Examinations with or without Honours of

any of the universities which have been functioning regularly for five years or more by 1-6-1994 after obtaining government concurrence or recognition and affiliation of any university or for three years or more if such institution is located in an educationally backward district, which has not been notified as an aided educational institution and has not received grant-in-aid from Government for any post.

(ii) Higher Secondary Schools and Junior Colleges conducting courses in Arts, Science and Commerce which have been functioning regularly for five years or more by 1-6-1994 after obtaining government concurrence or recognition and affiliation of the Council, or for 3 years or more if such an institution is located in any educationally backward district, but which have not been notified as aided educational institution and have not received grant-in-aid from Government for any post.

C- Category-III Non-Government Educational Institutions of the categories specified in sub-paras (1) and (2) of para 3 which have already been established and have received recognition of Government and affiliation prior to the commencement of the Amendment Act but do not come within Categories I or II of this paragraph, and such institutions which may be established and granted recognition by Government under the Act or the provision made thereunder and affiliation by the University by the Council, as the case may be after the commencement of this order.”

12. Undisputedly, Vindhya Vasini Junior College was established in 1989 and received Government concurrence on 05.12.1992 and affiliation from the Council on 22.07.1994 but relating to the academic session 1992-93, i.e., before commencement of the Amendment Act. As such, it falls under Category-III. It is also not disputed that the College is situated in Paikamal in the district of Baragarh, which is treated as an educationally backward district. Thus, in order to be eligible to receive GIA paragraph 5(2)(A)(ii) of the GIA Order, 1994 is relevant as per which, the essential requirement is, the institution must have been functioning regularly for a qualifying period of three years after receipt of Government concurrence and affiliation of the Council.

13. Paragraph-6 reads as follows :

“A Non-Government Educational Institution found eligible under para 5 shall be notified to be aided Educational Institutions by Government. No educational institution which has not been notified by the State Government as an Aided Educational Institution under the Act and no post in any such institution shall either be eligible to receive grant-in-aid from Government.”

Thus mere eligibility is not enough, the institution has to be notified as an Aided Educational Institution. The procedure to be followed in this regard is enumerated under Paragraph-7 as per which necessary application is to be made to the Director within the period stipulated thereunder followed by an enquiry and then only, the required notification is to be issued by the State Government.

14. As regards the eligibility of the posts, Paragraph 9 of GIA Order, 1994 is relevant. Clause (2) (iii) thereof reads as follows:

"(iii) A post in an educational institution coming under category- III or a post in institutions coming under Category-I and II which do not come within clauses (B) (ii) of Sub-para (2) of this para, if-

(a) the post is admissible as per workload and yardstick prescribed in this order; and

(b) it has completed qualifying period of 5 years or more from the date of its admissibility or of 3 years or more in the case of an educational institution situated in an educationally backward district or is a Women's Educational Institution.

(c) The workload for determining admissibility of a post shall be computed by taking into account the total workload on account of Degree course and Higher Secondary course in all streams conducted in that institution. If a question arises as to whether a post is admissible on the basis of workload and/or yardstick the decision of the Director thereon shall be final.

(d) The workload shall be determined with reference to the actual enrolment during the academic year in which the post is admissible, limited to the strength of students for which recognition and affiliation has been received and the number of candidates presented at the Higher Secondary or the Degree examination, as the case may be, from the same batch of students.

(e) A post shall not be deemed to have completed the qualifying period unless-

(i) the post has been filled up on full time basis during entire qualifying period.

(ii) the post has not been filled up on honoraria or part-time basis at any time during the entire qualifying period.

(iii) the post has been filled up by person recruited in accordance with the procedure laid down in the Act Rules and instructions as applicable at the relevant time.

(iv) the post has been filled up at all times during the qualifying period by a person duly qualified to hold such a post.

Note:- Duly qualified means a person possessing the minimum qualification and experience prescribed for the post at the time when the post was admissible or on the date recruitment was made whichever is later.

(f) If any post admissible on the basis of workload and yardstick has not been filled up in the manner indicated in Clause (E), the period during which the post was not filled up in such manner shall not count towards completion of the qualifying period.

Illustration : A post of a lecturer is admissible on 1.6.1985. Since the college is

not situated in an educationally backward district, it would ordinarily have completed the qualifying period on 31.5.1990. It is found that this post was not filled up by the management for a 6 months, was filled up by an under-qualified person for 4 months and was filled up by a lecturer on part-time basis for 2 months. This period of 12 months shall not count towards qualifying period. The post would now be eligible for approval with effect from 1.6.1986 and grant-in-aid with effect from 1.6.1991.

(G) An application has been made for approval of the post in the manner laid down."

