(2025) 12 OHC CK 0046

Orissa HC

Case No: Writ Appeal No. 1275 Of 2025

Haraprasanna Tripathy		APPELLANT
	Vs	
Principal Secretary, Department Of Higher Education, Bhubaneswar And Others		RESPONDENT

Date of Decision: Dec. 4, 2025

Acts Referred:

- Constitution Of India, 1950-Article 226
- Odisha Education (Recruitment And Conditions Of Service Of Teachers And Members Of The Staff Of Aided Educational Institution) Rules, 1974- Rule8(2)(B)
- Orissa Education Act, 1969-Section 7B, 7C, 24A, 24B, 24B(1)
- Indian Penal Code, 1860-Section 193, 219, 228

Hon'ble Judges: Harish Tandon, CJ; M.S. Raman, J

Bench: Division Bench

Advocate: Surya Prasad Mishra, Haraprasanna Tripathy, Saswat Das

Final Decision: Dismissed

Judgement

Harish Tandon, CJ

1. The seminal point involved in the instant writ appeal is whether a writ petition can be maintained / entertained against an order dated 27th March, 2025 passed by the Director, Higher Education, Government of Odisha in rejecting the representation of the appellant claiming for approval of his promotion to the post of Lecturer in Physics, the 7th post, without approaching the Odisha Education Tribunal (the “Tribunal” for short) constituted under the Odisha Education Act, 1969 (the “O.E. Act” for short).

2. The learned Single Judge disposed of the writ petition being W.P.(C) No.15175 of 2025 filed by the appellant solely on the ground that in view of the provisions contained under Section 24-B of the O.E. Act, the Tribunal is competent and vested with the power to adjudicate the dispute raised

in the writ petition and, therefore, the writ petition, by passing the said provision, does not deserve to be entertained as it is open to the appellant to challenge the said order before the Tribunal.

3. Shorn of unnecessary details and in order to determine the point as formulated hereinbefore, it would be apposite to recapitulate the prelude to the litigations ensued at the behest of the appellant in different fora. Undeniably, the appellant (petitioner) was appointed as a Demonstrator in Physics on 8th September, 1987 by the Governing Body of the KBDAV College, Nirakarpur ("college" for short). While discharging the duties and responsibilities attached to the said post, the appellant was permitted to hold the 7th post of Lecturer in Physics with effect from 6th August, 2000 as the Lecturer in Physics tendered resignation on 5th August, 2000. Subsequently, in a meeting held on 9th April 2003, the Governing Body of the college took a resolution to approve the promotion and/or appointment of the appellant in the 7th post of Lecturer in Physics and approached the Director, Higher Education, Government of Odisha to grant the final approval to such resolution. The Director vide its letter No.47870 dated 4th December, 2012 declined to grant approval to the resolution adopted by the Governing Body of the college on the premise that a Demonstrator in Direct Payment Scheme does not come within the purview of the initial recruitment procedure prescribed for Lecturer in terms of the provisions contained in the O.E. Act and Odisha Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institution) Rules, 1974 ("1974 Rules" for short).

3.1. Feeling aggrieved by such decision, a writ petition being W.P.(C) No.9325 of 2013 was filed by the appellant before this Court. Amidst the pendency of the said petition, a letter was caused by the Director, Higher Education as posted in the official website of the Higher Education Department asking the Principal of the college to appear with the relevant documents for verification in order to file the counter affidavit in the aforementioned writ petition and upon completion of such exercise, the writ petition was disposed of on 27th April, 2017 without extending any benefits in absolute terms to the appellant. However, the Court observed that the grievance raised by the appellant should be considered by the said authorities as the appellant has demonstrated the act of discrimination founded upon the fact that one of the Demonstrators, who was subsequently appointed as a Lecturer, was granted a post facto approval. As the said grievance petition remained pending in the domain of the said authority, the application being GIA Case No.70 of 2018 was filed before the Tribunal, which came to be disposed of on 23rd February, 2022 in the following:

"12. xxx. On the face of the above documents and keeping in view the afore quoted observations of the Hon'ble Court in the matter of Nilambar Satapathy, the claim of the petitioner cannot be brushed aside on the ground that it is not in terms of Rule8(2)(b) of the 1974 Rules. The O.P. Nos.1 and 2 are required to consider the claim of the petitioner in the manner the claims of above mentioned Demonstrators were considered.

13. Thus, the G.I.A. application is allowed in part against the O.P. Nos.1 and 2 and ex parte against the O.P. No.3, Governing Body. The O.P. Nos.1 and 2 are directed to consider the claim of the petitioner in the light of the observations made above, within four months from the date of receipt of a certified copy of this judgment. The petitioner be given an opportunity of personal

hearing."

