HIGH COURT OF ORISSA
Bench: The Hon'ble Justice Biraja Prasanna Satapathy
Date of Decision: 21st May 2024

CRIMINAL APPELLATE JURISDICTION
FAO No. 512 of 2009

An appeal under Section-24-C of the Orissa Education Act, 1969

State of Odisha & Another … APPELLANTS

Versus

Dasarathi Sahoo & Another … RESPONDENTS

Legislation:

Section 24-C of the Orissa Education Act, 1969

Subject: Appeal by the State of Odisha challenging the judgment of the State Education Tribunal allowing UGC scale of pay to Dasarathi Sahoo despite initial deficiency in qualifications at the time of appointment, which was later condoned by the Utkal University.

Headnotes:

Education Law – Eligibility for UGC Scale of Pay – High Court of Orissa dismisses appeal against the State Education Tribunal's decision – Tribunal held Respondent No. 1 eligible for UGC Scale of pay from 01.01.1986 despite initial lack of requisite qualification – Condonation of qualification deficiency by Utkal University and subsequent approval of appointment by Director of Higher Education validated eligibility [Paras 1-4.5].

Condonation of Qualification – Tribunal's decision based on condonation of Respondent No. 1's qualification deficiency – Consistency with the judgment in Kalidas Mohapatra case upheld by the Supreme Court – Condonation allows deficiency to be overlooked, making Respondent No. 1 eligible for UGC Scale of Pay [Paras 2.1, 3.4].

Judicial Precedent – Conflicting judgments of the Supreme Court – High Court follows earlier decision of coordinate bench in Kalidas Mohapatra – Supreme Court ruling in Mamata Mohanty not binding on similar coordinate bench decisions – Legal principle that earlier decisions should be followed unless overruled by larger bench [Paras 3.8, 3.9, 3.10, 3.11, 4.5].

Decision – Dismissal of Appeal – Held – The appeal is dismissed as Tribunal's judgment found to be consistent with existing legal principles and judicial precedents – High Court upholds Tribunal's decision granting UGC Scale of Pay to Respondent No. 1, validating condonation of initial qualification deficiency by Utkal University and subsequent approval by the Director of Higher Education [Paras 4.5, 4.6].

Referred Cases:

- Kalidas Mohapatra v. State of Orissa, 2001 (2) OLR 508
- State of Orissa & Another v. Mamata Mohanty, (2011) 3 SCC 436
- Pranay Sethi & Others v. National Insurance Company Limited, (2017) 16 SCC 680
- Union Territory of Ladakh & Others v. Jammu and Kashmir National Conference & Another, 2023 LiveLaw (SC) 749

Representing Advocates:

For Appellants: Mr. S.K. Samal, Additional Government Advocate
For Respondents: Dr. J.K. Lenka

Biraja Prasanna Satapathy, J.

1. This is an appeal filed by the State under Section 24C of the Orissa Education Act challenging the judgment dtd.31.05.2008 so passed by the State Education Tribunal (in short the 'Tribunal') in G.I.A Case No.6 of 2005. Vide the said judgment the Tribunal while allowing the claim of the private Respondent No.1 held him eligible and entitled to get the benefit of UGC Scale of pay w.e.f. 01.01.1986 and the order passed in that regard by Appellant No.1 on 06.08.2005 rejecting such claim was set aside. The Tribunal also held Respondent No.1 entitled to get the benefit of UGC Scale of Pay w.e.f. 01.01.1986.

2. It is the case of the Appellants that private Respondent No.1 was initially appointed as a Lecturer in English by the Governing Body of Mangala Mohavidyalaya, Kakatpur in the district of Puri vide order dtd.20.03.1980. Pursuant to the said order, Respondent No.1 joined as such on 22.03.1980.

2.1. It is contended that at the time of appointment of Respondent No.1, though he was not having the required percentage of mark i.e. 55% in M.A in English, but the deficiency was condoned by the Utkal University vide Memo No.16208 dtd.15.09.1989. Pursuant to such condonation of the qualification

by the University the appointment of the Respondent No.1 as against the 1st post of Lecturer in English was approved by the Director Higher EducationAppellant No.2 vide Order No.40056 dated 27.08.1992 allowing grant-in-aid @ 1/3rd w.e.f.01.06.1985, 2/3rd w.e.f. 01.06.1987 and full salary cost w.e.f 01.06.1989 in the scale of pay of Rs.1350/- to 2975/-. However, full grant-inaid was released in favour of Respondent No.1 only from 01.03.1990.

2.2. It is contended that Respondent No.1 while so, continuing he was transferred to Nayagarh College, Nayagarh in the year 1995. However, State Government in the Department of Higher Education vide Resolution dtd.06.10.1989 decided to implement the scheme for grant of UGC Scale of Pay to Teachers in Colleges, which is applicable to all categories of Full Time Teachers working in affiliated Government Colleges and aided Non-Govt. Colleges either covered or eligible to be covered under the direct payment scheme till 01.04.1989.

2.3. It is contended that Respondent No.1 initially approached this Court in OJC No.6600 of 1993 with a prayer to grant revised UGC scale of pay and arrear salary as due and admissible. The writ petition was disposed of by this Court on 14.01.1998, directing the appellants to release the arrear salary. However, with regard to grant of UGC Scale of Pay, this Court directed Respondent No.1 to make a separate application and for its consideration. Pursuant to the said order, Respondent No.1 made a representation to Appellant No.2 on 14.08.2002 for grant of UGC Scale of Pay.

2.4. As the claim made by Respondent No.1 to get the benefit of UGC Scale of Pay on 14.08.2002 was kept pending, he approached this Court once again in W.P.(C) No.2774/2002. However, this Court while disposing the Writ

Petition vide order dtd.06.05.2004 observed that Respondent No.1 should approach the Tribunal in terms of the provisions contained under Section-24-B of the Act. While making such an application before the Tribunal, Respondent No.1 in support of his claim relied on the decision of this Court in the case of **Kalidas Mohapatra vs. State of Orissa & Others** reported in **2001 (2) OLR508.** This Court in Para-8 to 10 of the judgment held as follows:-

"8. After hearing the learned counsel for petitioners and the learned Additional Government Advocate, the following questions require to be answered : The petitioners who admittedly did not secure 55 per cent marks at the P. G. level had been appointed as Lecturers. Their under qualifications having been condoned by the University and their appointments having been approved prior to 1-4-1989, whether they are entitled to the revised scales of pay as per Resolution of the Government dated 6-10-1989 (Annexure-7). As per the decision of the State Government in Annexure-6, i.e. a letter from Deputy Secretary to Government in the Department of Education and Youth Services written to the Director, Higher Education dated 27-11-1886, the under qualified teachers appointed in non-Government colleges by the concerned management before the college became aided may be made eligible to receive grant-in-aid notwithstanding their under qualification provided they were appointed on or prior to 31-3-1982 subject to the condition that the posts held by them otherwise qualify for release of grant-in-aid and such under qualification is condoned. All the petitioners were appointed prior to 31-3-1982 and their under qualifications were also condoned in view of the decision taken by the Utkal University in Annexures-5 and 6, Considering the aforesaid fact the appointment of the petitioners were approved from different dates prior to 1-4-1989 and they were brought under the direct payment scheme. The petitioners also satisfy the requirements for condonation of deficency in qualifications as the term 'under qualified teacher' means a teacher securing less than 54 per cent marks in aggregate at the P. G. Examination in the concerned discipline but not less than 48 per cent marks in any case. There is no dispute that all the petitioners have secured more than 48 per cent but less than 54 percent marks. Coming to the Resolution of the Government dated 6th October, 1989 with regard to revision of pay scale of teachers working in colleges it appears that a decision was taken to cover all categories of full time teachers working in all affiliated Government colleges and aided non-Government colleges either covered or eligible to be covered under direct payment scheme till. 1st April, 1989. There is no dispute that the petitioners were working as full time teachers and that the college in which they were working are aided non-Government colleges which had received aid prior to 1st April, 1989. The appointments of the petitioners having been approved prior to 1-41989 and they having been covered under the direct payment scheme prior to 1-4-1989 there is no reason as to why the said Resolution of the Government shall not be made

