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**ORISSA HIGH COURT : CUTTACK**

**W.P.(C) No.14619 of 2019**

In the matter of an Application under  
Articles 226 and 227 of the Constitution of India, 1950

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**1.** Bishwaranjan Pradhan  
Aged about 42 years  
Son of Sri Krushna Chandra Pradhan  
At present working as:  
Senior Technical Consultant  
Office of District Project Office  
Samagra Shiksha, Puri  
At/PO/District: Puri.

**2.** Sangran Keshari Prusty  
Aged about 27 years  
Son of Sri Pravakar Prusty  
At present working as:  
Technical Consultant  
Office of District Project Office  
Samagra Shiksha, Jagatsinghpur  
At/PO/District: Jagatsinghpur....

Petitioners

*-VERSUS-*

**1.** State of Odisha  
Represented though  
Chief Secretary-*cum*-Chairman  
Executive Committee  
OPEPA (Renamed as "OSEPA")  
At: Secretariat Building



PO: Bhubaneswar  
District: Khordha.

2. Development Commissioner-*cum*-  
Co-Chairman, Executive Committee  
OPEPA (Re-named as “OSEPA”)  
At: Secretariat Building  
PO: Bhubaneswar  
District: Khordha.
3. Secretary to Government  
School and Mass Education Department  
Odisha  
and  
Vice-Chairman, Executive Committee  
OPEPA (Renamed as “OSEPA”)  
At: Secretariat Building  
PO: Bhubaneswar  
District: Khordha.
4. Special Secretary to Government  
School and Mass Education Department  
Odisha  
At: Secretariat Building  
PO: Bhubaneswar  
District: Khordha.
5. State Project Director, OPEPA/OSEPA  
At: Shiksha Soudha, Unit-V  
Bhubaneswar  
District: Khordha. ... Opposite parties

***Counsel appeared for the parties:***

For the Petitioner : Mr. Budhadev Routray,  
Senior Advocate



along with  
Mr. Avijit Mishra, Advocate

For the Opposite parties : Mr. Satyabrata Mohanty,  
Additional Government Advocate

*P R E S E N T:*

**HONOURABLE  
MR. JUSTICE MURAHARI SRI RAMAN**

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**Date of Hearing : 27.11.2024 :: Date of Judgment : 11.03.2025**

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### **JUDGMENT**

Assailing the decision of the Government of Odisha in Department of School and Mass Education as reflected in Office Order No.16057— SME-MSSA-MSSA1-0084-2019/SME, dated 01.08.2019 (Annexure-17), the petitioners— Senior Technical Consultant and Technical Consultant of respective District Project Offices— have approached this Court to invoke extraordinary jurisdiction under the provisions of Articles 226 and 227 of the Constitution of India, with the following prayer(s):

*“Under these facts and circumstances it is most humbly prayed therefore that this Hon’ble Court may graciously be pleased to quash Order No. 16057, dated 01.08.2019 at Annexure-17 passed by Special Secretary to Government, School and Mass Education, Odisha wherein it has been directed to freeze the existing remuneration of*



*the members of the petitioner-association at the current level with effect from 31.03.2019,*

*And further be pleased to direct the opposite parties take necessary steps to revise the remuneration of the petitioners taking into account revised scale of pay granted to Government employees as per 7<sup>th</sup> Pay Commission, provision under 45(a) of Memorandum of Association (Rules & Regulations), Odisha Primary Education Programme Authority that “scale of pay in respect of posts to be created by the Executive Committee shall correspond either to the Central Government or State Government scale of pay”, principle of equal pay for equal work and the observations made in 36<sup>th</sup> Executive meeting of OPEPA/OSEPA held on 21.03.2018,*

*Or in the alternative pass any other order/orders deem fit and proper in this case.*

*And for the said act of kindness, the petitioner as in duty bound shall ever pray.”*

**Facts:**

- 2.** Facts, as outlined by the writ petitioners, reveal that the petitioner No.1 facing process of selection, being selected was appointed in the post “of Technical Consultant on contractual basis with consolidated pay of Rs.6,000/- in the District Project Office, Sarva Shiksha Abhiyan, Kandhamal *vide* Office Order No. 4454/OPEPA/03 dated 22.11.2003 issued by the opposite party No.5. Similarly, the petitioner No.2 was appointed in the post of Technical Consultant on contractual basis with consolidated pay of Rs.17,089/- in the District Project



Office, Sarva Shiksha Abhiyan, Baragarh *vide* Office Order No.6605/Estt/14 dated 08.08.2014 issued by opposite party No.5.

- 2.1. Odisha Primary Education Program Authority<sup>1</sup> (for brevity, “OPEPA”) came in to existence as a registered society in January, 1996 under the aegis of the School & Mass Education (S&ME) department of the Government of Odisha. OPEPA implements the flagship programme of Sarva Shiksha Abhiyan across the entire State, touching children studying in educational institutes related to Elementary Education. In a nutshell, the Organisation runs under the administrative control of School and Mass Education Department, Government of Odisha.
- 2.2. The OPEPA has been implementing different programmes like District Primary Education Programme-I (DPEP-I) and DPEP-II, Reconstruction of School Building Programme, Sarva Shiksha Abhiyan (SSA)<sup>2</sup>,

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<sup>1</sup> In Government of Odisha, School and Mass Education Department, Resolution No.11254— SME-FE-OES-0251-2018/SME, dated 24.05.2019, it has been stated as follows:

*“After merger of OPEPA and OMSM for better convergence and management of Elementary, Secondary and Higher Secondary Schools of the State, a new organisation namely, Odisha School Education Programme Authority (OSEPA) is created with the merger of the above two organisations.”*

<sup>2</sup> Article 21-A of the Constitution of India and the Right of Children to Free and Compulsory Education Act, 2009 incorporates the words ‘free and compulsory’. ‘Free education’ means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education. ‘Compulsory education’ casts an obligation on the appropriate Government and local authorities to provide and ensure admission, attendance and completion of elementary education by all children in the 6-14 age group. With this, India has moved forward to a rights based framework that casts a legal obligation on the



Rastriya Madhyamik Shiksha Abhiyan (RMSA), National Programme for Education of Girls at Elementary Level (NPEGEL), Kasturba Gandhi Balika Vidyalaya (KGBV) and Samagra Shiksha since last 22 years.

2.3. After OPEPA was formed, Odisha Primary Education Programme Authority Service Rules and Regulations 1996 (Annexure-B/4 of the counter affidavit) was framed in terms of Clause 5(n) of the Memorandum of Association of Odisha Primary Education Programme Authority read with Rule 36 of the Rules and the Regulations made thereunder.

2.4. The District Primary Education Programme (DPEP)-I which was a centrally sponsored project, started in the year 1995-96 in eight districts in the State of Odisha, came to be ceased in the year 2003-04. However, the District Primary Education Programme (DPEP)-II started in the year 2001-02 in other eight districts and the same continued till 2008-2009. As per sanction order issued by the Government of India *vide* Letter dated 15.11.1996

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Central and State Governments to implement this fundamental child right as enshrined in the Article 21A of the Constitution, in accordance with the provisions of the RTE Act. Sarva Shiksha Abhiyan (SSA) is implemented as India's main programme for universalising elementary education. Its overall goals include universal access and retention, bridging of gender and social category gaps in education and enhancement of learning levels of children. SSA provides for a variety of interventions, including inter alia, opening of new schools and alternate schooling facilities, construction of schools and additional classrooms, toilets and drinking water, provisioning for teachers, periodic teacher training and academic resource support, textbooks and support for learning achievement. These provisions need to be aligned with the legally mandated norms and standards and free entitlements mandated by the RTE Act. [See, [osepa.odisha.gov.in](http://osepa.odisha.gov.in)].



and Letter 22.11.2001, the grant was subject to the condition that the terms and conditions of services of the employees of the society would be normally according to the terms and conditions applicable to similar categories of employees in the State Government but not exceeding those admissible to the similarly placed in the Central Government.

2.5. The background history would suggest that OPEPA took up a centrally sponsored Project named as Sarva Sikhsya Abhiyan (hereinafter be called “SSA”) in the year 2002-03, which aimed at universalization of Elementary Education (Class-1 to Class-8) and to fulfil the constitutional mandate of providing free and compulsory education to the children in the age group 6-14 years in 30 districts of the State of Odisha. Engagements of employees were made following due procedure and they worked on payment of consolidated salary fixed for different posts. The employees, working in DPEP-I, were absorbed in SSA in the year 2003-04 and later, those working in DPEP-II were absorbed after closure of the same in the year 2008-09. After formation of OPEPA, the employees working under DPEP were brought in and additional employees were recruited by adhering to due procedure. The employees, working under the DPEP projects, have been working in SSA as of date.



2.6. The provision under Regulation 45(a) of Memorandum of Association (Rules & Regulations), OPEPA would transpire that “scale of pay in respect of posts to be created by the Executive Committee shall correspond either to the Central Government or State Government scale of pay”. As the same was not given effect to and the employees were being paid consolidated pay, Sub-Committee was constituted by the OPEPA for revision of remuneration of direct recruits with contractual position under the OPEPA. In the Meeting held on 23.05.2006, decision was taken to revise the remuneration of the employees of the OPEPA streamlined with the provisions of the Odisha Revised Scales of Pay Rules, 1998.

2.7. The recommendations of Sub-Committee dated 23.05.2006 was placed before the 23<sup>rd</sup> Executive Committee in the Meeting held on 05.12.2006. *Vide* item No.5, the recommendations for enhancement of remunerations of the employees were approved. In pursuance thereof, Office Order dated 25.01.2007 was issued by the opposite party No.5 where the scale of pay of the employees of the OPEPA was revised as per the Odisha Revised Scales of Pay Rules, 1998.

2.8. In the Meeting held on 05.12.2008, the Executive Committee extended the benefit of the consolidated remuneration of all contractual employees of OPEPA



(State Project Office and District Project Office) with effect from 01.04.2008.

2.9. Accordingly a decision was taken in the Meeting of 27<sup>th</sup> Executive Committee of OPEPA held on 16.08.2011 that the remuneration of contractual employees of the State Project Office as well as the District Project Office under project management was to be enhanced with effect from 01.08.2011. Furthermore, the employees were allowed to avail House Rent Allowance as would be applicable and the existing medical allowance. The contractual employees were also allowed 3% hike over the remuneration on yearly basis from 01.08.2012.