Sub-Clause (3) and (4) of Paragraph-9 are also relevant and as extracted hereinbelow:

"(3) Application for approval of posts which are eligible for approval by that date and application for notification of that educational institution as an Aided Educational Institution shall be made simultaneously in Form "A" Application for approval of any post which becomes eligible for approval thereafter shall be made in Form "B" prescribed in Annexure-II within three months from the date of its eligibility for approval. An application received in Form "B" shall be dealt with in the manner laid down in para 7. Where the Director is satisfied that a post is eligible for approval, he shall issue an order to that effect with prior concurrence of State Government indicating the date from which the post has been approved and the date of eligibility of that post to receive grant-in-aid.

(4) (i) The date of eligibility of a post in respect of which grant-in-aid has been sanctioned prior to commencement of the Amendment Act shall be the date on which the posts were admitted to the fold of grant-in-aid for the first time.

(ii) The date of eligibility of a post for which grant-in-aid has not been sanctioned shall be the first day of the academic year following the date on which an approved post completes the qualifying period as applicable to the post.

Provided that the date of eligibility in respect of a post in an educational institution coming within category II and III shall in no case be date prior to 1.6.1994."

Now the question is, even if it is held for the sake of argument that the institution in question and the posts held by the respondents were eligible for the benefits under GIA Order, 1994, can it be said that the same could be claimed as a matter of right? This Court in *State of Odisha v. Lokanath Behera*, reported in 2018 SCC OnLine Ori 413 : 2018(II) OLR 932 decided the very issue as follows:

"138. Learned counsel appearing for the respondent no. 1 (in both the appeals) has vehemently argued that a right has been created in their favour due to the saving clause by which the institution which was extended the benefit as per the Grant-in-Aid Order, 1994, will continue to get it and since the respondent no. 1 (in both the appeals) are in the same institution, hence a vested right has been accrued in their favour.

139. This Court is not in agreement with this submission due to the reason that the word 'vested', as has been defined in Black's Law Dictionary (6th Edition) at page-1563, means fixed; accrued; settled; absolute; complete. Having the character or given the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent. Rights are 'vested' when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute vested rights.

140. In Webster's Comprehensive Dictionary (International Edition) at page-1397, the word 'vested' is defined as a tenure subject to no contingency; complete; established by law as a permanent right, vested interest.

141. The word 'vested' is normally used where an immediate fixed right in present or future enjoyment in respect of a property is created. With the long usage the said word 'vest' has also acquired a meaning as "an absolute or indefeasible right". It had a 'legitimate' or "settled expectation" to obtain right to enjoy the property etc. Such "settled expectation" can be rendered impossible of fulfillment due to change in law by the legislature. Besides this, such a "settled expectation" or the so-called "vested right" cannot be countenanced against public interest and convenience which are sought to be served by amendment of the law. Thus, "vested right" is a right independent of any contingency. Such a right can arise from a contract, statute or by operation of law. A vested right can be taken away only if the law specifically or by necessary implication provide for such a course."

In the instant case, the respondents' claim was, being eligible, they accrued an indefeasible right. But as elaborately discussed in Lokanath Behera (supra), the claim of the respondents only reflects their expectation to receive the benefits which obviously cannot be equated with an accrued or vested right. There is nothing on record to show that the eligibility/entitlement was crystallized into a definite right. This is being said because GIA Order, 1994 is no longer in existence having been repealed by the GIA Order, 2004.

15. The GIA Order, 1994 was repealed by Odisha (Non-Government Colleges, Junior Colleges and Higher Secondary Schools) Grant-in-Aid, Order, 2004 as per Paragraph-4 thereof. Such repeal was w.e.f. 05.02.2004. Even assuming that the respondents could lay a claim under the GIA Order, 1994, the question is, can they be permitted to do so after its repeal. Such question was considered by this Court in the case of Lokanath Behera (supra) and answered in the negative. The same question was also considered by the Apex Court in the case of Anup Senapati (supra), wherein the law laid down in Lokanath Behera (supra) was upheld. In addition, it was reiterated as follows:

"32. It is apparent from the aforesaid discussion that what is unaffected by the repeal of a statute is a right acquired or accrued and not mere hope or

expectation of or liberty to apply for acquiring a right. There is a distinction in making an application for acquiring a right. If under some repealed enactment, a right has been given, but on investigation in respect of a right is necessary whether such right should be or should not be given, no such right is saved. Right to take advantage of a provision is not saved. After repeal, an advantage available under the repealed Act to apply and obtain relief is not a right which is saved when the application was necessary and it was discretionary to grant the relief and investigation was required whether relief should be granted or not. The repeal would not save the right to obtain such a relief. The right of pre-emption is not an accrued right. It is a remedial right to take advantage of an enactment. The right of a government servant to be considered for promotion under repealed rules is not a vested right unless the repeal provision contains some saving and right has been violated earlier.