applicable to the petitioners. Reliance is placed by the learned Additional Government Advocate on the Resolution of the State Government in the Department of Education & Youth Services dated 6th November, 1990. It is stated in the said Resolution that a decision was taken to regulate the revision of scales of pay of different categories of teachers serving in aided non-Government colleges of the State and the said instructions were not made applicable to teachers whose qualifications were below the qualification prescribed by U. G. C. even if such lack in prescribed qualification stands condoned by, the University. Relying on the said. Resolution, the learned Additional Government Advocate submits that even if the under qualification of the petitioners have been condoned, they shall not be entitled to the benefits of revised scale of pay as per the Resolution of the Government dated 6th November, 1990. The Resolution of the Government dated 6th October, 1989 only says that the revised pay scale of teachers in colleges shall be applicable to all categories of full time teachers working in aided non-Government colleges, provided such colleges are covered or eligible to be covered under direct payment scheme till 1st of April, 1989, The said Resolution does not say anything about condonation of deficiency in qualification in respect of teachers who had been appointed prior to 1-4-1989 and whose appointments were approved and brought within the fold of direct payment scheme prior to 1-41989.

9. This Court in the decision reported in 72(1991) C.L.T. 4. Sk. Harwi v. State of Orissa and Ors., held as follows :

"5. In this connection, our attention has been invited to the dictionary meaning of the, word 'condone', as given in Chambers Twentieth Century Dictionary, which has defined this word to mean to forgive, to pass over without blame, overlook, to excuse...'. We have also noted the meaning of this word as given in the Oxford English Dictionary which is 'to give up, remit, forgive, pardon'. In Websters Third New International Dictionary, the meaning of

'condone' given is "to pardon, forgive (an offence or fault)'.

6. From the meaning of the word 'condone' as given in these dictionaries, it appears that once deficiency is condoned, the same is forgiven and the deficiency attached gets washed away. This apart, in the present case the resolution of the Syndicate has stated that the deficiency has been condoned permanently. Because of these, we are of the view that Shri Kanungo's appointment as Lecturer was valid with effect from 8-8-1967."

In view of the aforesaid decision of this Court, the deficiency in qualification having been condoned the same is forgiven and the deficiency attached gets washed away.

10. This court in the decision in O. J. C. No. 14967 of 1996, disposed of on 12-9-2000, relying on an earlier decision of this Court in O. J. C. No. 6101 of 1995, disposed of on 24-7-96, held that the deficiency in qualification having been condoned and the petitioner therein having been brought under the direct payment scheme prior to 1-4-1989 is entitled to get U. G. C. scale of pay. Therefore, instructions issued on 6th November, 1990 prescribing that the Resolution of the State Government dated 6th

October, 1989 shall not be applicable to teachers whose qualifications have been condoned, cannot be acted upon".

2.5. It is contended that before the Tribunal the appellants filed a detailed counter affidavit disputing the claim of the Respondent No.1 to get the benefit of UGC Scale of Pay on the ground that Original Governing Body Resolution relating to selection and appointment of Respondent No.1 and details of the academic qualification have not been furnished by the Governing Body.

2.6. A further stand was taken that condonation of deficiency by Utkal University as in the case of Respondent No.1 has not been condoned by other Universities of the State as well as by the University Grants Commission in terms of the Notification issued by the Government on 27.11.1986.

2.7. It is also contended that since under qualified Lecturer are required to acquire M.Phil and Post Master Degree acceptable to UGC by 31.03.1992, but Respondent No.1 never acquired such M.Phil or Post Master Degree within the time stipulated. The condonation of the deficiency in the qualification by Utkal University, was only for the purpose of continuance of the Respondent No.1 in the College and to bring him under grant-in-aid fold in the existing scale of pay applicable to non-Govt. aided College and not to extend the benefit of UGC.

2.8. It is also contended that Respondent No.1 since was appointed as against a post available in an Intermediate College namely Mangala Mohavidyalaya, Kakatpur, Respondent No.1 is not eligible to get the benefit as it is applicable to the Lecturers of Degree Colleges. Respondent No.1 being a Lecturer in an Intermediate College he is also not eligible to get the benefit of UGC Scale of Pay.

2.9. Learned Addl. Government Advocate for the State-Appellants contended that even though all the aforesaid issues were raised by the appellants while filing

their counter, but the Tribunal without proper appreciation of the said grounds allowed the claim of Respondent No.1 only placing reliance on the decision in the case of **Kalidas Mohapatra** as cited (supra).

2.10. It is also contended that in view of the provisions contained in Resolution dtd.06.10.1989 and subsequent Resolution issued on 06.11.1990 so issued by the Government in the Education and Youth Services Department, Respondent No.1 is not covered under the provisions of the said Resolutions to get the benefit of UGC Scale of Pay.

2.11. Learned Addl. Government Advocate for the State while relying on the provisions contained under Clause-3.1 and Clause-3.6.1 of Resolution dtd.06.10.1989 contended that since Respondent No.1 is not covered as per the provisions contained under Claise-3.1. and 3.6.1, he is not eligible to get the benefit of UGC Scale of Pay. Clause-3.1. and 3.6.1 of the Resolution dtd.06.10.1989 reads as follows:-

> **"**3.1 Coverage- The revised scales and other measures for improvement of standards in Higher Education shall be applicable to all category of full time teachers working in all affiliated Government Colleges and aided non-government Colleges either covered or eligible to be covered under direct payment schemes till the 1st April 1989. The scheme will also be extended to full time eligible Teachers working in the College of Accountancy and Management Studies,
> Cuttack."
>
> 7. That clause 3.6.1 of the resolution dated 6.10.1089 stipulated that " The minimum qualification required for appointment to the post of Lecturers, Readers, Professors will be those prescribed by the University Grants Commission from time to time. Generally, the minimum qualification for appointment to the post of Lecturers in the revised scale of Rs. 2,200-4,400 shall be Master's Degree in the relevant subject with at least
> 55% marks or its equivalent grade and good academic record".

2.12. Similarly learned Addl. Government Advocate placing reliance on the Resolution dtd.06.11.1990 contended that since Respondent No.1 was appointed in an Intermediate College i.e. Mangala Mohavidyalaya, Kakatpur, in view of the provisions contained under Para-2 of the Resolution dtd.06.11.1990, Respondent No.1 is also not eligible and entitled to get the

benefit of UGC scale of pay. Clause-2.(1) with the note appended thereto and Para-2 of the Resolution dtd.06.11.1990 are reproduced hereunder:-

"2. Category of teachers to whom these instructions shall apply.

(1) Save as otherwise provided by or under these instructions, these instructions shall apply to it category of full-time teachers working in all aided nonGovernment Colleges either covered or eligible to be covered under direct payment scheme till the 1st day of April, 1989.

NOTE- "Colleges" under these instructions shall mean said colleges which have been Government concurrence and University affiliation for opening of + 3 Degree courses by 1st day of April 1989 and not thereafter.

(2) These instructions shall not apply in-

(i) persons engaged on contract except when contract provides otherwise.

(ii) persons reemployed after retirement.

(iii) instructors/lecturers appointed for Vocational subjects under Arts stream of +2.

(iv) teachers appointed against unrecognised subjects/streams even in recognised and aided colleges.

(v) teachers who are appointed primarily(may be read as principally) in +2 institutions as on 1st April 1989 including intermediate Colleges converted in institution.

(vi) teachers appointed after 1st April 1989 to teach in +3 courses in existing Degree Colleges or + 2 institution. (vii) teachers whose qualifications/norms are below the qualifications/norms prescribed by the U.G.C even if such lack of prescribed qualification has been condoned by Government/University.

(viii) teachers paid out of contingency.

(ix) teachers paid otherwise than monthly basis including those paid only of piece rate basis.

(x) teachers not drawing pay in a regular scale of pay for whom no revised scale is prescribed.