2.10. *Vide* Notification dated 29.07.2013, a Committee was constituted by the Government of Odisha in School and Mass Education Department to consider the grievances of the OPEPA Employees' Service Association regarding issues of the employees of OPEPA working in the State Project Office and the District Project Office in connection with the benefits and other matters relating to their service which was notified in the Odisha Gazette *vide* Notification dated 29.07.2013.

2.11. Governing Body of OPEPA in its Meeting dated 29.10.2013, presided over by the Hon'ble Chief Minister, Odisha and President, Governing Body, OPEPA, along with other matters, recommended as follows:



*“Item No. 5(i)—*

*On the proposal of formulating a career advancement policy for the staffs of OPEPA, the Hon’ble Minister, School & Mass Education Department expressed his satisfaction on the performance of the staffs of OPEPA in implementation of the various schemes of SSA and RTE and requested the House for favourable consideration. It was resolved that the matter may be examined by the Committee constituted earlier by Government under chairmanship of State Project Director, OPEPA and place before Executive Committee for necessary recommendation.”*

2.12. *Vide* Meeting held on 19.11.2013, the Committee constituted to look into various issues of OPEPA Employees Service Union in connection with the benefits and other matters relating to their service, discussed about regularisation of services of contractual employees of OPEPA. After thorough discussion and deliberation the Committee recommended to fix up the remuneration of different categories of employees of OPEPA at par with the initial pay structure including the D.A. of similar categories of posts in the State Government. Such decision was taken in consonance with the manner provided in Regulation 45(a) of Memorandum of Association (Rules & Regulations), Odisha Primary Education Programme Authority. It recommended for 2% annual enhancement of pay with effect from 01.01.2006 at par with State Government employees. Further it was



recommended that in the event of enhancement of D.A. by the State Government, the same would also be made applicable and the same would be added to the base remuneration of the employees of OPEPA. Besides, House Rent Allowance calculated as per Government prescribed norms, they would be entitled to other allowances including benefits under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. It was recommended to allow incentive @ 3% on the base remuneration to be paid on yearly basis. Employees who completed 6 years of satisfactory service as on 01.01.2014, the renewal of annual contract was stated to be dispensed with and they are allowed to continue till adverse is noticed.

2.13. *Vide* Item No.6:1 of Proceeding of the 30<sup>th</sup> Meeting of Executive Committee of OPEPA held on 06.03.2014, recommendations of the Committee constituted by the Government to look into the demands of the OPEPA Employees' Service Association were taken up and it was approved as follows:

*“The base remuneration of different categories of employees of OPEPA would be fixed at par with the initial pay structure of similar types of posts in the state government and with due recognition to the seniority, an annual incentive @2% on the base remuneration per completed year of service will be allowed counted from 01.01.2006 or from the date of joining whichever is later*



*as per the following statement". That vide proceeding of the committee meeting for assessment of performance & implementation of enhanced salary to contractual employees of OPEPA held on 06.09.2014 it was observed that the in the year 2013-14, Rs.2939.84 lakhs was spent towards salary for both State Project office and district project office. On fixation of revised pay of OPEPA employees, a total of Rs.3001.19 lakhs (approx) will be incurred as expenditure against the approved outlay of Rs.4674.70 lakhs which is within the Project Approval Board (PAB) approval in salary component under project management cost."*

2.14. Pursuant to such recommendation of the Governing Body and approval of the Executive Committee of OPEPA, Office Order No.7970, dated 20.09.2014 was issued by the opposite party No.4 wherein it was mentioned that the said revision of pay has been effected in pursuance of decision of the Executive Committee of OPEPA in its Meeting dated 06.03.2014, and the remunerations of contractual employees of the State Project Office and the District Project Offices under project management head have been revised, which was within the ceiling limit of management cost of Annual Working Plan and Budget, 2014-15 approved by PAB, Ministry of Human Resource Development, Government of India, Delhi.



2.15. While the matter stood thus, “Sarva Shiksha Abhiyan” got subsumed in “Samagra Shiksha”<sup>3</sup>. *Vide* Item No.9.1

3. Visiting webportal of “Samagra Shiksha, Department of School Education and Literacy, Ministry of Education, Government of India—[samagra.education.gov.in](http://samagra.education.gov.in)— the framework and the purport of Samagra Shiksha is couched in the following terms:

*“The Union Budget, 2018-19, has proposed to treat school education holistically without segmentation from pre-nursery to Class 12. Samagra Shiksha— an overarching programme for the school education sector extending from pre-school to class 12 has been, therefore, prepared with the broader goal of improving school effectiveness measured in terms of equal opportunities for schooling and equitable learning outcomes. It subsumes the three erstwhile Schemes of Sarva Shiksha Abhiyan (SSA), Rashtriya Madhyamik Shiksha Abhiyan (RMSA) and Teacher Education (TE).*

*This sector-wide development programme/scheme would also help harmonise the implementation mechanisms and transaction costs at all levels, particularly in using state, district and sub-district level systems and resources, besides envisaging one comprehensive strategic plan for development of school education at the district level. The shift in the focus is from project objectives to improving systems level performance and schooling outcomes which will be the emphasis of the combined Scheme along-with incentivizing States towards improving quality of education.*

*The Goal SDG-4.1 states that “By 2030, ensure that all boys and girls complete free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes. Further the SDG 4.5 states that “By 2030, eliminate gender disparities in education and ensure equal access to all levels of Education and vocational training for the vulnerable, including persons with disabilities, indigenous peoples and children in vulnerable situations.*

*The scheme envisages the ‘school’ as a continuum from pre-school, primary, upper primary, secondary to Senior Secondary levels. The vision of the Scheme is to ensure inclusive and equitable quality education from pre-school to senior secondary stage in accordance with the Sustainable Development Goal (SDG) for Education.*

*The major objectives of the Scheme are provision of quality education and enhancing learning outcomes of students; Bridging Social and Gender Gaps in School Education; Ensuring equity and inclusion at all levels of school education; Ensuring minimum standards in schooling provisions; Promoting Vocationalisation of education; Support States in implementation of Right of Children to Free and Compulsory Education (RTE) Act, 2009; and Strengthening and up-gradation of SCERTs/State Institutes of Education and DIET as a nodal agencies for teacher training.*

*The main outcomes of the Scheme are envisaged as Universal Access, Equity and Quality, promoting Vocationalisation of Education and strengthening of Teacher Education Institutions (TEIs).*

*The Scheme will be implemented as a Centrally Sponsored Scheme by the Department through a single State Implementation Society (SIS) at the State/UT level. At the National level, there would be a Governing Council headed by Minister of Education and a Project Approval Board (PAB) headed by Secretary, Department of School Education and Literacy. The Governing Council will be empowered to modify financial and programmatic norms and approve the detailed guidelines for implementation within the overall Framework of the scheme. Such modifications will include innovations and interventions to improve*



of the 35<sup>th</sup> Meeting of the Executive Committee of the OPEPA held on 02.03.2017, a change of nomenclature of the Odisha Primary Education Programme Authority (OPEPA) was effected and in its place, said Authority is renamed as the Odisha School Education Programme Authority (for brevity, “OSEPA”). While the Sarva

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*the quality of school education. The Department will be assisted by a Technical Support Group (TSG) at Educational Consultants of India Limited (EdCIL) to provide technical support in functional areas pertaining to access, equity and quality education by merging the TSGs of the Schemes of SSA, RMSA and TE. States would be expected to bring a single Plan for the entire school education sector.*

*The fund sharing pattern for the scheme between Centre and States is at present in the ratio of 90:10 for the 8 North-Eastern States viz. Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura and 3 Himalayan States viz. Jammu & Kashmir, Himachal Pradesh and Uttarakhand and 60:40 for all other States and Union Territories with Legislature. It is 100% centrally sponsored for Union Territories without Legislature. This is in accordance with the recommendations of the Sub-Group of Chief Ministers on Rationalization of Centrally Sponsored Schemes received in October, 2015.*

*The major interventions, across all levels of school education, proposed under the scheme are: (i) Universal Access including Infrastructure Development and Retention; (ii) Gender and Equity; (iii) Inclusive Education; (iv) Quality; (v) Financial support for Teacher Salary; (vi) Digital Initiatives; (vii) RTE Entitlements including uniforms, textbooks etc.;(viii) Pre-school Education; (ix) Vocational Education; (x) Sports and Physical Education; (xi) Strengthening of Teacher Education and Training; (xii) Monitoring; (xiii) Programme Management; and (xiv) National Component. It is proposed that preference in the interventions would be given to Educationally Backward Blocks (EBBs), LWEs affected districts, Special Focus Districts (SFDs), Border areas and the 117 Aspirational districts.*

*The main emphasis of the Scheme is on improving quality of school education by focussing on the two T’s— Teacher and Technology. The strategy for all interventions under the Scheme would be to enhance the Learning Outcomes at all levels of schooling. The scheme proposes to give flexibility to the States and UTs to plan and prioritize their interventions within the scheme norms and the overall resource envelope available to them. Funds are proposed to be allocated based on an objective criteria based on enrolment of students, committed liabilities, learning outcomes and various performance indicators.*

*The Scheme will help improve the transition rates across the various levels of school education and aid in promoting universal access to children to complete school education. The integration of Teacher Education would facilitate effective convergence and linkages between different support structures in school education through interventions such as a unified training calendar, innovations in pedagogy, mentoring and monitoring, etc. This single scheme will enable the SCERT to become the nodal agency for conduct and monitoring of all in-service training programmes to make it need-focused and dynamic. It would also enable reaping the benefits of technology and widening the access of good quality education across all States and UTs and across all sections of the Society.”*



Shiksha Abhiyan was implementing the project relating to students of Class-I to Class-VIII, but the Samagra Shiksha aims at implementing the project from Pre-Primary to +2 students in the State of Odisha.