4. Despite the direction as above having passed by the Tribunal, the authorities kept the claim raised by the appellant in the said representation in suspended animation, which constrained the appellant to file the Execution Case No.8 of 2023 before the Tribunal. Amidst the pendency of the said execution case, the representation was taken up by the Director and rejected the claim by passing an order No.17373/HE dated 27th March, 2025. The aforesaid facts were brought on record in the said execution proceeding which was disposed of with the categorical findings that "since the O.P. Nos.1 and 2 have been directed to consider the claim of the petitioner, as it appears, they have considered the same by affording an opportunity of personal hearing to the petitioner and rejected his claim vide Order No.17373/HE dtd. 27.03.2025. So, nothing is left in this proceeding to be executed. Therefore, the objection filed by the petitioner to the aforesaid rejection order of the O.P. No.2 is rejected."

5. Instead of challenging the said order dated 27th March, 2025 before the Tribunal, the appellant approached the writ Court by filing the writ petition, which was disposed of by the impugned order relegating the appellant to challenge the said order before the Tribunal.

6. Though the order impugned in the instant writ appeal does not in explicit term contained the genesis of the dispute, yet it can be reasonably inferred that the learned Single Judge declined to entertain the writ petition assailing the order of the Director dated 27th March, 2025 taken on the basis of a direction passed in the order dated 23rd March, 2022 by the Tribunal as the appellant cannot be permitted to jump the forum.

7. A piquant situation arose on the provisions contained under Section 24-B of the O.E. Act, which provides the power, authority and the jurisdiction exercised by the Tribunal in relation to the disputes and differences between the Managing Committee, the Governing body of any private institution, any teacher or employee of such institution or the State Government or any officer or authority of the said Government, relating to the eligibility, entitlement, payment or non-payment of grant-in-aid. Initially, an impression was created on the meaningful reading of the language employed in the aforementioned Section with regard to the expression "Grant-in-Aid" having nexus with the eligibility and entitlement and in order to have the clarity on the same and to ponder upon such issues, we invited Mr. Surya Prasad Mishra, learned Senior Counsel to assist the Court as Amicus Curiae for the reason that the appellant is pursuing his cause by appearing in person and the arguments were advanced by him purely on a factual matrix.

8. Before we proceed to determine the point as involved in the instant writ appeal, it would be profitable to quote the said provision in extenso, which runs thus:

"24-B. Adjudication by Tribunal *- (1) The Tribunal shall have jurisdiction, power and authority to adjudicate all disputes and differences, between the Managing Committee or, as the case may be, the Governing body of any private educational institution and any teacher or employee of such institution or the State Government or any officer or authority of the said Government, relating to or connected with the eligibility, entitlement, payment or non-payment of grant-in-aid.*

(2) Any person, aggrieved by an order pertaining to any matter within jurisdiction of the Tribunal, may make an application to the Tribunal for the redressal of his grievance.

(3) On receipt of an application under Sub-section (2), the Tribunal shall, if satisfied after such inquiry as it may deem necessary that the application is a fit case for adjudication by it, admit such application, but where the Tribunal is not so satisfied, it may summarily reject the application after recording its reasons:

Provided that no application before the Tribunal seeking a claim of grant-in-aid against the State Government or any officer or authority of the said Government shall be admitted, unless the applicant has served a notice on the State Government or concerned officer or authority furnishing the details of the claim and a period of two months has expired from the date of receipt of the said notice by the State Government or, as the case may be, the concerned officer or authority.

(4) The Tribunal shall not admit an application under Sub-section (2), unless it is made within one year from the date of expiry of the period of two months referred to in Sub-section (3).

(5) The Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to any rules made by the Government, shall have power to regulate its own procedure.

(6) All the proceedings before the Tribunal shall be deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 of the Indian Penal Code, 1860.

9. Initially, the point would have been set at rest on the factual aspect discerned from the record that on an earlier occasion, the appellant approached the Tribunal wherein the orders were passed and the impugned order being resultant effect thereof, it is impermissible for the litigant to choose the forum of his convenience ignoring the Statute and the provisions contained therein. The point involved in the instant writ appeal relates to a harmonization of the expressions-"eligibility" and "entitlement" in conjunction with the payment or non-payment of grant-in-aid.