(xi) teachers outside the prescribed yardstick staff.

(x) whom the Government may, by order, specifically exclude from the operation of all or any of the provisions contained in these instructions."

2.13. It is also contended that the Tribunal though relying on the decisions in the case of **Kalidas Mohapatra** so up- held by the Apex Court allowed the claim of Respondent No.1 but Hon'ble Apex Court in the case of **State of Orissa & Another vs. Mamata Mohanty,** reported in (**2011) 3 SCC-436** clearly held that the judgment rendered in the case of **Kalidas Mohapatra** has got no binding effect and it is a judgment per in curiam. View expressed by the Hon'ble Apex Court in Para-68(XI), (XII) & (XIII) in the case of **Mamata Mohanty** are reproduced hereunder:-

"68(xi) The power to grant relaxation in eligibility had not been conferred upon any authority, either the University or the State. In absence thereof, such power could not have been exercised.

(xii) This Court in Damodar Nayak (supra) has categorically held that a person cannot get the benefit of grant-in-aid unless he completes the deficiency of educational qualification. Further, this Court in Dr. Bhanu Prasad Panda (supra) upheld the termination of services of the appellant therein for not possessing 55% marks in Master Course.

(xiii) The aforesaid two judgments in Damodar Nayak (supra) and Dr. Bhanu Prasad Panda (supra), could not be brought to the notice of either the High Court or this Court while dealing with the issue. Special leave petition in the case of Kalidas Mohapatra & Ors. (supra) has been dealt with without considering the requirement of law merely making the reference to Circular dated 6.11.1990, which was not the first document ever issued in respect of eligibility. Thus, all the judgments and orders passed by the High Court as well as by this Court cited and relied upon by the respondents are held to be not of a binding nature. (Per in curiam)"

2.14. Mr. S.K. Samal, learned Addl. Government Advocate also relied on the decision in the case of **State of Orissa & Another vs. Damodar Nayak & Another**, reported in **(1997) 4 SCC 560.** In the case of **Damodar Nayak,** Hon'ble Apex Court held that since on the date of initial appointment the Respondent therein was not possessing the requisite qualification and acquired the same only on 21.03.1989, he is only eligible to get the benefit of grant-inaid. Hon'ble Apex Court in Para-3 of the order held as follows:-

"3. The question limited to the notice is whether the respondent would be entitled to payment of salary under the Grant-in-Aid Scheme from the date of initial appointment till he improved his qualification or from the date of his acquiring the qualification? The admitted position is that respondent No.1

came to be appointed as a lecturer in 1978. The Government issued clarification on January 5, 1987 that unqualified lectures having minimum second class, i.e. 48% or above and below 54% of marks in P.G. examination and appointed on or after 1.8.1977 in recognised nonGovernment Collates would be eligible to receive grant-inaid. The Resolution dated September 13,1983 issued by the Government prescribes the qualifications for recruitment on Lecturers of affiliated colleges which indicates that " candidate not holding an M. Phil degree should possess a high second class Master's degree, i.e., 54% marks and a second class Honours/pass in the B.A/B.Com./B.Sc. examination." Respondent No.1 secured 53.9% marks, which is almost equivalent of 54% marks on July 10, 1987. Therefore, the question arises, whether the second respondent is entitled to receive grant-in-aid for payment of salary to the first respondent from, the date of his acquiring qualification or from the date of initial appointment? Admittedly, since the first respondent on the date of his appointment was not possssing the requisite qualification and acquired the same only on 21-3-1989, he will be eligible to the benefit of the grant-in-aid w.e.f. 1-4-1989 and onwards .

2.15. Learned Addl. Government Advocate also relied on the decision of the Hon'ble Apex Court in the case of **Dr. Bhanu Prasad Panda vs. Chancellor, Samablpur University & Others**, reported in **(2001) 8 SCC 532.** Hon'ble Apex Court in the said decision held that rejection of the claim of the appellants therein to get the benefit of UGC Scale of Pay by the University is justified and declined to relax the minimum percentage of mark. Hon'ble Apex Court in Para-5 of the judgment held as follows:-

"5. We have carefully considered the submissions of the learned counsel appearing on either side. The stipulation regarding the minimum academic qualification reads, "good academic record with at least 55 per cent marks or an equivalent grade of Masters degree level in the relevant subject from an Indian University or an equivalent degree from a foreign university". Though the Department concerned for which the appointment is to be made is that of 'Political Science & Public Administration', the appointment, with which we are concerned, is of the Lecturer in Political Science and not Public Administration and subject matterwise they are different and not one and the same. It is not in controversy that the posts of Lecturers in Public Administration and in Political Science are distinct and separate and on selection the appellant could not have been appointed as Lecturer in Public Administration be it in the Department of Political Science and Public Administration since the advertisement was specifically to fill up the vacancy in the post of Lecturer in Political Science. Merely because the Department is of Political Science and Public Administration - the essential requirement of academic qualification of a particular standard and grade, viz., 55%, in the "relevant subject" for which the post is advertised, cannot be rendered redundant or violated by ignoring the relevant subject and carried away by the name of the Department only which, in substance, encompass two different disciplines. That merely depending upon the context he was being referred to or the post is referred

to as being available in the Department of political science and Public Administration, is no justification to do away or dispense with the essential academic qualification in the relevant subject for which the post has been advertised. Consequently, the Resolution No. 6.2 dated 18.2.92 or extracts provided from the proceedings of the Board of Studies dated 2.3.96 cannot be of any assistance to support the claim of the appellant. The rejection by the U.G.C. of the request of the Department in this case to relax the condition relating to 55% marks at Post-Graduation level for Research Assistant having M. Phil up to March 1991 or Ph.D. up to December 1992, is to be the last word on the claim of the appellant and there could be no further controversy raised in this regard. In view of the above, no exception could be taken to the decision of the Chancellor and no challenge could be countenanced in this appeal against the wellmerited decision of the High Court".

2.16. Making all these submissions and the decisions so relied on, learned Addl. Government Advocate contended that the impugned judgment is not sustainable in the eye of law and requires interference of this Court.

3. Dr. J.K. Lenka, learned counsel appearing for the Respondent No.1 on the other hand made his submission basing on the materials available on record. At the outset, learned counsel for Respondent No.1 contended that the judgment in question so passed by the Tribunal on 31.05.2008 though is under challenge in the present appeal, but delay in filing the appeal was only condoned vide order dtd.17.05.2023 in Misc. Case No.823/2009. In absence of any interim order staying the operation of the judgment, the appellants only on the ground of pendency of the appeal, did not implement the decision of the Tribunal. However, learned counsel for the Respondent No.1 contended that Respondent No.1 was selected and appointed as a Lecturer in English by the Governing Body of Mangala Mohavidyalaya, Kakatpur vide order dtd.20.03.1980 and Respondent No.1 joined in the said post on 22.03.1980. Even though Respondent No.1 had not the required percentage of mark in M.A in English i.e. 55%, but the deficiency in his qualification was not only condoned by Utkal University but also by the appellants. While condoning such deficiency, the appointment of Respondent

No.1 was approved vide order dtd.27.01.1992 and the Respondent No.1 was allowed 1/3rd grant w.e.f. 01.06.1988.

3.1. With regard to the stipulation contended in Resolution dtd.06.10.1989 and 06.11.1990, learned counsel for Respondent No.1 contended that Lecturers appointed in +2 Colleges were denied the benefit of UGC Scale of Pay, if the said College got the affiliation for degree wing after 01.04.1989. The aforesaid cut-off date 01.04.1989 with regard to the receipt of affiliation from the University for degree course was upheld by the Hon'ble Apex Court in the case of **State of Odisha & Another vs. Aswini Kumar Das & Others,** reported in **(1998) 3 SCC 613.** Hon'ble Apex Court in Para-13 of the judgment held

as follows:-

> **"13.** In the present case the State Government has decided to provide grants-in-aid to cover the revised U.G.C. scales of pay for those teachers in existing colleges which have received Government concurrence and University affiliation on or before 1st of April, 1989. The date has a direct nexus with the date of the decision to provide for such higher pay scales in the grant-in-aid to be given to the concerned colleges. The date which is so fixed cannot be considered as arbitrary or unreasonable. Colleges which have secured Government concurrence or affiliation from the University after 1st of April, 1989, therefore, cannot claim any right to the higher grant-in-aid contrary to the policy as laid down by the state. The High Court was, therefore, not right in coming to the conclusion that the Note to paragraph 2(1) of the Government Resolution of 6th of November, 1990, was arbitrary and unreasonable".