2.16. The Executive Committee of OPEPA had its 36<sup>th</sup> Meeting on 21.03.2018, where certain proposals were placed which is discussed *infra*. The Executive Committee decided to examine the matter in the School and Mass Education Department in consultation with the Finance Department. *Vide* Item No.11.3, the Executive Committee made the following approval:

*“Renewal of TOR of employees.*

*It has been approved in the 35<sup>th</sup> Meeting of EC, OPEPA that the contractual employees those who have completed 06 years of satisfactory service as on 01.01.2014, the renewal of contract may be dispensed with and they may be allowed to continue till adverse is noticed. Further, as per provision of Rule 4(d) of OPEPA Service Rules and Regulations, 1996, “the appointment of officers/staff either on deputation or re-employment or on contract shall be initially for a period of 02 years extendable for further period depending upon their performance and continuity of the programme, by the Executive Committee.*

*On the basis of this a Committee constituted by Government of Odisha vide Government Notification No. 17364 dated 29.07.2013 and as per the kind approval of the 4<sup>th</sup> Governing Body under the Chairmanship of Hon’ble Chief Minister, Odisha recommended as stated above. Hence, it is proposed to renew the contract those*



*who have not completed 06 years of service as on 01.01.2014 and their renewal should be done as per previous practice. This has also been communicated to all esteemed members of EC as well as Administrative Department, Finance Department, Government of India and Chief Secretary, Chairman, EC, Odisha. This has also been confirmed by all concerns.*

*But now it is felt necessary that, all employees are also to be included in annual TOR for better HR management.*

*The matter was discussed and appraised to the Committee that no compliance has been made and no executive instruction has been issued in this regard. The Committee unanimously approved to reintroduce the TOR for all employees for better HR management as per earlier practice.”*

2.17. However, the opposite party No.4 issued an Office Order No. 16057, dated 01.08.2019, wherein it has been directed to freeze the existing remuneration of the petitioners and other employees of OPEPA at the current level with effect from 31.03.2019. Said Order dated 01.08.2019 reads thus:

*“The Odisha Primary Education Programme Authority (OPEPA) was constituted in the year 1996 under Societies Act, 1860. The Authority has been established to function as a social mission for bringing about a change in the basic education system. The current remuneration structure of persons engaged in the Society was finalised by the 30<sup>th</sup> Executive Committee (EC) constituted at the level of OPEPA and passed in the EC. However, Finance Department concurrence was not taken although the State*



*bears 40% as per the Scheme structure. Practically, the current contribution of the Centre would amount to much lower than 60%. However, the sharing pattern of the centre and the State since FY 2001-02 has been reduced from 85:15 to 60:40.*

*At present the employees of OPEPA are drawing their remuneration as per ORSP Rules, 2008 vide their Office Order No.7970 dated 20.09.2019 without the approval of the Government and concurrence of Finance Department.*

*Further, it is to mention that the employees of OPEPA are Schematic employees but they are drawing gross remuneration at a higher rate due to addition of certain perks which are not extended to any State Government employee. The dynamic D.A. structure twice a year is not availed by any schematic employee of the State Government. Due to gradual decrease in Central funding, the financial burden has also been increasing for the State Government.*

*After careful consideration, it has been decided by the Government to freeze the existing remuneration at the current level with effect from 31.03.2019.*

*The administrative department will take necessary steps to review the remuneration structure vis-à-vis the Finance Department guidelines. This Order will come into force with immediate effect.*

*This has been concurred in by the Finance Department in OSWAS file No. SME-MSSA-MSSA1-0084-2018.”*

2.18. The instant writ petition is directed against said Order dated 01.08.2019.

**Hearing:**



3. Pleadings, being completed and exchanged between the learned counsel for respective parties, on their consent, this matter is taken up for final hearing at the stage of admission.
- 3.1. Accordingly, heard Sri Budhadev Routrary, learned Senior Advocate appearing along with Mr. Avijit Mishra, learned Advocate appearing for the Petitioner and Sri Satyabrata Mohanty, learned Additional Government Advocate appearing for opposite parties.
- 3.2. On conclusion of hearing, the matter stood reserved for preparation and pronouncement of judgment.

***Rival contentions and submissions:***

4. Reiterating the facts as narrated in the writ petition, Sri Budhadev Routray, learned Senior Advocate appearing for the petitioner submitted that on the basis of grievance petition submitted by the contractual employees of OPEPA to the State Project Director, OPEPA, the Sub-Committee constituted by OPEPA for revision of remuneration of directly recruited contractual staff under OPEPA held Meeting on 23.05.2006, wherein the following was decided:

*“The Sub-Committee perused the Service Rules & Regulations 1996 of OPEPA and proceedings of the 15<sup>th</sup> Executive Committee meeting and found that Posts like FO Level-II, Media Consultant, Asst. Director (Girls*



*Education), System Administrator, Network Administrator, Internal Auditor, Sr. Asst. Librarian, Zonal Coordinator and Programme Associate (under 'NPEGEL) were not created at the time of finalization of Service Rules & Regulations, 1996 of OPEPA. Considering the workload & business of OPEPA, the Executive Committee considered creation of above posts and finalized consolidated pay against each post. Since such type of posts are not made available in Orissa Govt. Establishment, the committee taking into consideration of consolidated pay given by Executive Committee, fitted those posts in the identical pay scales available in Orissa Revised Scales of Pay Rules, 1998 as given below:*

<i>Sl. No.</i>	<i>Name of the posts created by EC</i>	<i>Consolidated pay allowed by EC (In Rs.)</i>	<i>Fitted in Revised Scale of Pay Rules, 1998</i>
1	<i>FO Level-II</i>	<i>10500/-</i>	<i>8000-275-13500</i>
2	<i>Media Consultant</i>	<i>7590/-</i>	<i>5500-175-9000</i>
3	<i>Asst. Director (Girls Education)</i>	<i>10000/-</i>	<i>6500-200-10500</i>
4	<i>System Administrator</i>	<i>6000/-</i>	<i>5000-150-8000</i>
5	<i>Network Administrator</i>	<i>6000/-</i>	<i>5000-150-8000</i>
6	<i>Internal Auditor</i>	<i>8000/-</i>	<i>5500-175-9000</i>
7	<i>Sr. Asst. Librarian</i>	<i>4700/-</i>	<i>4750-125-7500</i>
8	<i>Librarian</i>	<i>6000/-</i>	<i>5000-150-8000</i>
9	<i>Zonal Coordinator (NPEGEL)</i>	<i>12000/-</i>	<i>8000-275-13500</i>
10	<i>Prog. Associate (NPEGEL)</i>	<i>9000/-</i>	<i>6500-200-10500</i>

*Rule 9(a) in Chapter-III of Orissa Primary Education Programme Authority (OPEPA) Service Rules & Regulations 1996 provides that the directly engaged staff appointed on fixed sum shall draw the fixed amount after they join their post and shall continue to draw the same*



*until the amount is revised by the Executive Committee. No dearness allowance shall be paid in these cases. The 16<sup>th</sup> Executive Committee have decided for payment of consolidated remuneration to the contractual staff of OPEPA engaged at State Project Office and District Project Offices of SSA/DPEP districts.*

*After detailed discussion and thorough examination of pay/remuneration structure of State Project Office, SSA/DPEP, West Bengal, Tamil Nadu State Mission of Education for All, Uttar Pradesh Rajya Pariyojana Karjyalaya, Maharashtra Prathamik Shikshan Parishad, the Committee recommends that:*

- 1) The post of System Analyst (SA) shall be re-designated as Asst. Director(MIS) equivalent to other posts of Asst. Directors in OPEPA in view of the importance of Management Information System and present work load in OPEPA.*
- 2) Consolidated pay of all officers of OPEPA engaged on contract basis under Group-B, C & D will be fixed @150% of the basic pay of the pay scale applicable to State Govt. employees of equivalent post/cadre in the existing pay scales (Orissa Revised Scales of Pay Rules 1998) as in Annexure-II.*
- 3) The directly engaged Officers in Group B,C & D will get HRA as per the Finance Department Office Memorandum in force.*
- 4) No Medical Allowance shall be given to the contractual staff.*
- 5) Annual increase @ 2% of consolidated pay will be given to the directly recruited Officers in Group B,C & D subject to review of performance.*



- 6) *Consolidated remuneration of the existing directly recruited Officers in Group-B,C &D shall be fixed giving lump sum of Rs.300/-, Rs.250/- & Rs.200/- over and above of the consolidated pay respectively to the Group B,-C & D categories of officers:*

*The revision of pay/remuneration of Officers of OREPA in Group B,C & D categories directly recruited on contract basis shall be given effect from 1.4.2006.*

*The Executive Committee may consider the recommendation of Sub-Committee regarding revision of pay/remuneration and other allowances of the Officers of Group B, C & D categories in the State Project Office, District Project Offices of DPEP/SSA districts and Zonal Office (NPEGEL). The financial implication on revision of the consolidated pay/remuneration has been worked out at Annexure-III which is within the 6% of the management cost of the approved Work Plan & Budget.”*

- 4.1. In the 23<sup>rd</sup> Executive Committee, the representation of contractual employees of OPEPA was considered and *vide* Office Order No.543/Estt/07, dated 25.01.2007 revision of consolidated remuneration structure has been laid down as follows:

*“1. To have one category of Group ‘B’ Officers and six categories of Group ‘C’ Officers and one category under Group ‘D’ Officers for State Project Office. Similarly five categories of Officers under Group ‘C’ and one category for Group ‘D’ Officers for District Project Offices under DPEP/SSA. For Zonal office at Rayagada it has been decided to have two categories of Officers one each of Group ‘B’ & ‘C’.*



2. To grant House Rent Allowances of 10% of the consolidated remuneration for the State Project Office Staff, Staff of District Offices, Puri, Cuttack & Sambalpur. For all other staff of District Project Offices and Zonal Office under NPEGEL at Rayagada 7.5% of the basic consolidated remuneration.
3. To maintain a priority among the staff, Officers who have joined in 2003 will get extra remuneration on the basic of their seniority over those who have joined in 2004 & 2005.
4. To grant an annual increase of 2% of the consolidated remuneration to the disengaged staff subject to review of their performance.
5. The revision of remuneration structure of all officer/staff directly engaged will be given effect from 01.04.2006.

The details of revised remuneration structure are given at Annexure 'A'.