33. In general savings of the rights accrued under Section 6 of the General Clauses Act are subject to a contrary intention evinced by the repealing Act. It depends upon the repealing provisions what it keeps alive and what it intends to destroy when repeal and saving clause is comprehensively worded, then the provisions of Section 6 of the General Clauses Act are not applicable.

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

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

16. Thus, even assuming for the sake of argument that the respondents could have laid a claim under the GIA Order, 1994 then also such right to make a claim stood automatically extinguished by the repeal of the said order w.e.f.

05.02.2004 by the GIA Order, 2004.

17. Another aspect needs to be highlighted. Admittedly, the respondents are in receipt of Block Grant as per GIA Order 2009. The GIA order 1994 was repealed by the GIA Order 2004, which in turn was repealed by the GIA Order 2008. There is no material to show that the respondents had raised any claim for grant of GIA under the GIA order 1994 either after commencement of such Order or at anytime thereafter till receiving Block Grant as per GIA Order 2009. They approached the Tribunal much later, i.e., in the year 2013. This is after a lapse of nearly 9 years after repeal of GIA Order, 1994. Nothing is forthcoming from them as regards the reason for such belated motion. Be that as it may, the Apex Court, in the case of Anup Senapati (supra) has disapproved such belated move to claim benefits under the GIA Order, 1994 in the following words:

"26. The employees have filed representations to claim grant-in-aid under 1994 Order belatedly for the first time in the year 2011-2012 that too according to the directions of the High Court, which were rejected. Thereafter, they approached the Tribunal by way of filing original applications, whereas on completion of the qualifying period, the institution has to inform the Director to claim grant-in-aid. There is no material on record that the institutions have duly applied in the particular academic year and within the time fixed for making application as per the 1994 Order and there is nothing on the record indicating that the requisite information was furnished. No such supporting documents have been placed on record. Be that as it may. Fact remains that there is no order placed on record whether such prayer if any made by the institution had been rejected as per the 1994 Order. The representations which have been placed on record are of 2011-2012, as the grant-in-aid is annual, dependent upon economic limits and financial viability of the State Government, it was too late in the day to file the original applications or writ petitions in the year 2011-2012, claiming the benefit of grant-in-aid under the 1994 Order. In case employees/institutions were desirous of obtaining grant-in-aid under the 1994 Order, they ought to have taken the steps within the reasonable time in view of the fact that it cannot be claimed as a matter of right, but it depends upon annual budget and fulfillment of various factors as contained in the provisions of the 1994 Order.

27. In our opinion, the prayer made to release grant-in-aid under the 1994 Order after its repeal was misconceived and would not be possible for any Government within the economic capacity to release the grant-in-aid retrospectively. Delay by itself defeats the right, if any, to claim the grant-in-aid which is dependent upon the option of the institution to apply for it. They may choose not to apply for the grant-in-aid as it comes with several riders as imposed by the Government. Thus, original applications filed belatedly after the repeal of the 1994 Order, could not have been entertained at all and the employees filing the applications after repeal of the 1994 Order, cannot be said to be entitled for any relief owing to laches having slept over their right, if any, available under the 1994 Order."

18. That apart, the Apex Court in Anup Senapati (supra) has also considered

whether any right accrued was saved notwithstanding repeal of the GIA Order, 1994 and held in the negative under Paragraphs 32 and 34 already quoted hereinbefore.

19. It has been extensively argued on behalf of the respondents that notwithstanding the repeal of GIA Order, 1994 as also the judgment rendered in Anup Senapati (supra), the Government has extended such benefits to identically placed employees and therefore, the same should also be granted to them on the principle of parity. I have given my anxious consideration to the contentions raised in this regard by Mr. Routray, learned Senior Counsel, who has relied upon several orders passed by the Government on different dates extending the benefits of GIA Order, 1994. I have gone through such orders carefully. It is seen that in all such cases, orders have been passed in obedience to orders passed by the Apex Court in different SLPs, Review applications and curative petitions. Mr. Routray has referred to the order passed in S.L.P.(C) No.21291 of 2018 and batch, the order passed in S.L.P.(C) No. 26091 of 2018 and many others, wherein the SLPs/Review petitions filed by the State against similar judgments passed by the Tribunal, and confirmed by this Court was refused to be interfered with even on merits. Mr. Routray has forcibly contended that such orders have been passed after rendering of the judgment in Anup Senapati (supra). Alternatively, Mr. Routray contends that unless the claimed benefits are granted it would amount to gross discrimination inasmuch as some of the employees of the same institution would be getting the benefits while some others including the present respondents would not.

20. In reply, Mr. R.N. Mishra has again referred to Anup Senapati (supra) to contend that there can be no negative equality as held by the Apex Court and that no vested right having accrued in favour of the respondents they cannot claim such right after repeal of the GIA Order, 1994 regardless of the fact that the benefit granted to similarly placed employees was not disturbed.