3.2. It is contended that not only Mangala Mohavidyalaya, Kakatpur got the affiliation for its degree course from Utkal University prior to 01.04.1989 but also Respondent No.1 after his transfer to Nayagarh College, Nayagarh in the year 1995, continued in the degree wing and Nayagarh College, Nayagarh had got the affiliation for degree course prior to 01.04.1989.

3.3. It is accordingly contended that since both Mangala Mohavidyalaya, Kakatpur and Nayagarh College, Nayagarh had got the affiliation for degree course

prior to 01.04.1989, in view of the stipulation contained in the Resolution dtd.06.11.1990, Respondent No.1 became eligible and entitled to get the benefit of UGC Scale of pay and the same was rightly allowed by the Tribunal in its judgment dtd.31.05.2008.

3.4. With regard to the stand taken by the appellants that Respondent No.1 since was not having the requisite qualification for his appointment as against the post of Lecturer in English in Mangala Mohavidyalaya, Kakatpur on 20.03.1980 and accordingly he is not eligible to get the benefit of UGC Scale of Pay in view of the stipulation contained in Para-2 of the Resolution dtd.06.11.1990, It is contended that since the deficiency with regard to the qualification of Respondent No.1 in M.A. in English was not only condoned by the Utkal University on 06.10.1989 but also his services was approved by making him eligible to get the benefit of grant-in-aid @ 1/3rd w.e.f. 01.06.1988, there was no scope on the part of Respondent No.1 to improve the said deficiency and that cannot be taken as a bar to deny the benefit, which has been rightly allowed by the Tribunal.

3.5. It is accordingly contended that the stand taken by the appellants that since Respondent No.1 had not the requisite qualification at the time of his initial appointment and accordingly is not eligible to get the benefit of UGC Scale of Pay is not sustainable in the eye of law.

3.6. It is also contended that similar issue in the case of **Kalidas Mohapatra** when was allowed by this Court, the matter was carried to the Hon'ble Apex Court by the State. But Hon'ble Apex Court upheld the decision of this Court so passed in the case of **Kalidas Mohapatra.** Respondent No.1 though was not having the requisite qualification at the time of his initial appointment but since the said deficiency was condoned by the University on 06.10.1989, placing reliance on the decision in the case of **Kalidas**

Mohapatra, the Tribunal rightly allowed the claim of Respondent No.1 to get the benefit of UGC scale of pay and rightly set aside the impugned rejection so passed by appellant No.1 on 06.08.2005.

3.7. It is further contended that the plea taken by the appellants that the decision in the case of **Kalidas Mohapatra** has been held as per in curiam by the Hon'ble Apex Court in the case of **Mamata Mohanty,** as cited (supra) and the decision in the case of **Kalidas Mohapatra** is not binding as not a good law requires consideration as the decision in the case of **Kalidas Mohapatra** as well as in the case **of Mamata Mohanty** were rendered by similar Co-ordinate Bench of the Hon'ble Apex Court.

3.8. It is contended that since the decision in the case of **Kalidas Mohapatra** was rendered by a Two Judge Bench of the Hon'ble Apex Court, the same could not have been held as not binding by another Co-ordinate Bench of the Hon'ble Apex Court in the case of **Mamata Mohanty** and the matter should have been referred to a larger Bench.

3.9 In support of his aforesaid submission, Dr. J.K. Lenka relied on the following decisions of the Hon'ble Apex Court.

1. **Dr. Vijay Laxmi Sadho vs. Jagdish reported in (2001) 2 SCC -247.**
2. **Pradip Chandra Parija & Others vs. Pramod Chandra Patnaik & Others reported in (2002) 1 SCC -1.**
3. **Union of India & Another vs. Hansoli Devi & Others reported in (2002) 7 SCC -273.**
4. **State of Bihar vs. Kalika Kuet alia Kalika Singh & Others reported in (2003) 5 SCC-488.**
5. **State of Punjab & Another vs. Devans Modern Breweries Ltd., & Another reported in (2004) 11 SCC-26.**
6. **Central Board of Dawoodi Bohra Community & Another vs. State of Maharastra and another, reported in (2005) 2 SCC-673.**
7. **National Insurance Company Limited vs. Pranay Sethi and Others, reported in (2017) 16 SCC-680.**

8. **Shah Faesal vs. Union of India, Writ Petition (Civil) No.1099 of 2019.**

3.10. Hon'ble Apex Court in the case of **Dr. Vijay Laxmi Sadho vs. Jagdish** reported in **(2001) 2 SCC -247.** Hon'ble Apex Court in Para-33 & 34 has held as follows:-

"**33.** As the learned Single Judge was not in agreement with the view expressed in Devilal case [Election Petition No. 9 of 1980] it would have been proper, to maintain judicial discipline, to refer the matter to a larger Bench rather than to take a different view. We note it with regret and distress that the said course was not followed. It is well-settled that if a Bench of coordinate jurisdiction disagrees with another Bench of coordinate jurisdiction whether on the basis of "different arguments" or otherwise, on a question of law, it is appropriate that the matter be referred to a larger Bench for resolution of the issue rather than to leave two conflicting judgments to operate, creating confusion. It is not proper to sacrifice certainty of law. Judicial decorum, no less than legal propriety forms the basis of judicial procedure and it must be respected at all costs.

34. Before parting with this aspect of the case, we wish to recall what was opined in Mahadeolal Kanodia v. Administrator General of W.B. [AIR 1960 SC 936 : (1960) 3 SCR 578] :

"If one thing is more necessary in law than any other thing, it is the quality of certainty. That quality would totally disappear if Judges of coordinate jurisdiction in a High Court start overruling one another's decisions. If one Division Bench of a High Court is unable to distinguish a previous decision of another Division Bench, and holding the view that the earlier decision is wrong, itself gives effect to that view the result would be utter confusion. The position would be equally bad where a Judge sitting singly in the High Court is of opinion that the previous decision of another Single Judge on a question of law is wrong and gives effect to that view instead of referring the matter to a larger Bench. In such a case lawyers would not know how to advise their clients and all courts subordinate to the High Court would find themselves in an embarrassing position of having to choose between

dissentient judgments of their own High Court."

3.11. Hon'ble Apex Court in the case of **Pradip Chandra Parija & Others vs.**

Pramod Chandra Patnaik & Others reported in **(2002) 1 SCC -1.** Hon'ble

Apex Court in Para-

2, 3 & 6 has held as follows:-

"2. The question is whether two learned Judges of this Court can disagree with a judgment of three learned Judges of this Court and whether, for that reason, they can refer the matter before them directly to a Bench of five Judges.

3. We may point out, at the outset, that in Bharat Petroleum Corpn. Ltd. v. Mumbai Shramik Sangha [(2001) 4 SCC 448] a Bench of five Judges considered a somewhat similar question. Two learned Judges in that case doubted the correctness of the scope attributed to a certain provision in an earlier Constitution Bench judgment and, accordingly, referred the matter before them directly to a Constitution Bench. The Constitution Bench that then heard the matter took the view that the decision of a Constitution Bench binds a Bench of two learned Judges and that judicial discipline obliges them to follow it, regardless of their doubts about its correctness. At the most, the Bench of two learned Judges could have ordered that the matter be heard by a Bench of three learned Judges.