The remuneration structure of different Group 'B', 'C' and 'D' Officers of State Project Office will be prepared by the Establishment Section and then it will be counter signed by Finance Officer, OPEPA (Sri A.K. Dhal) to avoid any wrong calculation. Similarly, revised remuneration structure of District Project Offices will be prepared by the District Project Office and then submit to the State Project Office for countersignature by Finance Officer. For Zonal Office under NPEGEL at Rayagada, Zonal Coordinator will prepare the revised remuneration structure of the Zonal Office and then submit to the State Project Office for countersignature by Finance Officer. After receipt of the



*countersigned revised remuneration calculation sheet, the District Project Office and Zonal Office under NPEGEL at Rayagada will draw the remuneration of the contractual staff.*

*Calculation of revised consolidated remuneration shall be prepared in the prescribed format as at Annexure-B.”*

4.2. In the Meeting of 4<sup>th</sup> Governing Body of OPEPA held on 29.10.2013, being presided over by the Hon’ble the Chief Minister of the Odisha and President of Governing Body, OPEPA, the following decision was taken:

- “(i) On the proposal of formulating a career advancement policy for the staff of OPEPA, the Hon’ble Minister, School & Mass Education Department expressed his satisfaction on the performance of the staff of OPEPA in implementation of the various schemes of SSA and RTE and requested the House for a favourable consideration. It was resolved that this matter may be examined by the Committee constituted earlier by the Government under the Chairmanship of State Project Director, OPEPA and place before the Executive Committee for necessary recommendation.*
- (ii) Dr. Pranati Panda, Professor of NUEPA suggested that the job and responsibility of the educational administrators should be clearly defined.”*

4.3. It is pointed out by learned Senior Counsel that in the 4<sup>th</sup> Governing Body Meeting of OPEPA as many as 24 Members were present and participated. One of the



Members as shows in Annexure-A of the said proceedings reflects as follows:

<i>Sl. No.</i>	<i>Name</i>	<i>Designation</i>	<i>Member</i>
***	***	***	***
4	Sri Upendra Nath Behera, IAS	Additional Chief Secretary to Govt., Finance Department, Govt. of Odisha	Member
***	***	***	***

4.4. He went on to submit that the remuneration which the petitioners are getting today was recommended by the 4<sup>th</sup> Governing Body Meeting of OPEPA, which was presided over by the Chief Minister, Odisha on 29.10.2013 and again the same was further recommended by the Special Committee *vide* Meeting dated 19.11.2013 and finally the same was approved by 30<sup>th</sup> Executive Committee Meeting of OPEPA on 06.03.2014. The 30<sup>th</sup> Executive Committee “was presided over by the Chief Secretary-*cum*-Chairman OPEPA and the decision to extend career advancement was taken keeping in terms of Regulation 45(a) of Memorandum of Association (Rules and Regulations), Odisha Primary Education Programme Authority.

4.5. It has been urged that at present the petitioners are getting much less remuneration than that of the State Government employees working in the similar positions. As the impugned Office Order (Annexure-17) has been



passed by an incompetent authority and without taking into account the provisions contained in the Memorandum of Association, the reasons mentioned in the said order cannot be countenanced.

4.6. It is averred that since responsible officer of the Finance Department represented in the Meeting, the impugned Office Order dated 01.08.2019 *vide* Annexure-17 showing that the employees of the OPEPA were drawing remuneration as per the Odisha Revised Scales of Pay Rules, 2008 without approval of the Government and concurrence of the Finance Department is unwholesome and a myth.

4.7. Advancing further argument, learned Senior Advocate Sri Budhadev Routray referring to Annexure-12, *i.e.*, the proceeding of the Committee Meeting held on 19.11.2013 submitted that conscious decision was taken after discussion and deliberation to fix up the remuneration of different categories of the employees of the OPEPA at par with the initial pay structure including the D.A. that is extended to similar nature of posts in the State Government. The relevant portions of said proceeding, as referred to by Sri Budhadev Routray, learned Senior Advocate, reflects as follows:

“\*\*\*



2. *Implementation of Career Advancement Policy and enhancement of salary at par with State Govt. employees.*

*There is a provision under 45(a) of Memorandum of Association (Rules & Regulation), Odisha Primary Education Programme Authority that “scale of pay in respect of posts to be created by the Executive Committee shall correspond either to the Central Government or State Government Scale of Pay”. Accordingly, under the Odisha Primary Education Programme Authority Service Rules & Regulations, 1996, the staffing pattern for the State Project Office as well as the District Project Offices has been prescribed with the scale of pay which was equivalent to similar types of staff in the State Govt. From time to time as per the decision of the Executive Committee, the scale of pay of OPEPA has been enhanced to have some type of parity with the scale of pay of the State Govt. employees. It was discussed and appreciated that the employees are recruited by following the due recruitment procedure and highly qualified persons have been engaged in the project. Further, the successful implementation of SSA and the different requirements of Right to Education Act is attributable to the sincere, efficient & dedicated discharge of duties by the project staff both at the State level as well as at the field level. So, payment of remuneration less than what has been paid to similar types of posts in the State Government will be injustice to the employees of OPEPA. Further, there is no promotion, no career advancement policy, no periodical Dearness Allowance available to them as are enjoyed by the State Government employees. The Committee after*



*thorough discussion and deliberation recommends to fix up the remuneration of different categories of employees of OPEPA at par with the initial pay structure including the DA of similar types of posts in the State Government as per statement (Annexure-B).*

- 2.1. There are many staff in the project who have put in years of service. With due recognition to their seniority, it is also recommended to allow an annual increment at the rate of 2% per completed year of service. Since the State Government pay structure as per the Scale of Pay 2008, effective from 01.01.2006 is recommended to the OPEPA employees, the seniority for the purpose of 2% annual enhancement will be applicable from 01.01.2006.*
- 2.2. To have parity with the salary structure of State Government employees, it is also recommended that whenever there is any enhancement of DA by the State Government that will also be allowed to the OPEPA employees. This enhancement will be added to the base remuneration of OPEPA employees. The HRA will be calculated as per the Govt. prescribed rate applicable from place to place. In addition to the above, the other allowances availed by OPEPA employees & EPF as per EPF & MP Act will also be provided.*
- 2.3. Besides, it was also recommended to allow annual incentive @ 3% on base remuneration to be paid on yearly basis.*
- 2.4. It was also discussed that under the Project Management Head of the SSA Budget, sufficient fund is available to meet the additional requirement*



*towards enhancement on the existing remuneration. A comparative statement of last two year budget provision & expenditure incurred under salary head of project management is annexed as Annexure-C.*

2.5. *It is also recommended that in respect of employees, who have completed 6 years of satisfactory service as on 01-01-2014, the renewal of annual contract may be dispensed with and they may be allowed to continue till adverse is noticed.*

2.6. *The individual pay fixation will be made at SPO level which will be countersigned by Additional Director (General) and FA & CAO, OPEPA. Further, the committee recommended that in case of any anomalies in pay fixation in future, a fitment committee may be constituted at the level of SPD, OPEPA.”*

4.8. In 30<sup>th</sup> Executive Committee Meeting of OPEPA held on 06.03.2014 (Annexure-13) after deliberation, it was decided to implement Career Advancement of OPEPA employees with effect from 01.03.2014. In said meeting, the base remuneration of different categories of the OPEPA was fixed at par with initial pay structure of similar types of posts in the State Government. In the Committee Meeting held on 06.09.2014 it was unanimously agreed to implement the decisions of 30<sup>th</sup> Executive Committee meeting held on 06.03.2014. The remuneration of contractual employees of the State Project Office and the District Project Office under the Project Management Head has been revised under the



ceiling limit of management cost of AWP & Budget 2014-15 duly approved by PAB, MHRD, Government of India, New Delhi, *vide* Office Order No.7970/Estt./14, dated 20.09.2014 issued by the State Project Director, OPEPA.

4.9. In 36<sup>th</sup> Meeting of the Executive Committee of OPEPA held on 21.03.2018, the following was discussed:

\*\*\*\*

9. *Enhancement of salary/remuneration structure of employees working under RTE-SSA & KGBV.*

(A) *Modification of Salary Structure of employees of OPEPA engaged under Project Management Head of RTE-SSA:*

*The employees engaged under OPEPA Project Management Heads at State and District level are availing Base Pay + GP + DA + Other allowances as available to their counterpart at Government level as per the decision of 30<sup>th</sup> Meeting of EC, OPEPA held on 06.03.2014 w.e.f. 01.04.2014. They are also drawing the enhanced DA as enjoyed by Government employees from time to time. In the meanwhile, Government of Odisha has allowed salary as per recommendation of 7<sup>th</sup> pay commission. Hence, for employees engaged under Project Management Head at State and District level, a conscious decision may be taken to avail the remuneration on the basis of parameters fixed by the Government of Odisha. Necessary budgetary provision has already been made by the PAB, Government of India under SSA during 2017-18 following due procedure.*



*The EC may kindly consider the proposal of enhancing the salary of employees working under Project Management at State and District level after which the same will be placed before PAB, Government of India for necessary approval in Annual Work Plan and Budget, 2018-19.*

*This was discussed and committee decided to examine the matter in Govt. in S & ME Deptt. In consultation with Finance Department.*

*(B) Enhancement of salary/remuneration staffs engaged under different Programme Heads.*

*Different Memorandums have been received from the Employees Union regarding enhancement of salary etc. from the Block level employees, employees of RP(CWSN), Part Time Instructor, KGBV & Residential Hostel employees and Multilingual Instructors. The details of demands, present remuneration structure have been enclosed as at Annexure-10.*

*Hence, for aforementioned employees a conscious decision may be taken by EC as per the budgetary provision made in AWP & B and approval of PAB subject to actuals.*

*This was discussed and following decisions were taken.*

*The matter relating to existing remuneration of employees working under SSA at State, District and Block Level was discussed and the committee suggested to put up the matter before Govt. in S & ME to examine in consultation with Finance Department relating to existing remuneration structure of SPO, DPO and Block Level employees*



*and the basis on which SPO and DPO employees are now getting their remuneration at par with their counter parts of State Govt. as per the recommendations of 6<sup>th</sup> Pay Commission.*

*The committee also suggested to conduct the Human Resources audit to examine the essential and non-essential components, performers and non-performers of the project in order to minimise the man power. The committee also suggested to avoid automatic assumption of approval of Executive Committee on various issues relating to financial in nature without concurrence of F.D. Since invariably there is 40% share of Govt. of Odisha in SSA Project and Govt. have to shoulder the entire liability after closure of the project.”*

4.10. Learned Senior Advocate would strenuously argue that the Finance Department having been consulted at each stage of decision making process, the Office Order issued by the Special Secretary to Government in Anneuxre-17 stating that the OPEPA employees have been drawing remuneration “without approval of the Government and concurrence of Finance Department” *vide* Office Order No. 7970/Estt./14, dated 20.09.2014 is far from truth.