21. As regards the claim for parity it is seen that the Apex Court in Anup Senapati (supra) have extensively dealt with the effect of repeal of the GIA Order, 1994 by quoting several authorities to ultimately hold as follows:

“39. It was lastly submitted that concerning other persons, the orders have been passed by the Tribunal, which was affirmed by the High Court and grants-in-aid have been released under the 1994 Order as such on the ground of parity this Court should not interfere. No doubt, there had been a divergence of opinion on the aforesaid issue. Be that as it may. In our opinion, there is no concept of negative equality under Article 14 of the Constitution. In case the person has a right, he has to be treated equally, but where right is not available a person cannot claim rights to be treated equally as the right does not exist, negative equality when the right does not exist, cannot be claimed.”

22. That apart, the point canvassed by Mr. Routray that similar SLPs filed by the State and Review applications have been dismissed by the Supreme Court is also

not tenable for the reason that in all such cases there was no discussion of merits of the case and the petitions were dismissed in limine.

23. In S.L.P.(C) No. 21291 of 2018, the Apex Court passed the following order:

“Delay condoned.

No ground for interference is made out in exercise of our jurisdiction under Article 136 of the Constitution of India.

The special leave petitions are accordingly dismissed. Pending application, if any, stands disposed of.”

24. In S.L.P.(C) No. 26091 of 2018, the following order was passed.

“Upon perusing the paper book, it has come to our notice that there is a delay of 459 days in filing this review petition and we do not find any justifiable reasons to condone the delay.

Even on merits, we have perused the Review Petition and the connected papers with meticulous care and do not find any justifiable reason to entertain this review petition.

The Review Petition is, accordingly, dismissed on the ground of delay as well as on merits.”

25. It is apparent from a bare reading of the aforementioned order that the petitions were dismissed at the threshold without entering into any determination of the issues of fact and law involved. It has been the long settled legal position that such dismissal in limine of S.L.P. cannot be treated as a bar for a party to seek the same relief on identical grounds.

26. In the case of Indian Oil Corporation Ltd. vs. State of Bihar and others, reported in (1986) 4 SCC 146, the Supreme Court held as under:

“8. It is not the policy of this Court to entertain special leave petitions and grant leave under Article 136 of the Constitution save in those cases where some substantial question of law of general or public importance is involved or there is manifest injustice resulting from the impugned order or judgment. The dismissal of a special leave petition in limine by a non-speaking order does not therefore justify any inference that by necessary implication the contentions raised in the special leave petition on the merits of the case have been rejected by this Court. It may also be observed that having regard to the very heavy backlog of work in this Court and the necessity to restrict the intake of fresh cases by strictly following the criteria aforementioned, it has very often been the practice of this Court not to grant special leave except where the party cannot claim effective relief by approaching the concerned High Court under Article 226 of the Constitution. In such cases also the special leave petitions are quite often dismissed only by passing a non-speaking order especially in view of the rulings already given by this Court in the two decisions aforecited, that such dismissal of

the special leave petition will not preclude the party from moving the High Court for seeking relief under Article 226 of the Constitution. In such cases it would work extreme hardship and injustice if the High Court were to close its doors to the petitioner and refuse him relief under Article 226 of the Constitution on the sole ground of dismissal of the special leave petition.”

In the case of Kunhayammed v. State of Kerala, reported in (2000) 6 SCC 359, the same principle was reiterated.

27. Again in the case of State of Orissa and another vs. Dhirendra Sundar Das and others, reported in (2019) 6 SCC 270, it was held that the dismissal of SLP in limine simply implies that the case before the Apex Court was not worthy of examination for a reason, which may be other than merits of the case and that such in limine dismissal at the threshold without giving any detailed reasons, does not constitute any declaration of law or a binding precedent under Article 141 of the Constitution.

28. In view of such clear pronouncement of law as referred above, it is evident that the orders of the Apex Court referred to by Mr. Routray cannot be of any assistance to the respondents.

29. On the contrary, Anup Senapati (supra) being the authoritative pronouncement of law by the Apex Court remains binding on all concerned as per Article 141 of the Constitution of India, the effect of which cannot be watered down or nullified in any manner whatsoever.

30. A reading of the impugned judgment reveals that learned Tribunal has not considered the effect of the repeal of GIA Order, 1994 as also the fact of receipt of Block Grant by the respondents in terms of the GIA Order, 2009. In view of what has been discussed hereinbefore the impugned judgment is thereby rendered unsustainable in the eye of law.

31. Thus, from a conspectus of the discussion and analysis of the relevant statutory provisions as also the settled position of law referred to hereinbefore, this Court has no hesitation in holding that the impugned judgment being entirely contrary to law cannot be sustained and hence, warrants interference.

32. Resultantly, the appeal succeeds and is therefore, allowed. The impugned judgment is set aside. There shall be no order as to costs.

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