6. In the present case the Bench of two learned Judges has, in terms, doubted the correctness of a decision of a Bench of three learned Judges. They have, therefore, referred the matter directly to a Bench of five Judges. In our view, judicial discipline and propriety demands that a Bench of two learned Judges should follow a decision of a Bench of three learned Judges. But if a Bench of two learned Judges concludes that an earlier judgment of three learned Judges is so very incorrect that in no circumstances can it be followed, the proper course for it to adopt is to refer the matter before it to a Bench of three learned Judges setting out, as has been done here, the reasons why it could not agree with the earlier judgment. If, then, the Bench of three learned Judges also comes to the conclusion that the earlier judgment of a Bench of three learned Judges is incorrect, reference to a Bench of five learned Judges is justified".

3.12. Hon'ble Apex Court in the case of **Union of India & Another vs. Hansoli Devi & Others** reported in **(2002) 7 SCC -273.** Hon'ble Apex Court in Para-2 has held as follows:-

"2. According to the learned Judges, the three-Judge Bench decision of this Court in Jose Antonio Cruz Dos R. Rodriguese v. Land Acquisition Collector [(1996) 6 SCC 746] requires reconsideration. At the outset, it may be stated that the Constitution Bench in Pradip Chandra Parija v. Pramod Chandra Patnaik [(2002) 1 SCC 1] held that judicial discipline and propriety demands that a Bench of two learned Judges should follow a decision of a Bench of three learned Judges. But if a Bench of two learned Judges concludes that an earlier judgment of three learned Judges is so very incorrect that in no circumstances can it be followed, the proper course for it to adopt is, to refer the matter before it to a Bench of three learned Judges setting out the reasons why it could not agree with the earlier judgment and then the Bench of three learned Judges also comes to the conclusion that the earlier judgment of a Bench of three learned Judges is incorrect, then a reference could be made to a Bench of five learned Judges. In view of the aforesaid Constitution Bench decision, the very reference itself made by the two learned Judges was improper and we would have sent the matters to a Bench of three learned

Judges for consideration. But since the questions involved are pending in many cases in different High Courts and certain doubts have arisen with regard to the interpretation to the provisions of Section 28-A of the Act, we thought it appropriate to answer the two questions referred. Section 28-A of the Land Acquisition Act reads thus:

"28-A. Redetermination of the amount of compensation on the basis of the award of the court.—(1) Where in an award under this Part, the court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under Section 11, the persons interested in all the other land covered by the same notification under Section 4 sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector under Section 18, by written application to the Collector within three months from the date of the award of the court require that the amount of compensation payable to them may be redetermined on the basis of the amount of compensation awarded by the court:

Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.

(2) The Collector shall, on receipt of an application under sub-section (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard and make an award determining the amount of compensation payable to the applicants.

(3) Any person who has not accepted the award under sub-section (2) may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the court and the provisions of Sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference

under Section 18."

3.13. Hon'ble Apex Court in the case of **State of Bihar vs. Kalika Kuet alia Kalika Singh & Others** reported in **(2003) 5 SCC -448.** Hon'ble Apex Court in Para-9 to 12 has held as follows:-

"9. In Fuerst Day Lawson Ltd. v. Jindal Exports Ltd. [(2001) 6 SCC 356] this Court observed: (SCC pp. 367 & 368, paras 19 & 23)

A prior decision of the Supreme Court on identical facts and law binds the Court on the same points of law in a later case. In exceptional instances, where by obvious inadvertence or oversight a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached, the principle of per incuriam may apply. Unless it is a glaring case of obtrusive omission, it is not desirable to depend on the principle of judgment 'per incuriam'. It has to be shown that some part of the decision was based on a reasoning which was demonstrably wrong, for applying the principle of per incuriam.

10. Looking at the matter, in view of what has been held to mean by per incuriam, we find that such element of rendering a decision in ignorance of any provision of the statute or the judicial authority of binding nature, is

not the reason indicated by the Full Bench in the impugned judgment, while saying that the decision in the case of Ramkrit Singh [AIR 1979 Pat 250 : 1979 Pat LJR 161 (FB)] was rendered per incuriam. On the other hand, it was observed that in the case of Ramkrit Singh [AIR 1979 Pat 250 : 1979 Pat LJR 161 (FB)] the Court did not consider the question as to whether the Consolidation Authorities are courts of limited jurisdiction or not. In connection with this observation, we would like to say that an earlier decision may seem to be incorrect to a Bench of a coordinate jurisdiction considering the question later, on the ground that a possible aspect of the matter was not considered or not raised before the court or more aspects should have been gone into by the court deciding the matter earlier but it would not be a reason to say that the decision was rendered per incuriam and liable to be ignored. The earlier judgment may seem to be not correct yet it will have the binding effect on the later Bench of coordinate jurisdiction. Easy course of saying that earlier decision was rendered per incuriam is not permissible and the matter will have to be resolved only in two ways — either to follow the earlier decision or refer the matter to a larger Bench to examine the issue, in case it is felt that earlier decision is not correct on merits. Though hardly necessary, we may however, refer to a few decisions on the above proposition.

11. In Vijay Laxmi Sadho (Dr) v. Jagdish [(2001) 2 SCC 247] it has been observed as follows: (SCC p. 256, para 33)

"33. As the learned Single Judge was not in agreement with the view expressed in Devilal case [Devilal v. Kinkar Narmada Prasad, Election Petition No. 9 of 1980] it would have been proper, to maintain judicial discipline, to refer the matter to a larger Bench rather than to take a different view. We note it with regret and distress than the said course was not followed. It is well settled that if a Bench of coordinate jurisdiction disagrees with another Bench of coordinate jurisdiction whether on the basis of 'different arguments' or otherwise, on a question of law, it is appropriate that the matter be referred to a larger Bench for resolution of the issue rather than to leave two conflicting judgments to operate, creating confusion. It is not proper to sacrifice certainty of law. Judicial decorum, no less than legal propriety forms the basis of judicial procedure and it must be respected at all costs."

12. In Pradip Chandra Parija v. Pramod Chandra Patnaik [(2002) 1 SCC 1] it has been held that where a Bench consisting of two Judges does not agree with the judgment rendered by a Bench of three Judges, the only appropriate course available is to place the matter before another Bench of three Judges and in case the threeJudge Bench also concludes that the judgment concerned is incorrect then the matter can be referred to a larger Bench of five Judges.

3.14. Hon'ble Apex Court in the case of **State of Punjab & Another vs. Devans Modern Breweries Ltd., & Another,** reported in **(2004) 11 SCC -**

26. Hon'ble Apex Court in Para-339, 340, 341, 342, 343, 344 has held as follows:-

"339. Judicial discipline envisages that a coordinate Bench follow the decision of an earlier coordinate Bench. If a coordinate Bench does not agree with the principles of law enunciated by another Bench, the matter may be referred only to a larger Bench. (See Pradip Chandra Parija v. Pramod Chandra Patnaik [(2002) 1 SCC 1] , SCC at paras 6 and 7; followed in Union of India v. Hansoli Devi [(2002) 7 SCC 273] , SCC at para 2.) But no decision can be arrived at contrary to or inconsistent with the law laid down by the coordinate Bench. Kalyani Stores [AIR 1966 SC 1686 : (1966) 1 SCR 865] and K.K. Narula [AIR 1967 SC 1368 : (1967) 3 SCR 50] both have been rendered by the Constitution Benches. The said decisions, therefore, cannot be thrown out for any purpose whatsoever; more so when both of them if applied collectively lead to a contrary decision proposed by the majority.