10. Mr. Mishra, learned Senior Counsel fervently submits that Section 7-C of the O.E. Act was introduced by way of an Amendment Act No.14 of 1993 to extend grant-in-aid to non-Government Institutions on account of placement of teachers and the payment of salary in commensurate with the others subject to the economic capacity of the State. According to Mr. Mishra, the use of "comma" (punctuation) cannot be a sole determinant factor in ascertaining the intent and the purport underlining the introduction of the said provision and, therefore, the Court must bear in mind the object and purpose envisaged from the decision of the Government or the Cabinet taken in this regard. According to Mr. Mishra, the eligibility and/or entitlement is intricately connected with the payment or non-payment of grant-in-aid and, therefore, the jurisdiction exercised by the Tribunal under Section 24-B of the O.E. Act must be confined to a grand-in-aid, which necessarily excludes such jurisdiction and the competence of the Tribunal in relation to any other disputes being outside the purview thereof. Mr. Mishra arduously submits that expression "relating to or

connected with" appearing in sub-section (1) of Section 24-B of the O.E. Act should be ascribed a reasonable meaning relatable to the eligibility, entitlement, payment or non-payment of grant-in-aid, which denuded the Tribunal to adjudicate any other disputes outside the ambit of the grant-in-aid. He thus submits that there is no ambiguity in perceiving the intent and the purport of applicability of the said provision in ascertaining the jurisdiction, the power and the authority exercised by the Tribunal under the aforesaid provision and, therefore, the writ petition assailing the order of the Director, Education Department is maintainable and should not be thrown out solely on the ground of an alternative efficacious remedy provided in the Statute.

11. Learned Additional Government Advocate for the State however took a dissenting opinion on the interpretation of the words, the expressions and the language employed in Sub-section (1) of Section 24-B of the O.E. Act as each word or expression used therein has to be given a proper meaning and the moment the intention is manifested providing an unambiguous meaning, the Court should not employ the interpretative tools in giving a meaning not perceived at the time of its introduction in the Statute. According to learned AGA, impugned orders sees the birth therefrom. According to him, the purpose of constituting a Tribunal and bestowing the authority powers and jurisdiction should not be abridged by taking a view, which is not in consonance therewith.

12. On the conspectus of the facts adumbrated hereinabove and the points so urged, the pivotal issue as narrated in the opening paragraphs of this Judgment is required to be determined not only on a meaningful reading of the words or expressions used in the said statutory provision but also to be gathered from the legislative intent, more particularly, the Bills and the Cabinet decisions of the State Government.

13. The Grant-in-Aid was envisioned and felt inevitable by the Government as the educational institution set up within the State was felt inadequate to cater the need and in order to ratify its commitment in providing the quality education as ordained in the Constitution of India, the Government decided to extend grant-in-aid subject to its economic capacity to the private educational institutions within the State. Despite such aid being granted to such private educational rts continued pouring into the Government that there is no uniform standard adopted by the educational institutions in appointing the teachers as the Managing Committees or the Governing Bodies of such institutions were indiscriminately appointing the teachers without following the standards or the procedures relating thereto. In order to put an end to such perceived discrepancies, it was felt that the standard and the procedures as provided by the other institutions including the University Grants Commission should be strictly followed. Despite such decision having taken, a spate of litigations were pouring in the docket of the High Court concerning the eligibility, the entitlement and the payment or non-payment of the grant-in-aid, which led the Government to establish a special forum to adjudicate such issues not only to ease out the burden of the High Court in dealing with such issues in exercise of writ jurisdiction but also to provide a specialized forum by constituting a Tribunal. Based upon such infirmities, Section 24-B of the O.E. Act was introduced into the said Act by way of an amendment not only encompassing the jurisdiction, powers and the authority to adjudicate all disputes and differences between the educational institutions, the State or its officers or authority but also the eligibility,

entitlement and payment and non-payment of the grant-in-aid, which are intricately related to the educational institutions or any teachers or the employees of such institutions.

14. A point is taken that the “comma” (punctuation) used in the said Section is distinctive in the sense that the eligibility or entitlement must be construed in conjunction with the grant-in-aid. It is sought to be contended that the punctuation cannot be used as an effective tool of interpretation but are used to effectuate the clarity in languages. We are not unmindful of the proposition that the punctuation though one of the cannon of interpretation of the statutory provisions, but may at times, has an infallible guide resulting into an ambiguity to be brought in juxtaposition with the legislative intent.

15. The apex Court in State of West Bengal v. Swapan Kumar Guha reported in (1982) 1 SCC 561 in explicit, lucid and unambiguous term held that the grammar and/or the punctuation are hapless victims of a pace of life, yet have been placed as a matter of convenience and meaningfulness. It is further held that any clause that follows with “comma” often brings a sense of doubt and, therefore, it would be appropriate for the Court / Tribunal to ascertain the true meaning of the provision with due regard to the substance of

the matter emerging from the object and the purpose of the Act.