4.11. Referring to Memorandum of OPEPA, learned Senior Advocate submitted that the Executive Committee is well defined and being delegated and vested with powers to take decision(s), the State Government cannot sit over the decision of the Executive Committee and review the



benefits already extended to the employees of the OPEPA by issuing of Office Order dated 01.08.2019.

5. *Per contra*, valiant attempt was made by Sri Satyabrata Mohanty, learned Additional Government Advocate appearing for the opposite parties to justify the action of the Government in School and Mass Education Department in issuing Office Order dated 01.08.2019 under Annexure-17 to freeze the remuneration with effect from 31.03.2019 (retrospectively), has taken this Court to Memorandum of Association (Annexure-A/4 enclosed to the counter affidavit) whereby Clause 7 thereof which in specific terms empowers the State Government and the Central Government to appoint one or more persons to review the work and progress of the OPEPA and to hold enquiries into the affairs thereof. Making further reference to said document, he has relied on Clause 21 thereof to contend that the Central Government and the State Government were required to be Members of the Executive Committee.

- 5.1. Sri Satyabrata Mohanty, learned Additional Government Advocate laid stress on paragraph 3 of the counter affidavit, which is extracted hereunder:

*“That, it is humbly submitted that the prayer of the petitioners in the writ application is not sustainable in the eye of law. The decision vide its Order No.16057, dated 01.08.2019 even though communicated by the Special*



*Secretary to Government, School and Mass Education Department, but this is the decision of the Government taken with the concurrence of the Finance Department. It may not be out of place to submit that the decision dated 01.08.2019 is basically an outcome of the defects pointed out by the Government of Odisha, Finance Department. The petitioners have failed to implead the Finance Department as a party to this writ application even though they assail the Office Order dated 01.08.2019 and described in the body of the writ application that such a decision has been taken with the concurrence of the Finance Department and on the basis of the objection raised by the Finance Department. Accordingly, this is a case of non-joinder of necessary party for which this writ application is liable to be dismissed.”*

- 5.2. Laying emphasis on the stand taken by the Opposite Parties, learned Additional Government Advocate submitted that since the Finance Department and the Central Government are not made parties in the writ petition, the same deserves to be dismissed.
- 5.3. Continuing his argument he proceeded to submit on merit that since the Odisha Revised Scale of Pay Rules, 2008 is framed in exercise of powers conferred under proviso under Article 309 of the Constitution of India, the same is not applicable to the employees working under different schematic programmes. He then submitted that the contract of engagement of the petitioners provided for payment of remuneration and they are not employees under the Government rather



they were working under projects, which was jointly funded by the Central Government and the State Government.

- 5.4. In such view of the matter, it is vehemently contested by the opposite parties that the claim of the petitioners for availing benefits of the Odisha Revised Scale of Pay Rules is thoroughly misconceived and the writ petition is liable to be dismissed.

***Analysis and discussion:***

6. This Court first takes up the objection raised by Sri Satyabrata Mohanty, learned Additional Government Advocate with respect to non-joinder of parties.

6.1. Glance at the prayers made by the writ petitioner in the writ petition, it transpires that the petitioners have claimed relief against the State Government, but not against the Central Government.

6.2. Furthermore, the petitioners have questioned the propriety of Office Order dated 01.08.2019 issued by the Special Secretary to the Government of Odisha in Department of School and Mass Education, *vide* Annexure-17. The contentions and averments along with arguments of the petitioners would lead this Court to construe that such decision taken by the State Government in School and Mass Education Department



would nullify the effect of decisions taken in the different Executive Committee Meetings wherein different departments took part including the School and Mass Education Department and the Finance Department.

- 6.3. This Court is called upon to examine the sustainability of Office Order dated 01.08.2019 issued by the Special Secretary to Government of Odisha in Department of School and Mass Education.
- 6.4. Under such situation, the contention of the learned Additional Government Advocate that the writ petition is liable to be dismissed *in limine* for non-joinder of parties is repelled.
7. On scrutiny of minutes of different meetings as referred to and relied on by Sri Budhadev Routray, learned Senior Advocate appearing for the petitioners, it could not be disputed by the learned Additional Government Advocate appearing for the opposite parties that representatives of the Finance Department and the School and Mass Education Department were present. It is found that conscious decision were taken at each level in the presence of representative of the Finance Department besides other Departments such as, Higher Education Department, Panchayati Raj Department, Women & Child Development Department, School and Mass Education Department, Labour & Employment



Department, Elementary Education, Secondary Education, National Council of Educational Research & Training, National University of Education Planning & Administration, SC & ST Welfare Department, Government of India, Ministry of Human Resources Department.

- 7.1. As is revealed from Annexure-A to the proceeding, in the Meeting of the 4<sup>th</sup> Governing Body of OPEPA held on 29.10.2013, it was decided that the remuneration of employees of the OPEPA *inter alia* would be fixed “at par with the initial pay structure including the D.A of similar types of posts in the State Government”. It was also decided for enhancement of remuneration and to extend the benefit of career advancement to the employees of OPEPA.
- 7.2. At this juncture, it is relevant to take note of following relevant clauses/provisions of “Odisha Primary Education Programme Authority— Memorandum of Association” as made available at Annexure-A/4 of the counter affidavit:

*“Odisha Primary Education Programme Authority  
Memorandum of Association*

4. *Objects:*

*The Orissa Primary Education Programme Authority  
shall act as an autonomous and independent body*



*for implementation of the Orissa Primary Education Programme as outlined in the project document published by the Government of Orissa and its revised versions that may be prepared on the basis of joint review from time to time.*

5. *Functions:*

*In pursuance of the above objects, the function of the authority to be undertaken directly by Authority office through its staff or sponsored/ supported by it through other institutions, agencies or individuals, shall be as follows:*

*\*\*\**

*(e) to bring about effective decentralization in basic education by involvement of the people through a process of training and awareness building and creation of appropriate structures formal or otherwise.*

*\*\*\**

*(m) to create academic, technical, administrative and managerial and other posts in the Authority and to make payments for the same in accordance with the rules and regulations of the Authority.*

*(n) to make rules and regulations for conduct of the affairs of the Authority and add or amend, vary or rescind them from time to time.*

*\*\*\**

*(p) to incur expenditure after drawing of a budget and with due regard for economy and probity.”*



6. *Property and Assets:*

*The income and property of the Authority howsoever, derived shall be applied towards promotion of the objects thereof as set forth in this Memorandum of Association, subject nevertheless in respect of the expenditure of grants made by the Government of Orissa or Government of India, to such limitations as these Government may from time to time, impose. No portion of the income and property of the Authority shall be paid or transferred directly or indirectly, by way of dividend, bonus or otherwise, howsoever by way of profit, to the persons who at any time have been members of the Authority or to any of them or to any person claiming through them provided that nothing herein contained shall prevent the payment in good faith of remuneration to any member thereof or otherwise persons in return for any service rendered to the Authority for travelling allowance, halting or other similar charges.*

7. *Government Powers:*

*State Government and the Central Government shall jointly appoint one or more persons to review the work and progress of the Authority and to hold enquiries into the affairs thereof and to report thereon in such a manner as the Government may stipulate and upon receipt of any such report, the Government may jointly take such action and issue such directions as they may consider necessary in respect of any of the matters dealt within the report and the Authority shall be bound to comply with such directions. In addition, the Central Government or State Government may at any time issue directives or matters of policy to the Authority and*



*the latter shall be bound to promptly comply with such directives. Where there is divergence of views between the State Government and Central Government, in views of the Central Government would prevail.*

*“Odisha Primary Education Programme Authority  
Rules and Regulations*

*4. Definitions:*

- (v) ‘Executive Committee’ shall mean the body which is constituted as such under Rule 21 as the Executive Committee of the Authority.”*

*34. Powers and Function of Executive Committee:*

*It shall be responsibility of the Executive Committee to endeavour to achieve the objects of the Authority and to discharge all its functions. The Executive Committee shall exercise all administrative, financial and academic authority in this behalf, including powers to create posts of all description and make appointments thereon in accordance with the regulations.*

*35. The Executive Committee:*

*The Executive Committee shall have under its control the management of all affairs and funds of the Authority.*

*36. The Executive Committee shall have the powers and responsibilities in respect of the following:*

- (i) To frame regulations with the approval of the State Government.*



- (ii) *To frame bye-laws for the conduct of activities of the Authority in functioning as per its stated objectives.*
44. *The Executive Committee may delegate, to the Chairman, State Project Director or any of its members and/or to a Committee/Group or any other Officer of the Authority such administrative, financial and academic powers and impose such duties as it deems proper and also prescribe limitations within which the powers and duties are to be exercised or discharged.*

#### *Regulations*

45. *Subject to any specific directions or the Authority and keeping in view the overall advice of the Central Government and the State Government the Executive Committee shall have the powers to frame and amend regulations, not inconsistent with these rules for administration and management of the affairs of the authority and without prejudice to the generality of this provision, such regulations may provide for the following matter:*
- (i) *Service matters pertaining to officers and staff including creation of posts, qualifications, selection procedure, service conditions, pay and emoluments, disciplinary controls as well as classification, control and Appeal Rules.*
- (ii) *Important financial aspects including formulation of budget, purchase procedures, delegation of financial powers, investment of funds, maintenance of accounts and audit, T.A. Rules etc. and*



- (iii) *Such other matters as may be necessary for the furtherance of the objects and the proper administration of the affairs of the Authority.*