340. In Halsbury's Laws of England (4th Edn.), Vol. 26 at pp. 297-98, para 578, it is stated:

"A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction which covered the case before it, in which case it must decide which case to follow (Young v. Bristol Aeroplane Co. Ltd. [(1944) 1 KB 718 : (1944) 2 All ER 293 (CA)] , KB at p. 729 : All ER at p. 300. In Huddersfield Police Authority v. Watson [1947 KB 842 : (1947) 2 All ER 193] Lord Goddard, C.J. said that a decision was given per incuriam when a case or statute had not been brought to the court's attention and the court gave the decision in ignorance or forgetfulness of the existence of the case or statute); or when it has acted in ignorance of a House of Lords decision, in which case it must follow that decision; or when the decision is given in ignorance of the terms of a statute or rule having statutory force [Young v. Bristol Aeroplane Co. Ltd. [(1944) 1 KB 718 : (1944) 2 All ER 293 (CA)] , KB at p. 729 : All ER at p. 300. See also Lancaster Motor Co. (London) Ltd. v. Bremith Ltd. [(1941) 1 KB 675 : (1941) 2 All ER 11 (CA)] For a Divisional Court decision disregarded by that court as being per incuriam, see Nicholas v. Penny [(1950) 2 KB 466 : (1950) 2 All ER 89] .] A decision should not be treated as given per incuriam, however, simply because of a deficiency of parties (Morelle Ltd. v. Wakeling [(1955) 2 QB 379 : (1955) 1 All ER 708 (CA)]), or because the court had not the benefit of the best argument (Bryers v. Canadian Pacific Steamships Ltd. [(1957) 1 QB 134 : (1956) 3 All ER 560 (CA)] , per Singleton, L.J.; affd. sub nom. Canadian Pacific Steamships Ltd. v. Bryers [1958 AC 485 : (1957) 3 All ER 572 (HL)]), and, as a general rule, the only cases in which decisions should be held to be given per incuriam are those given in ignorance of some inconsistent statute or binding authority (A. and J. Mucklow Ltd. v. IRC [1954 Ch 615 : (1954) 2 All ER 508 (CA)] ; Morelle Ltd. v. Wakeling [(1955) 2 QB 379 : (1955) 1 All ER 708 (CA)] . See also Bonsor v. Musicians' Union [1954 Ch 479 : (1954) 1 All ER 822 (CA)] where the per incuriam contention was rejected and, on appeal to the House of Lords, although the House overruled the case which bound the Court of Appeal, the House agreed that that court had been bound by it: see Bonsor v. Musicians' Union [1956 AC 104 : (1955) 3 All ER 518 (HL)]). Even if a decision of the Court of Appeal has misinterpreted a previous decision of the House of Lords, the Court of Appeal must follow its previous decision and leave the House of Lords to rectify the mistake (Williams v. Glasbrook Bros. Ltd. [(1947) 2 All ER 884 (CA)])."

341. In Vijay Laxmi Sadho (Dr.) v. Jagdish [(2001) 2 SCC 247 : JT (2001) 1 SC 382] it has been observed as follows: (SCC p. 256, para 33)

"33. As the learned Single Judge was not in agreement with the view expressed in Devilal case [Devilal v. Kinkar Narmada Prasad, Election Petition No. 9 of 1980 (MP)] it would have been proper, to maintain judicial discipline, to refer the matter to a larger Bench rather than to take a different view. We note it with regret and distress that the said course was not followed. It is well settled that if a Bench of coordinate jurisdiction disagrees with another Bench of coordinate jurisdiction whether, on the basis of 'different arguments' or otherwise, on a question of law, it is appropriate that the matter be referred to a larger Bench for resolution of the issue rather than to leave two conflicting judgments to operate, creating confusion. It is not proper to sacrifice certainty of law. Judicial decorum, no less than legal propriety forms the basis of judicial procedure and it must be respected at all costs.

342. In State of Bihar v. Kalika Kuer [(2003) 5 SCC 448 : JT (2003) 4 SC 489] a Bench of this Court upon taking a large number of decisions into consideration observed: (SCC p. 454, para 10)

"10. Looking at the matter, in view of what has been held to mean by per incuriam, we find that such element of rendering a decision in ignorance of any provision of the statute or the judicial authority of binding nature, is not the reason indicated by the Full Bench in the impugned judgment, while saying that the decision in the case of Ramkrit Singh [Ramkrit Singh v. State of Bihar, AIR 1979 Pat 250 : 1979 Pat LJR 161 (FB)] was rendered per incuriam."

(emphasis in original)

It was further opined: (SCC p. 454, para 10)

"The earlier judgment may seem to be not correct yet it will have the binding effect on the later Bench of coordinate jurisdiction. Easy course of saying that earlier decision was rendered per incuriam is not permissible and the matter will have to be resolved only in two days — either to follow the earlier decision or refer the matter to a larger Bench to examine the issue, in case it is felt that earlier decision is not correct on merits."

343. It is also trite that the binding precedents which are authoritative in nature and are meant to be applied should not be ignored on application of the doctrine of sub silentio or per incuriam without assigning specific reasons therefor. I, for one, do not see as to how Kalyani Stores [AIR 1966 SC 1686 : (1966) 1 SCR 865] and K.K. Narula [AIR 1967 SC 1368 : (1967) 3 SCR 50] read together can be said to have been passed sub silentio or rendered per incuriam.

Conclusion 344 [Para 344 corrected as per Official Corrigendum No. F.3/Ed.B.J./98/2004 dated 14-122004.] . The propositions of law which emerge from the discussions made hereinbefore are

(1) The maxim "res extra commercium" has no role to play in determining the constitutional validity of a statute.

The State, in its discretion having regard to the provisions contained in Article 47 of the Constitution, may part with its right or exclusive privilege but once it does so, the grant being subject to the terms and conditions of a statute, the common-law principle based on the maxim "res extra commercium" shall have no application in relation thereto.

(2) When the constitutionality of a taxing statute is questioned, the same has to be judged on the touchstone of the constitutional provisions including Article 301 thereof. The freedom guaranteed under Article 301 of the Constitution may not be considered in isolation having regard to the expression contained therein that such freedom is subject to Part XIII of the Constitution.

(3) The right to carry on trade in liquor is a fundamental right within the meaning of Article 19(1)(g) of the Constitution and the State may, however, legislate prohibiting such trade either in whole or in part in terms of clause (6) thereof.

(4) Article 14 is applicable in the matter of grant by the State and, thus, there is no reason as to why the grantee would not be entitled to invoke the commerce clause contained in Article 301 of the Constitution.

(5) In interpreting the constitutional provisions, the court should take into consideration the implication of its decision having regard to the international treaties dealing with countervailing duty, etc.

(6) The decision of Kalyani Stores [AIR 1966 SC 1686 : (1966) 1 SCR 865] being an authoritative pronouncement, the same is binding irrespective of the fact as to whether therein the decisions of this Court in Chamarbaugwala [AIR 1957 SC 699 : 1957 SCR 874] , Har Shankar [(1975) 1 SCC 737 : AIR 1975 SC 1121 :
(1975) 3 SCR 254] and Khoday Distilleries [(1995) 1 SCC 574] have been referred to or not, keeping in view the fact that even in K.K. Narula [AIR 1967 SC 1368 : (1967) 3 SCR 50] another Constitution Bench has held that trade in liquor is a fundamental right.

3.15. Learned counsel for the Respondent relied on the decision of the Hon'ble Apex Court in the case of **Central Board of Dawoodi Bohra Community & Another vs. State of Maharastra and another**, reported in **(2005) 2 SCC-673**. Hon'ble Apex Court in Para-12 of the said judgment

has held as follows:-

"12. (1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength.

(2) A Bench of lesser quorum cannot disagree or dissent from the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted."

3.16. Hon'ble Apex Court in the case of **Pranay Sethi and Others,** in Para-16, 17, 21, 23 & 28 has held as follows:-

16. In State of Bihar v. Kalika Kuer alias Kalika Singh and others19, it has been held:-

"10. … an earlier decision may seem to be incorrect to a Bench of a coordinate jurisdiction considering the question later, on the ground that a possible aspect of the matter was not considered or not raised before the court or more aspects should have been gone into by the court deciding the matter earlier but it would not be a reason to say that the (2003) 5 SCC 448 decision was rendered per incuriam and liable to be ignored. The earlier judgment may seem to be not correct yet it will have the binding effect on the later Bench of coordinate jurisdiction. …" The Court has further ruled:-

"10. … Easy course of saying that earlier decision was rendered per incuriam is not permissible and the matter will have to be resolved only in two ways — either to follow the earlier decision or refer the matter to a larger Bench to examine the issue,

in case it is felt that earlier decision is not correct on merits."