16. The importance of the “comma” used in the statutory provision

is succinctly dealt with in a subsequent decision of the Supreme Court

in case of Bihar State Electricity Board v. Pulak Enterprises

reported in (2009) 5 SCC 641 in the following:

“40. Counsel for the writ petitioners referred to the “comma” occurring prior to the words “out of”. Though sometimes presence or absence of comma has been taken aid of in interpreting the particular provision, the ordinary rule is that punctuation mark is a minor element in the interpretation of statute (see Aswini Kumar Ghose v. Arabinda Bose [(1952) 2 SCC 237 : AIR 1952 SC 369]). More so, in the case of subordinate legislation.”

What can be culled out from the aforementioned report that the significance of “comma” used in a statutory provision though a minor element in the interpretative process, but at times, may be used as useful tool to ascertain the true meaning of the provision flowing from the object and purpose of the Act. The support can be lent from various discussions and discourse undertaken in the Cabinet meeting leading to the amendment to be brought to enlarge the scope, authority and the jurisdiction of the Tribunal in dealing with the cases concerning the grant-in-aid to the institutions or the individual teaching and non-teaching employees.

17. We had a privilege of perusing the memorandum issued by the Commissioner-cum-Secretary to the Government for proposal to bring an amendment in the Odisha Education Act, 1969 in order to regulate the payment of the grant-in-aid to the private educational institutions and the

matters connected therewith. The Bill was placed before the Cabinet in the meeting dated 7th September, 1997 and a decision was taken to constitute a Cabinet Sub-committee to formulate appropriate proposals with an intent to streamline the payment of grant-in-aid to private educational institutions. The Sub-committee of the Cabinet recommended the amendment to be brought in the said Act upon taking into consideration the spate of litigations filed before the High Court concerning the eligibility of payment or non-payment of grant-in-aid in paragraph-8 of the Cabinet memorandum of the even date in the following:

"(8) It is observed that there are a large number of cases in the form of writ petitions filed by employees of the Non-Government colleges and schools claiming that their institutions or posts should be brought within the grant-in-aid fold. Attending to such large number of cases on time has become well-nigh impossible. Both Higher Education and School & Mass Education Departments and the Directorates are at present crushed under the burden. There is hardly any time left for long-term, even medium term, planning for the development of education and measures necessary for ensuring quality of education. Experience reveals that large number of cases are being filed before the Hon'ble High Court invoking its extraordinary jurisdiction in the matter of dispute relating to eligibility of payment or non-payment of grant-in-aid. As a result Hon'ble High Court is unnecessarily burdened with large number of such cases and it is desirable that the cases filed in the High Court should be reduced through a process of screening at the lower level. It would, therefore, be appropriate to enlarge the jurisdiction of the Educational Tribunal constituted under section 24-A of the Orissa Education Act, 1969 s■ that such dispute can be adjudicated by the said Tribunal. It is proposed that the Tribunal may adjudicate the followings:

(i) (a)Disputes relating to eligibility of an educational institution and/or of teaching and non-teaching staff of educational institution to receive grant-in-aid.

(b) Any dispute or difference between the managing committee or the governing body or any employee of any private educational institution and the State Government or any authority which is connected with the grant-in-aid.

(ii) No petition before the Education Tribunal seeking to make a claim against the Government or any other authority of Government shall be entertained unless the petitioner has served a notice on the concerned authority furnishing the details of the claim and a period of 2 months has expired from the date of receipt of that notice by the said authority or Government, as the case may be.

(iii) Any person aggrieved by an order of the Tribunal including the Government may prefer an appeal before the High Court within 60 days."

Ultimately, the proposal was mooted out to amend Section 7-B and 7-C of the O.E. Act and also to insert new Sections as 24-B and 24-C to give effect to the proposal as above. The Odisha Education (Amendment) Bill, 1998 was placed on the floor of the House of the Assembly and after having passed by majority, the Odisha Education (Amendment) Act, 1998 received assent of the

Governor on 2nd April, 1998 and was published in the Odisha Gazette on 7th April, 1998.