*Provided that for the purpose of this Rule, following Guidelines would be kept in view while creating the posts and formulating the Service and Financial Regulations:*

- (a) *Scales of pay in respect of the posts to be created by the Executive Committee shall correspond either to the Central Government or State Government scales of pay.*

#### *Bye-Laws*

#### *52. Funds of the Authority:*

*The funds of the Authority shall consist of the following:*

- (i) *Grants-in-aid made by the Central Government and the State Government for furtherance of the Objects of the Authority;*
- (ii) *Contribution from other sources and*
- (iii) *Income from assets of the Authority*
- (iv) *Receipts of the Authority from other sources and*
- (v) *Grants donations or assistance of any kind from foreign Governments and other external agencies, with prior approval of the Central Government.”*

7.3. Apposite it is to have glance at Odisha Primary Education Programme Authority— Service Rules and Regulations, 1996, as found place at Annexure-B/4 of the counter affidavit:



*“Odisha Primary Education Programme Authority  
Service Rules and Regulations*

2. *Scope:*

*These Regulations shall apply to the officers and staff of the Orissa Primary Education Programme Authority.*

4. *Category of Staff and Conditions of Selection:*

(a) *The employees shall be classified into Group A, B, C and D on the following basis:*

*Group A— All posts in the pay scale the maximum of which is not less than Rs.4000/-*

*Group B— All post in the pay scale the maximum of which is less than Rs.4000/- but not less than Rs.3500/-*

*Group C— All posts in the pay scales the maximum of which is over Rs.1025/- and less than Rs.3500/-*

*Group D— All posts in the pay scales the maximum of which is Rs.1025/- or less*

*Provided that in respect of retired officers appointed on contract basis with lump sum and on re-employment terms their classification will be as per the scale of pay from which they retired. All orderlies, peons, sweepers, shall be classified as Group-D irrespective of the fixed amount they get as remuneration and stenographers, data entry operator, office assistance and drivers appointed with lump sum amount shall be classified as Group-C irrespective of the amount they have draw as*



*monthly remuneration when the appointment is not against a time scale.*

*(b) Nature of Appointment:*

*All the appointments shall be temporary in nature and terminable either on close of the project work or close of the period for which their appointment is made whichever is earlier. Provided that the appointing authority has extended the period of appointment of an officer from time to time subject to the total period being co-terminus with the date of completion of the project as a whole or completion of a component of the project for which the appointment is made whichever is earlier subject to efficiency and good conduct assessed annually.*

*(c) Engagement of staff:*

*Engagement of staff by the Authority may be of following categories:*

*\*\*\**

*(ii) Engagement on contract:*

*\*\*\**

*(b) Engagement of directly recruited person on contract basis.*

*\*\*\**

*(e) The scale of pay prescribed for the posts to be filled up on deputation, on reemployment terms and on contract basis either directly recruited or retired persons on fixed lump sum amount to be fixed are given in Appendix-A. notwithstanding prescription of*



*these time scales the Authority reserves the right to appointing persons against these scale on lump sum amount.*

9. *Pay fixation:*

(a) *the directly engaged staff appointed on fixed sum shall draw the fixed amount after they join their post and shall continue to draw the same until the amount is revised by the Executive Committee. No dearness allowance shall be paid in these cases.”*

7.4. Raising the issue whether the decision taken in the 30<sup>th</sup> Executive Committee Meeting of OPEPA held on 06.03.2014 with respect to service conditions as well as the consequential action with regard to the career advancement of those employees of OPEPA could be set at naught by way of passing the impugned Office Order dated 01.08.2019, Sri Budhadev Routray, learned Senior Advocate made suave submission that Memorandum of Association (*vide* Annexure-A/4 to the counter affidavit) of the OPEPA, subsequently renamed as OSEPA, clearly envisages that the OPEPA/OSEPA shall act as autonomous and independent entity for implementation of the Odisha School Education Programmes. Clause 5(n) of the Memorandum of Association lays down that the function of the Authority *inter alia* is to frame Rules and Regulations for conduct of the affairs of the OPEPA. Said provision empowers the OPEPA to add or amend, vary or rescind them from time to time. The “Odisha



Primary Education Programme Authority— Rules and Regulations” as enclosed to the counter affidavit delineates “Powers and Functions of the Executive Committee” at Rule 34, wherein it has been specified that “it shall be the responsibility of the Executive Committee to endeavour to achieve the object of the Authority and to discharge all its functions. The Executive Committee shall exercise all administrative, financial and academic authority in this behalf, including powers to create posts of all description and make appointments thereon in accordance with the regulations”. Rule 44 of said “Rules and Regulations” envisages that the Executive Committee has the power to delegate to the Chairman, State Project Director or any of its members and/or to a Committee/Group, or any other Officer of the OPEPA such administrative, financial and academic powers and impose such duties as it deems proper and also to prescribe limitations within which the powers and duties are to be exercised or discharged. Regulation 45 of said “Rules and Regulations” confers powers in respect of certain aspects *inter alia* Scales of Pay in respect of the posts to be created by the Executive Committee that correspond to the Central Government or the State Government Scales of Pay.



7.5. From the preamble of the Memorandum of the Association and the Rules and Regulations as referred above makes it unambiguous that the OPEPA is an autonomous and independent body without having any control of the State Authorities, rather the Executive Committee which consists of 17 numbers of senior officers of the State Government. The OPEPA has framed Rules and Regulations by way of the Memorandum of Association and by dint of Rule 21 thereof, the Executive Committee was constituted. Such Committee is conferred and invested with all the powers to take decision including administrative and financial matters. It is also discernible from the above that the provision provided under Rule 34 that the conditions of the service of the employees of OPEPA are also within the domain of the Executive Committee. Under said Rule 34, the powers and the functions of the Executive Committee has been provided by laying down that it shall be the responsibility of the Executive Committee to make endeavour to achieve the objects of the Authority and to discharge all its functions. Rule 35 provides that the Executive Committee shall have under its control the management of all the affairs and funds of the OPEPA. Under Regulation 45 of the Regulation power has been vested with the Executive Committee and accordingly, the Executive Committee has the powers to frame and amend regulations. Said regulation *inter alia* empowers



that “service matters pertaining to officers and staff including creation of posts, qualifications, selection procedure, service conditions, pay and emoluments, disciplinary control as well as Classification, Control & Appeal Rules”.

7.6. Conjoint reading of different provisions unequivocally speaks that the Executive Committee, the apex body, has every power not only to make any Rules and Regulations but also to discharge the administrative and financial powers on behalf of the OPEPA.

7.7. In the Meeting of the 4<sup>th</sup> Governing Body of OPEPA held on 29.10.2013— presided over by the Hon’ble Chief Minister and in presence of senior officers of different departments, as can be seen from minutes of proceedings— while taking decision for implementation of Career Advance Policy and enhancement of salary at par with the State Government employee by referring to Regulation 45 of the Memorandum of Association (Rules and Regulations of OPEPA) it was held that scale of pay in respect of the post to be created by the Executive Committee shall corresponding to either to the State Government or the Central Government scale of pay. After due deliberation it was decided to have parity with the salary structure of the State Government employees. It was also recommended that whenever there happened to be any enhancement of D.A. by the State Government



that would also be extended to the OPEPA employees. This enhancement to be added to the base remuneration of the OPEPA Employees. Such recommendation was made on the basis of the Report submitted by a Committee constituted in terms of Notification dated 29.07.2013. The Executive Committee has accepted such recommendation in the proceeding of the 30<sup>th</sup> meeting of the OPEPA held on 06.03.2014, which was implemented in terms of such decision by extending benefits to the employees of OPEPA, as has been admitted by the opposite parties in their counter affidavit.

7.8. In such background it is also borne on the records that the Joint Secretary to Government in School and Mass Education Department was also one of the members in the Meeting held on 19.11.2013. Hence, the impugned order to freeze the remuneration of the petitioners (who are the employees of erstwhile OPEPA renamed OSEPA) at current level with (retrospective) effect from 31.03.2019 cannot be sustained and is, hence, liable to be quashed. Unilateral decision of the Government without taking the Executive Committee into confidence would prejudice larger interest of employees of the OPEPA/OSEPA.

7.9. It is apparent from careful scrutiny of the counter affidavit that the opposite party No.4 in its reply does not



deny the fact of decision being taken in the Meeting of Executive Committee held on 06.03.2014 regarding career advancement of the OPEPA employee. Rather, it has been clearly admitted that the decision for the Executive Committee in the Resolution passed in the 30<sup>th</sup> Executive Committee Meeting dated 06.03.2014 has been implemented. But at the same time in the counter affidavit it could not have been taken as a stand that such decision of the Executive Committee is not consistent with the Rules.