17. In G.L. Batra v. State of Haryana and others20, the Court has accepted the said principle on the basis of judgments of this Court rendered in Union of India v. Godfrey Philips India Ltd. 21 , Sundarjas Kanyalal Bhatija v. Collector, Thane, Maharashtra22 and Tribhovandas Purshottamdas Thakkar v. Ratilal Motilal Patel 23 . It may be noted here that the Constitution Bench in Madras Bar Association v. Union of India and another 24 has clearly stated that the prior Constitution Bench judgment in Union of India v. Madras Bar Association25 is a binding precedent. Be it clarified, the issues (2014) 13 SCC 759 (1985) 4 SCC 369 (1989) 3 SCC 396 AIR 1968 SC 372 (2015) 8 SCC 583 (2010) 11 SCC 1 that were put to rest in the earlier Constitution Bench judgment were treated as precedents by latter Constitution Bench".

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21. In Chandra Prakash and others v. State of U.P. and another28, another Constitution Bench dealing with the concept of precedents stated thus:- "22. … The doctrine of binding precedent is of utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. Judicial consistency promotes confidence in the system, therefore, there is this need for consistency in

the enunciation of legal principles in the decisions of this Court. It is in the above context, this Court in the case of Raghubir Singh29 held that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or smaller number of Judges. …" xxx xxx xxx

23. It also stated what has been expressed in Raghubir Singh (supra) by R.S. Pathak, C.J. It is as follows:- "28. We are of opinion that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or a smaller number of Judges, and in order that such decision be binding, (2014) 7 SCC 701 (2012) 4 SCC 516 (1995) 4 SCC 96 it is not necessary that it should be a decision rendered by the Full Court or a Constitution Bench of the Court. …"

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28. In this context, we may also refer to Sundeep Kumar Bafna v. State of Maharashtra and another34 which correctly lays down the principle that discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of courts would become a costly casualty. A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co- equal or larger Bench. There can be no scintilla of doubt that an earlier decision of co-equal Bench binds the Bench of same strength. Though the judgment in Rajesh's case was delivered on a later date, it had not apprised itself of the law stated in (2014) 16 SCC 623 Reshma Kumari (supra) but had been guided by Santosh Devi (supra). We have no hesitation that it is not a binding precedent on the co-equal Bench".

3.17. Reliance was also placed in the decisions of the Hon'ble Apex Court in the case of **Shah Faesal vs. Union of India, Writ Petition (Civil) No.1099 of 2019** decided on March, 02, 2020. Hon'ble Apex Court in Para-14, 17, 18, 19, 23, 24, 25, 26, 29 & 31 have held as follows:-

"14. The learned Solicitor General supported the arguments rendered by the learned Attorney General and submitted that a coordinate Bench cannot refer the matter to a larger Bench on minor inconsistencies. Rather, the decisions rendered by an earlier co-ordinate bench are always binding on the subsequent Benches of equal strength. However, if the subsequent Bench expresses doubt on the correctness of the earlier decision rendered by a Bench of equal strength, the same has to be referred to a larger Bench.

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17. This Court's jurisprudence has shown that usually the courts do not overrule the established precedents unless there is a social, constitutional or economic change mandating such a development. The

numbers themselves speak of restraint and the value this Court attaches to the doctrine of precedent. This Court regards the use of precedent as indispensable bedrock upon which this Court renders justice. The use of such precedents, to some extent, creates certainty upon which individuals can rely and conduct their affairs. It also creates a basis for the development of the rule of law. As the Chief Justice of the Supreme Court of the United States, John Roberts observed during his Senate confirmation hearing, "It is a jolt to the legal system when you overrule a precedent. Precedent plays an important role in promoting stability and evenhandedness". [Congressional Record—Senate, Vol. 156,
Pt. 7, 10018 (7-6-2010).]

18. Doctrines of precedents and stare decisis are the core values of our legal system. They form the tools which further the goal of certainty, stability and continuity in our legal system. Arguably, Judges owe a duty to the concept of certainty of law, therefore they often justify their holdings by relying upon the established tenets of law.

19. When a decision is rendered by this Court, it acquires a reliance interest and the society organises itself based on the present legal order. When substantial judicial time and resources are spent on references, the same should not be made in a casual or cavalier manner. It is only when a proposition is contradicted by a subsequent judgment of the same Bench, or it is shown that the proposition laid down has become unworkable or contrary to a well-established principle, that a reference will be made to a larger Bench. In this context, a five-Judge Bench of this Court in Chandra Prakash v. State of U.P. [Chandra Prakash v. State of U.P., (2002) 4 SCC 234 : 2002 SCC (Cri) 496 : 2002 SCC (L&S) 496] , after considering series of earlier rulings reiterated that : (SCC p. 245, para 22)

"22. … The doctrine of binding precedent is of utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. Judicial consistency promotes confidence in the system, therefore, there is this need for consistency in the enunciation of legal principles in the decisions of this Court."
(emphasis supplied)

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23. This brings us to the question, as to whether a ruling of a coordinate Bench binds subsequent coordinate Benches. It is now a settled principle of law that the decision rendered by a coordinate Bench is binding on the subsequent Benches of equal or lesser strength. The aforesaid view is reinforced in the National Insurance Co. Ltd. v. Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] wherein this Court held that : (SCC pp. 713-14, para 59)

"59.1. The two-Judge Bench in Santosh Devi [Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 421 :
(2012) 3 SCC (Civ) 726 : (2012) 3 SCC (Cri) 160 : (2012) 2 SCC (L&S) 167] should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009)

2 SCC (Cri) 1002] , a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench."

(emphasis supplied)

24. The impact of non-consideration of an earlier precedent by a coordinate Bench is succinctly delineated by Salmond [Salmond on Jurisprudence [P.J. Fitzgerald (Ed.), 12th Edn., 1966], p. 147.] in his book in the following manner:

"… A refusal to follow a precedent, on the other hand, is an act of coordinate, not of superior, jurisdiction. Two courts of equal authority have no power to overrule each other's decisions. Where a precedent is merely not followed, the result is not that the later authority is substituted for the earlier, but that the two stand side by side conflicting with each other. The legal antinomy thus produced must be solved by the act of a higher authority, which will in due time decide between the competing precedents, formally overruling one of them, and sanctioning the other as good law. In the meantime the matter remains at large, and the law uncertain."

(emphasis supplied)

25. In this line, further enquiry requires us to examine, to what extent does a ruling of coordinate Bench bind the subsequent Bench. A judgment of this Court can be distinguished into two parts : ratio decidendi and the obiter dictum. The ratio is the basic essence of the judgment, and the same must be understood in the context of the relevant facts of the case. The principal difference between the ratio of a case, and the obiter, has been elucidated by a three-Judge Bench decision of this Court in Union of India v. Dhanwanti Devi [Union of India v. Dhanwanti Devi, (1996) 6 SCC 44] wherein this Court held that : (SCC pp. 51-52, para 9)

"9. … It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. … A decision is only an authority for what it actually decides. … The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution."

(emphasis supplied)

26. The aforesaid principle has been concisely stated by Lord Halsbury in Quinn v. Leathem [Quinn v. Leathem, 1901 AC 495 (HL)] in the following terms : (AC p. 506) "… that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides."

(emphasis supplied)

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29. In this context of the precedential value of a judgment rendered per incuriam, the opinion of Venkatachaliah, J., in the seven-Judge Bench decision of A.R. Antulay v. R.S. Nayak [A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602 : 1988 SCC (Cri) 372] assumes great relevance : (SCC p. 716, para 183)

"183. But the point is that the circumstance that a decision is reached per incuriam, merely serves to denude the decision of its precedent value. Such a decision would not be binding as a judicial precedent. A coordinate Bench can disagree with it and decline to follow it. A larger Bench can overrule such decision. When a previous decision is so overruled it does not happen — nor has the overruling Bench any jurisdiction so to do — that the finality of the operative order, inter partes, in the previous decision is overturned. In this context the word "decision" means only the reason for the previous order and not the operative order in the previous decision, binding inter partes. … Can such a decision be characterised as one reached per incuriam? Indeed, Ranganath Misra, J. says this on the point : (para 105)

'Overruling when made by a larger Bench of an earlier decision of a smaller one is intended to take away the precedent value of the decision without effecting the binding effect of the decision in the particular case. Antulay, therefore, is not entitled to take advantage of the matter being before a larger Bench.'"