18. The conjoint reading of the aforementioned factual events leading to incorporation of Section 24-B of the Act manifestly indicates the intention of the Legislators in bringing such amendment in relation to a dispute concerning the eligibility of not only the educational institution, but also of teaching and non-teaching staff of the institution to receive grant-in-aid. Such being the manifest intention apparent from the object and purpose underlining the incorporation of a newly inserted Section 24-B removes any doubt or ambiguity by using the punctuation after “eligibility” and “entitlement” before “payment or non-payment of grant-in-aid” which is relatable to the eligibility towards the grant-in-aid. The grant-in-aid as evident from the proposal of the Sub-committee includes the entitlement and also eligibility of a teaching or non-teaching staff to get the grant-in-aid, which in unambiguous term includes the salary attached to the post. Thus, the denial of payment of the salary and also the approval to the post, which is intricately and intrinsically connected to the payment of the salary, comes within the purview thereof. Any other meaning assigned to the provision contained under Section 24-B of the O.E. Act by giving due importance to the punctuation and ascribing the meaning in segregation shall be opposed to the legislative intent and purpose and object for bringing the said provision by way of an amendment shall be meaningless. Section 7-C of the said Act, which was also amended contemporaneously with the insertion of Section 24-B, is exposit of such intention that the salary cost or any other expenses made by the private educational institutions or for any post or to any person employed in such institutions comes within the ambit of grant-in-aid.

19. Having held so, let us now revert to the facts involved in the instant case in pursuit of determining whether the judgment of the learned Single Judge in relegating the appellant to the Education Tribunal warrants any interference.

20. As indicated hereinbefore, the appellant, who was admittedly appointed as a Demonstrator by the Governing body of the college until he was permitted to hold the 7th post of Lecturer in Physics with effect from 6th August, 2000. Though the resolution was taken by the Governing body of the college to approve such promotion, but the Director of the Higher Education, Government of Odisha declined to grant such approval as the Demonstrator in direct payment scheme does not come within the purview of the initial appointment procedure prescribed in this regard. Though the appellant moved a writ petition challenging the said decision before this Court, but subsequently the issue was again activated by the Director by causing a letter to the Principal of the college to submit the relevant documents for verification. Subsequently, the Writ Court relegated the matter to the authorities as the appellant pleaded the act of discrimination that the similarly circumstanced people were granted post facto approval. Interestingly, the appellant approached the Tribunal as the authority remained silent and did not take any decision on the grievance petition, which was allowed in part directing the authorities to consider the claim of the appellant in the light of the observations made therein. The said order was passed on 23rd February, 2022 and attained finality as no challenge was made from any corner. Despite such specific direction to consider and dispose of the said grievance petition within a time frame, the authorities sat over the same for which an execution petition was filed before the Tribunal. During the pendency of the said execution proceeding, the decision was taken by the Director on 27th

March, 2025 and after noticing the aforesaid fact, the execution case was disposed of. Although the order dated 27th March, 2025 passed by the Director in terms of the direction passed by the Tribunal, the appellant challenged the said order before the learned Single Judge in a writ proceeding instead of assailing the same before the Tribunal. The learned Single Judge relegated the appellant to the Tribunal as the appellant cannot choose the forum at his convenience.

21. It is axiomatic to record that the appellant has been taking steps assailing the action of the authorities either by filing writ petition before this Court and at times before the Tribunal, which appears to be convenient to him. It is a matter of concern that such proceedings are being dealt with, obviously in absence of any plea relating to the jurisdiction. A litigant cannot choose the forum at his convenience as the jurisdictional issue strikes at the root and, therefore, it is the foremost duty of a Court while dealing any litigation to satisfy itself whether it has a jurisdiction to deal with the disputes/issues raised therein. Any uncertainty in relation to jurisdictional issue would not only invite an anomaly situation, but also conflicting decisions bringing uncertainty in its due implementation. Once the Legislature has provided a forum for redressal and/or determination of the disputes, it would be preposterous to suggest that such forum is a forum of convenience and does not limit or abridge the right of the litigant to approach another forum. Even if the power of High Court under Article 226 of the Constitution of India cannot be ousted being a basic structure of the Constitution, yet the Writ Court may decline to entertain the writ petition if a forum is provided in the statute, which is competent to deal with such issues within its folds. The order dated 27th March, 2025 was passed in due implementation of the direction issued by the Tribunal and, therefore, we do not find any infirmity in the impugned order, which relegate the appellant to move the forum provided under Section 24-B of the said Act.

22. We have discussed in extenso the scope and jurisdiction of the Tribunal constituted under Section 24-A of the said Act and the dispute comes within the four-corners of the said jurisdiction and, therefore, the challenge to the order dated 27th March, 2025 can be made by approaching the said Tribunal.

23. We, thus, do not find any infirmity and/or illegality in the impugned order. The appeal is, thus, dismissed.