7.10. In this context, it may be worthwhile to refer to a co-ordinate Bench decision of this Court rendered in the case of *Purna Chandra Bag and Others Vrs. State of Odisha and Others*, W.P.(C) Nos.20940, 21425, 24708, 26700, 26702, 26703, 26704, 26705, 26706, 26708, 26709, 28876 of 2020 and W.P.(C) Nos.24233, 30728 & 33966 of 2021, vide Judgment dated 02.08.2023, relevant portion of which is quoted hereunder:

“8. Having heard learned counsel for the parties and after going through the materials available on record, it is found that the Executive Committee in its 26<sup>th</sup> meeting held on 16.02.2010 though approved for creation of the posts of Accountant-cum-Data Entry Operator to be filled up at the block level, but the said post was designated as Accountant-cum-Support Staff by the opposite party No.2 while issuing the communication dated 07.02.2011 under Annexure-1. Basing on the said communication



*though it is not disputed that all the petitioners were engaged as Accountant-cum-Support Staff at the block level pursuant to the advertisement issued by the concerned Collector-cum-Chairman, Sarva Siksha Abhiyan in different districts, but taking into account the qualification prescribed for Accountant at the block level and that of the Accountant engaged in the State Project Office and District Project Office, this Court is of the view that the qualification prescribed for engagement of the Accountants at the block level as well as in the district level and State level are similar. It is also found from the record that as per Regulation 45(a) of the 1996 regulation, it has been clearly provided that the Scale of Pay in respect of the post to be created by the Executive Committee shall correspond either to the Central Government or State Government scale of pay. It is also found from the record that the Executive Committee in its 30th meeting held on 06.03.2014 vide Item No.6.4 also approved to extend the benefit enjoyed by the different employees as per OPEPA Employees Service Rules and Regulations 1996 to the block level Accountant engaged at BRCs level.*

- 8.1. Therefore, in view of the provisions contained under Regulation 45(a) of the Rules & Regulation, 1996 and the decision taken by the Executive Committee in the proceeding of the 30th meeting held on 06.03.2014, the rejection of the claim of the petitioners to get the benefit of pay parity with that of the Accountants working in the State level and District level as per the considered view of this Court is not legal and justified. Therefore, this Court is inclined to quash the said rejection made by*



*opposite party No.3 vide Order dated 10.07.2020, which is impugned in WP(C) No.20940 of 2020 and quash the same.”*

7.11. It is manifest from the counter affidavit that the Special Secretary to the Government of Odisha has made attempts to justify his action in directing to freeze the remuneration of the employees of the OPEPA. While justifying such action he has referred to Regulation 45. By way of Amendment on 31.7.2019 it has been provided that “such other matters as may be necessary for the furtherance of the objective and proper administration of the affairs of the authority certain guidelines will kept in view while creating the post and formulating the service and financial regulation”. All decision relating to creation and up-gradation of post and fixation of pay and involvement having financial implication would have to be placed before the School and Mass Education Department for approval of Government. Such amendment of Regulation 45 has absolutely no application to the fact situation of the case for the reason that:

- i. Such a provision has been made by way of amendment on 31.07.2019, which is prospective in nature inasmuch as no power has been cited by the opposite parties to demonstrate that the amendment could be given retrospective effect. The



rights of the employees that existed prior to amendment could not be taken away or imperilled.

- ii.* The decision of the Executive Committee for enhancement of salary and extension of other benefits in the Meeting held on 06.03.2014 with reference to the powers conferred under the Memorandum of Association, Regulation and Rules, as were prevalent at that relevant point of time, could not be dispensed with by assuming retrospective operation of the amendment.
- iii.* By virtue of amendment and introduction of clause (iii) to Regulation 45, it can only be said that such provision can be made applicable in the context of creation of new posts and formulating the service and financial regulation. In such eventuality, the approval of School and Mass Education Department of the Government may be necessary. Nonetheless, in the case at hand, question of creation of the post or the question of formulating the service and financial regulation did not arise; rather the decision which was taken in the year 2014 by the competent authority, *i.e.* the Executive Committee, being empowered in that regard. Such decision has also been implemented by the OPEPA by extending the benefit to all eligible employees including the petitioners. The impugned order



dated 01.08.2019 (Annexure-17), therefore, could not have been passed by lightly brushing aside such important decision affecting the rights of the OPEPA employees having impact on civil consequences.

- iv.* With regard to application of amendment with retrospective effect, it may not require any authority to be referred to; nevertheless, it would suffice to quote from *Indian Latex Fibre Corporation Vrs. Commissioner of Sales Tax, 2007 SCC OnLine Ori 399 (Division Bench of this Court)*, as is trite:

*“It is well known that normally a statute operates prospectively. The Legislature in its plenary power can also legislate retrospectively, but in such cases the statute must say so or it must appear by necessary implication. (See Keshavan Madhava Menon Vrs. State of Bombay reported in AIR 1951 SC 128 at page 130). This principle has been subsequently reiterated by the honourable Supreme Court repeatedly.”*

- v.* In such view of the matter, the specious plea of the Government of Odisha in School and Mass Education that “the employees of OPEPA are drawing their remuneration as per Odisha Revised Scales of Pay Rules, 2008 *vide* their Office Order No.7970 dated 20.09.2014 without the approval of the Government and concurrence of Finance



Department” cannot withstand judicial scrutiny inasmuch as the Government Officers have participated and concurred with the decision taken in the Meetings of the Executive Committee of the OPEPA.

- vi. Having participated in the Meetings, the Officers of the Government Departments endorsed the decision taken therein and implemented the same since 2014, at this stage the Government of Odisha in School and Mass Education cannot turn around to resile from such a decision without adhering to due process of law. Doing so would not be in the larger interest of the employees.
- vii. In this context it may be apposite to extract a passage from *Chowhan Machinery Mart Vrs. State of Orissa, 2008 SCC OnLine Ori 596*:

*“The honourable Supreme Court in Dabur India Ltd. Vrs. State of Uttar Pradesh, AIR 1990 SC 1814, observed that Government, Central or State, cannot be permitted to play dirty games with the citizens of this country to coerce them in making payments which the citizens were not legally obliged to make. If any money is due to the Government, the Government should take appropriate steps, but it should not take extra-legal steps or adopt the course of manoeuvring. Because of the above discontentment expressed by the Bar it has become necessary to provide guidelines for just exercise of*



*the power of Revenue authorities. To prevent the abuse of power and to see that it does not become a new despotism, courts are gradually evolving the principles to be observed while exercising such power. New problems call for new solutions.”*

- viii. The Officers, who are responsible to take decisions at the Government level must see that the adequate measures and safeguards have been taken into consideration to obliterated already implemented decisions. The manner in which they were extended to the employees, without following the legally established course the benefits so extended to the employees could not be dispensed with.
- ix. In case any deviation is intended, there must be plausible explanation and such intention must be reflected by taking conscious decision with the participation of such other Officers who were present in the Meetings where decision to extend the benefits to the OPEPA employees was taken.
- x. In this context it deserves to have reference to Section 22 of the Odisha General Clauses Act, 1937, provision of which is reproduced hereunder:

*“Power to make to include power to add to, amend, vary or rescind, orders, rules or by-laws.—*

*Where, by an Odisha Act, a power to make or issue notifications, orders, schemes, rules, by-laws or*



*forms, is conferred, then that power includes a power exercisable in the like manner and subject to the like sanction and conditions, (if any) to and to, amend, vary or rescind any notifications, orders, schemes, rules, by-laws or forms so made or issued.”*

- xi.* The reason for deviating from the decision taken way back in 2014 and subsequent thereto by virtue of Office Order dated 01.08.2019 (Annexure-17) depicting unilateral decision at the behest of the School and Mass Education Department “to freeze the existing remuneration at the current level, *i.e.*, 31.03.2019” is bound to materially prejudice the employees’ rights. No provision could be shown by the learned Additional Government Advocate demonstrating conferment of such power under any statute or the Memorandum of Association which comprehended Rules and Regulations to obliterate the benefit already extended to the employees of OPEPA.

7.12. Since the OPEPA is an “Autonomous Body” and has been conferred with independent power, there cannot be any interference to such power and function of the Executive Committee of the OPEPA, subject to the manner suggested in the Odisha General Clauses Act. Hence, the action as spelt out in the Office Order dated



01.08.2019 issued by the Special Secretary is not in consonance with law.

7.13. As is made abundantly clear from the School and Mass Education Notification No.17364—XI-SME-SSA-30/2013-S&ME, dated 29.07.2013 (Annexure-10) the decision with regard to enhancement of pay was taken in the duly constituted Executive Committee and the decision has been implemented based on the recommendation of High-Power Committee constituted in terms of said Notification dated 29.07.2013. Therefore, no infirmity in such decision being shown nor does the impugned order depict exigency to vary with such decision taken by the Executive Committee, this Court is inclined to set aside the impugned Office Order dated 01.08.2019.

**8.** By referring to outcome of the various Meetings of the OPEPA as has already been discussed in foregoing paragraphs, it is highlighted that the impugned Office Order dated 01.08.2019 has no foundational factor to hold water. It is forcefully submitted that the reason ascribed therein that the OPEPA employees draw higher remuneration/pay than that is extended to the State Government employees is not based on facts and figures. Such a reason is contrary to decisions taken in the Meetings of the Executive Committee where other departmental authorities took part including the Officers



of the School and Mass Education Department and the Finance Department.

8.1. Conjoint reading of different Rules, Regulations and Service Rules as culled out for discussion on merit of this case, it is but unambiguous that under Rule 44 of the Memorandum of Association (Rules and Regulations) the Executive Committee could delegate to the Chairman, State Project Director or any of its members and/or to a Committee/Group, or any other Officer of the OPEPA/ OSEPA administrative, financial and academic powers and under Regulation 45 thereof the Executive Committee have powers to frame and amend Regulations *inter alia* with respect to financial powers. In Rule 21 of the said Memorandum of Association the constituent members have been enumerated. The opposite parties have not disputed nor denied the constitution of the Executive Committee where the Officers of the School and Mass Education and the Finance Department participated in the decision making process. Thus, there was no requirement for taking further concurrence of the Finance Department.

8.2. Query of this Court in this regard could not be answered by the learned Additional Government Advocate and no provision is cited before this Court to suggest that after the Executive Committee took a decision in presence of Officers of different Departments of the Government



including the Finance Department touching the financial implication, there is requirement of concurrence of the Department of Finance.

8.3. Therefore, this Court is of the considered opinion that the reason for freezing the existing remuneration for lack of concurrence of the Finance Department is liable to be obliterated.