(emphasis supplied)

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31. Therefore, the pertinent question before us is regarding the application of the rule of per incuriam. This Court while deciding Pranay Sethi case [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] , referred to an earlier decision rendered by a two-Judge Bench in Sundeep Kumar Bafna v. State of Maharashtra [Sundeep Kumar Bafna v. State of Maharashtra, (2014) 16 SCC 623 : (2015) 3 SCC (Cri) 558] , wherein this Court emphasised upon the relevance and the applicability of the aforesaid rule : (Sundeep Kumar Bafna case [Sundeep Kumar Bafna v. State of Maharashtra, (2014) 16 SCC 623 : (2015) 3 SCC (Cri) 558] , SCC p. 642, para 19)

"19. It cannot be overemphasised that the discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of courts would become a costly casualty. A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench; or if the decision of a High Court is not in consonance with the views of this Court.

It must immediately be clarified that the per incuriam rule is strictly and correctly applicable to the ratio decidendi and not to obiter dicta."

(emphasis supplied)

3.18. Placing reliance on the decision in the case of **Pranay Sethy** and other decisions as cited (supra). Dr. Lenka contended that since the decision in the case of **Kalidas Mahapatra** was rendered by a two Judge Bench of the Hon'ble Apex Court, the same could not have been treated as not a good law and having no binding effect, in the case of **Mamata Mohanty,** which was also rendered by a two Judge Bench of the Hon'ble Apex Court.

3.19. Learned counsel for the private Respondent also contended that in case of conflicting judgments of equal strength of the Hon'ble Apex Court, it is earlier one which is to be followed by the High Courts. In support of the aforesaid submissions, learned counsel appearing for the private Respondent relied on a decision of the Hon'ble Apex Court in the case of **Union Territory of Ladakh & Others vs. Jammu and Kashmir National Conference & Another,** reported in **2023 LiveLaw (SC) 749**. Hon' ble Apex Court in Para-35 of the said judgment has held as follows:-

"35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in **National Insurance Company Limited v Pranay** Sethi, (2017) 16 SCC 6805. The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it".

3.20. It is also contended that by the time the appeal was filed by the State challenging the judgment passed by the Tribunal on 31.05.2008, the decision

in the case of **Kalidas Mohapatra** was governing the field. Not only that in view of the decision in the case of **Union Territory of Ladakh** as cited (supra), the decision in the case of **Kalidas Mohapatra** was to be followed to the facts of the present case.

3.21. Making all these submissions, learned counsel appearing for Respondent No.1 contended that the Tribunal has rightly allowed the claim vide its judgment dtd.31.05.2008, while setting aside the rejection so made by Opposite Party No.1 vide his order dtd.06.08.2005 and it requires no interference.

4. Having heard learned counsel appearing for the Parties and after going through the materials available on record, this Court finds that Respondent No.1 herein was appointed as a Lecturer in English in Mangala Mohavidyalaya, Kakatpur in the district of Puri vide order of appointment issued on 20.03.1980. Pursuant to the said order, Respondent No.1 joined as such on 22.03.1980. Even though at the time of his appointment Respondent No.1 was not having the required percentage of mark in his M.A in English, but the said deficiency was condoned by Utkal University vide its Notification dtd.06.10.1989. After such condonation of the qualification, the services of the Respondent No.1 was approved by the Director Higher Education -Appellant No.2 vide order dtd. 27.08.1992 allowing grant-in-aid @ 1/3rd w.e.f. 01.06.1988.

4.1. Even though Respondent No.1 was appointed as a Lecturer in English in Mangala Mohavidyalaya, Kakatpur, which was a +2 College, but subsequently Mangala Mohavidyalaya, Kakatpur got the affiliation to pursue degree course prior to 01.04.1989. The College to which the Respondent No.1 was transferred in the year 1995 i.e. Nayagarh College, Nayagarh has also got the affiliation from the University to pursue degree course prior to 01.04.1989. Since the College in which Respondent No.1 continued as a

Lecturer in English got the affiliation of the University to pursue degree course prior to 01.04.1989, Respondent No.1 as per the stipulation contained in Resolution dtd.06.11.1989 and 06.11.1990 became eligible to get the benefit of UGC scale of pay as the College in question has got the affiliation prior to the cut-off date i.e. 01.04.1989 so upheld by the Apex Court in the case of **Aswini Kumar Das** (as cited supra).

4.2. Only ineligibility of Respondent No.1 to get the benefit is with regard to his deficiency in qualification at the time of his initial appointment. But as found from the record the deficiency in qualification of Respondent No.1 at the time of his appointment was condoned by the Utkal University vide Notification dtd.06.10.1989 and after such condonation of his qualification, services of Respondent No.1 was approved by the Appellant No.2 vide order dtd.27.08.1992 allowing grant-in-aid @ 1/3rd w.e.f. 01.06.1988, which is before the cut-off date on 01.04.1989.

4.3. With regard to entitlement of a Lecturer to get the benefit of UGC Scale of Pay on such condonation of qualification was the subject matter of dispute in the case of **Kalidas Mohapatra** (as cited supra). This Court in the case of **Kalidas Mohapatra** taking into account the condonation of the qualification, held him entitled to get the benefit of UGC Scale of Pay. Even though the matter was carried to the Hon'ble Apex Court by the State, but Hon'ble Apex Court while confirming the view of this Court dismissed the SLP. After such dismissal of the SLP, benefit of UGC Scale of Pay was extended in favour of **Kalidas Mohapatra** though he was not having the required qualification at the time of his initial appointment. The Tribunal by the time disposed of the matter, judgment in the case of **Kalidas Mohapatra** was governing the field.

4.4. With regard to the stand taken by the appellants that in terms of the provisions contained in Resolution dtd.06.11.1990, Respondent No.1 since did not

improve his qualification and accordingly not entitled to get the benefit of UGC Scale of Pay, this Court is unable to accept such a plea of the appellants, as the deficiency in his qualification was duly condoned by the University vide Notification dtd.06.10.1989 and basing on such condonation, services of the Respondent No.1 was approved by the Appellant No.2 vide order dtd.27.08.1992 allowing grant-in-aid w.e.f. 01.06.1988.

4.5. Therefore, this Court is of the view that allowing the claim of Respondent No.1 by the Tribunal placing reliance on the decision in the case of **Kalidas Mohapatra** was legal and justified. The stand taken by the appellants with regard to the decision rendered in the case of **Mamata Mohanty** wherein Hon'ble Apex Court held the decision in the case of **Kalidas Mohapatra** as a decision per in curiam and not binding, it is the humble opinion of this Court that since the decision in the case of **Kalidas Mohapatra** and in the case of **Mamata Mohanty** were passed by Coordinate Bench of the Hon'ble Apex Court, in view of the decision in the case of **Pranay Sethy** and other decisions (as cited supra) and so relied on by the learned counsel appearing for the appellants, the matter should have been referred to a larger Bench. Not only that in view of the decision rendered by the Hon'ble Apex Court in the case of **Union Territory of Ladakh** as cited (supra), the decision in the case of **Kalidas Mohapatra** is required to be followed to the facts of the present case. Not only that since the decision in the case of **Mamata Mohanty** was not available by the time the Tribunal disposed of the matter placing reliance on the decision in the case of **Kalidas Mohapatra,** this Court is unable to accept the contention of the appellants and of the view that the Tribunal rightly allowed the claim of Respondent No.1. This Court accordingly finds no illegality or irregularity with the impugned judgment and is not inclined to interfere with the same. The appeal accordingly fails and stands dismissed.