8.4. It may be significant to have regard to Letter bearing No. F.13-5/2001 DPEP-3, dated 22.11.2001 issued by the Ministry of Human Resources Development, wherein it has been laid down as follows:

*“No. F. 13-5/2001 DPEP-3  
Government of India  
Ministry of Human Resources Development  
(Department of Elementary Education & Literacy)  
EE-I Bureau*

\*\*\*

*New Delhi, the November 22. 2001*

To

*The Accounts Officer  
Pay & Accounts Office  
Ministry of Human Resource Development  
Department of Elementary Education and Literacy  
New Delhi.*

*Subject: District Primary Education Programme—  
Release of 1<sup>st</sup> instalment of grant to Orissa  
Primary Education Programme Authority,*



*Bhubaneswar (Orissa) for implementation of District Primary Education Programme for Expansion of district (phase-II) during the year 2001-2002.*

*Sir,*

*I am directed to say that the Annual Work Plan and Budget for 2001-2002 in respect of Orissa Primary Education Programme Authority, Bhubaneswar has been approved for a sum of Rs.6593.13 lakhs for implementation of District Primary Education Programme for Expansion Districts (phase-II). The central share (85%) of Rs. 6593.13 lakhs works out to Rs. 5600.00 lakhs.*

- 2. I am accordingly directed to convey the sanction of the President to the release of an amount of Rs.15,00,00,000/- (Rupees fifteen crore only) as first instalment of grant to State Project Director, Orissa Primary Education Programme Authority, Bhubaneswar-751001 for implementation of District Primary Education Programme in expansion districts (phase-II) during the year 2001-2002.*
- 3. The sanction is subject to the conditions laid down in para-8 of the minutes of the EFC meeting circulated vide this Ministry communication number F4-3/99-DPEP-4 dated 16.08.2001.*
- 4. The expenditure shall be incurred according to the parameters and norms as laid down in DPEP guidelines.*
- 5. The amount sanctioned will be drawn by the drawing and disbursing officer (Grants) Ministry of Human Resource Development, Department of*



*Elementary Education and Literacy, Government of India, New Delhi on a grant-in-aid bill for disbursement to the guarantee, through a crossed bank draft (Account Payee) payable to the State Project Director, Orissa Primary Education Programme Authority, Bhubaneswar 751001 during the current financial year.*

6. *The grant shall be subject to the following conditions:*
- (i) It shall be drawn during the current financial year before 31<sup>st</sup> March, 2002 and shall be utilised within a reasonable period from the date of its drawal.*
  - (ii) It shall be utilised only for undertaking activities proposed in the Work Plan for the year 2001-2002 and approved by the Government of India on the basis of norms of expenditure.*
  - (iii) The assets, if any to be acquired wholly or substantially out of the grant should not without the prior sanction of the Government of India, be disposed of encumbered or utilised for purposes other than those for which the grant has been sanctioned.*
  - (iv) Orissa Primary Education Programme Authority, Bhubaneswar shall maintain a separate and proper account of the expenditure incurred out of the grant and the accounts so maintained shall be open to audit by the Comptroller and Auditor-General of India or by*



*any authority deputed by him for the purpose, as per rules.*

- (v) *The Society shall furnish to this department item-wise statement of expenditure on a quarterly basis and other reports in approved formats. The Society will submit annual detailed progress report of the project within one month of the close of the financial year. An annual audited statement of accounts along with a certificate of chartered accountant and authorised signatories of the society and approved by the society in original will be submitted to the Ministry within 3 months from the close of the financial year. The balance amount of grant for 2001-2002 shall be released only on receipt of unaudited statement of accounts showing 75% or more expenditure out of the earlier instalment of grant.*
- (vi) *A register of assets acquired wholly or substantially out of the grant shall be maintained in prescribed form and certified copy of the register in respect of the assets acquired should be sent to this Ministry not later than one month from the close of the financial year. Such copies should continue to be furnished even after the government's grant to the society has seized. The statement should relate not only to the assets acquired during the year to which it relates but to all previous assets too created wholly or substantially out of the government's grant up to the end of the period to which the return relates. For purposes*



*of determining whether an asset has been created substantially out of the government grant it is not necessary that the amount utilised out of the government grant should exceed 50%.*

- (vii) The grant is subject to the condition that the terms and conditions of services of the employees of the Society, be normally according to terms and conditions applicable to similar categories of employees in the State Government and not exceeding those admissible to similar categories of Central Government employees.*
- (viii) The accounts and other records of the Orissa Primary Education Programme Authority, Bhubaneswar shall be open to inspection by an officer of the Ministry of Human Resource Development or any other person deputed by the Ministry for this purpose.*
- (ix) The Orissa Primary Education Programme Authority, Bhubaneswar shall follow strictly all instructions issued by the Government of India from time to time on reservations of posts of Scheduled casts, Scheduled Tribes. The staff appointed at state and district level be on deputation or on contract basis only for a limited period.*
- (x) The Orissa Primary Education Programme Authority, Bhubaneswar shall fully implement the official language policy of the Union Government that is it shall fully comply with official language Act- 1963 and Official*



*language (use for the official purposed of the Union), Rules, 1976 etc.*

- (xi) *The guidelines given by the GOI regarding monitoring, management and financial and other procedures to be followed in the execution of the project will be followed.*
7. *The expenditure will be debitabile to demand no-46/ Department of Elementary Education and Literacy- Major head 2202; general education 0.1- Elementary education 800- other expenditure,19- District Primary Education Programme 19, 00.31- Grants-in-aid-2001-2002(plan).*
8. *The pattern of assistance has been approved by the Ministry of Finance and this sanction is being issued in conformity with the Rules and Regulations approved by the Ministry of Finance. The grantee institution is located in the Orissa circle of accounts.*
9. *This sanction issues in exercise of the delegated powers in consultation with integrated finance divisions vide their DY No. 8918/2001-IFD dated 23.10.2001 and the funds have been cerified by IF I Section vide their DY No. 5533-0/01-IIF dated the 20.11.2001.*

*Yours faithfully,*

*(I.S.Kalijai)*

*Desk Officer.”*

8.5. *Aforesaid Guidelines have further been clarified vide Letter dated 26.06.2003, which reads as follows:*



*“F.2-42/2003-EEIII*

*Government of India*

*Ministry of Human Resource Development  
Department of Elementary Education & Literacy*

*\*\*\**

*New Delhi, June 26, 2003.*

*Subject: Clarification on sustaining of DPEP interventions in SSA after closure of DPEP.*

*A question has been raised on the sustaining of DPEP interventions under SSA. Following, guidelines, as approved by the Expenditure Finance Committee of Government of India, are issued for the purposes of planning and appraisal:*

- (i) The liability of DPEP relating to salary of teachers and BRC/CRC personnel would have to be taken over by the State Government. So, no salaries can be provided under SSA for teachers and BRC/CRC personnel appointed under DPEP.*
- (ii) For arriving at the requirement of BRC/CRC personnel under SSA, the BRC/CRC resource persons already provided under DPEP should be deducted from the entitlement of the District as per SSA norms (20 or 10 depending on number of schools). For example, if DPEP had 12 BRC and CRC personnel in the Block, these 12 would have to be sustained by the State Government and SSA would provide for only additional 8 persons, if the entitlement of the block was 20 to begin with.*
- (iii) Programme related expenditures like School Grant, Teacher Grant, Civil Works, New Teachers, R&E*



*Grant, Text Books, Innovative, IED, Maintenance Grant, etc. can be funded under SSA.*

- (iv) *Salary of permanent management staff under DPEP would have to be borne by State. However, contractual appointments and deputationists may be borne by the SSA management structure through fresh contract. At the time of appraisal, the full physical and financial liabilities of the States under DPEP to be borne by the State should be brought out and concurrence of the State obtained on bearing this liability.*

*Yours faithfully,*

*Sd/- (O.P. Chaturvedi)*

*Under Secretary*

*to the Govt. of India*

*Tel: 23387538”*

8.6. As is discerned from aforesaid Letters of the Government India, after closure of the District Primary Education Programme (DPEP), the State Government is required to bear the expenditure towards the management under the Samagra Shiksha structure. Nothing is placed on record by the opposite parties that prior to taking decision *vide* Office Order dated 01.08.2019 (Annexure-17) steps were taken to nullify or vary with the decisions of Executive Committee taken earlier as discussed hereinabove. The learned Additional Government Advocate could not proffer explanation as to the requirement of concurrence of the Finance Department



after decision on financial matters taken in the Executive Committee Meetings in presence of Officers of the Finance Department and the School and Mass Education Department. Rather this Court on minute scrutiny of Rules and Regulations as forming part of the Memorandum of Association and the Service Rules and Regulations observes that financial autonomy was delegated to the Executive Committee. In absence of any step taken by the Government of Odisha in School and Mass Education to review the decisions taken in the Executive Committee of the OPEPA/OSEPA, unilateral decision of the Government *vide* Officer Order dated 01.08.2019 to freeze the “existing remuneration” after years of implementation of decisions taken in the Executive Committee with respect to pay and career advancement is unwholesome and untenable.

**Conclusion:**

9. The reasons for freezing the remuneration of the employees of OPEPA/OSEPA as ascribed to in the Office Order dated 01.08.2019 of the Government of Odisha in School and Mass Education, impugned in the writ petition at Annexure-17, are:

- i. The employees of OPEPA are drawing their remuneration as per Odisha Revised Scales of Pay Rules, 2008 *vide* Office Order No.7970, date



20.09.2014 without the approval of the Government and concurrence of Finance Department;

- ii.* The employees of OPEPA are schematic employees but they are drawing gross remuneration at a higher rate due to addition of certain perks which are extended to any State Government employee;
- iii.* The dynamic D.A. structure twice a year is not availed by any schematic employee of the State Government. Due to gradual decrease in Central funding, the financial burden has also been increasing for the State Government.

9.1. Aforesaid reasons, as has already been discussed above, cannot be countenanced inasmuch as after conscious decision being taken in different Meetings and having implemented the decisions since long, in the year 2019 unilateral decision by the School and Mass Education could not have been taken to nullify decisions taken in Meetings held in the duly constituted Executive Committee in the presence of Officers of different departments including the School and Mass Education Department and the Finance Department.

**10.** In the wake of discussions made *supra* and for the reasons cited hereinabove taking note of decisions taken in various Meetings held by the Executive Committee



constituted in terms of the Rules and Regulations forming part of the Memorandum of Association and the Service Rules and Regulations, this Court sets aside the Office Order dated 01.08.2019 (Annexure-17) issued by the Special Secretary to the Government of Odisha in Department of School and Mass Education.

- 11.** Accordingly, the writ petition stands disposed of, but in the circumstances there shall be no order as to costs.

**(MURAHARI SRI RAMAN)  
JUDGE**

Signature Not Verified

Digitally Signed  
Signed by: LAXMIKANT  
MÖHAPÄTRÄ  
Designation: Senior Stereographer  
Reason: Authentication  
Location: High Court of Orissa,  
Cuttack  
Date: 11-Mar-2025 16:08:14

*High Court of Orissa, Cuttack  
The 11<sup>th</sup> March, 2025//Aswini/Laxmikant/Suchitra*

**W.P.(C) No.14619 of 2019**

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