REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7295 OF 2019
(ARISING OUT OF S.L.P. (C) NO.8343 OF 2019)

STATE OF ODISHA & ANOTHER ...PETITIONER(S)

VERSUS

ANUP KUMAR SENAPATI & ANOTHER ...RESPONDENT(S)

WITH

CIVIL APPEAL NO. 7298 OF 2019
(ARISING OUT OF S.L.P. (C) NO.29313 OF 2018)

CIVIL APPEAL NO 7301 OF 2019
(ARISING OUT OF S.L.P. (C) NO.32409 OF 2018)

CIVIL APPEAL NO. 7296 OF 2019
(ARISING OUT OF S.L.P. (C) NO.16964 OF 2018)

CIVIL APPEAL NO. 7297 OF 2019
(ARISING OUT OF S.L.P. (C) NO.17416 OF 2018)

CIVIL APPEAL NO. 7304 OF 2019
(ARISING OUT OF S.L.P. (C) NO. 22309 OF 2019 ARISING OUT OF DIARY NO.31807 OF 2018)

CIVIL APPEAL NOS. 7299-7300 OF 2019
(ARISING OUT OF S.L.P. (C) NOS.31110-31111 OF 2018)

CIVIL APPEAL NO. 7302 OF 2019
(ARISING OUT OF S.L.P. (C) NO.4261 OF 2019)

AND

CIVIL APPEAL NO. 7303 OF 2019
(ARISING OUT OF S.L.P. (C) NO.6708 OF 2019)

J U D G M E N T

ARUN MISHRA, J.

1. The question involved in the appeals is whether the employees are entitled to claim grant-in-aid as admissible under the Orissa (Non-Government Colleges, Junior Colleges and Higher Secondary Schools) Grant-in-aid Order, 1994 (hereinafter referred to as the 'the order of 1994'), after its repeal in the year 2004 by virtue of provisions contained in Orissa (Non-Government Colleges, Junior Colleges and Higher Secondary Schools) Grant-in-aid Order, 2004 (hereinafter referred to as the 'the order of 2004'). The order of 2004 has also been repealed by Orissa (Aided Colleges, Aided Junior Colleges, and Higher Secondary Schools) Grant-in-aid Order, 2008.

2. Before the promulgation of the Order of 1994, the benefit of grant-in-aid to non-Government educational institutions used to be provided under instructions issued from time to time under the provisions of Orissa Education Act, 1969 (hereinafter referred to as 'the Act'). The same has been amended in the year 1994 by insertion of the provisions contained in Section 7-C, extracted hereunder:

"**7-C. Grant-in-aid –** (1) The State Government shall within the limits of its economic capacity, set apart a sum of money annually for being given as grant-in-aid to private Educational Institution in the State.

(2) No order according permission or approval or recognition under this Act, whether prior to or after the commencement of the Odisha Education (Amendment) Act, 1994, shall entitle any private educational institution to receive grant-in-aid.

(3) Save as otherwise provided, no private Educational Institution which has not been recognized by the State Government under this Act shall be entitled to receive any aid from the State Government.

(4) Notwithstanding anything contained in any law, rule' executive order or any judgment, decree or order any Court, no grant-in-aid shall be paid and no payment towards salary costs or any other expense shall be made to any private educational institution or for any post or to any person employed in any such institution after the commencement of the Odisha Education (Amendment) Act, 1994, except in accordance with an order or rule made under this Act. Grant-in-aid where admissible under the said rule or order, as the case may be, shall be payable from such date as may be specified in that rule or order or from such date as may be determined by the State Government:

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

(4-a) The grant-in-aid to be borne by the State Government on account of placement of a teacher in an aided educational institution receiving University Grants Commission scales of Pay under the Career Advancement Scheme, shall be limited to the extent as may be admissible by computing the period of service rendered by him against an approved post with effect from the date of completion of five years of service against such approved post:

Provided that nothing in this Sub-section shall be construed as to affect the seniority or any other conditions of service of such a teacher.

(4-b) Notwithstanding anything contained in any judgment, decree or order of any Court to the contrary, any instructions issued, actions taken or things done on or after the 1st day of January, 1986 in regard to matters provided in Sub-section (4-a) shall be deemed to have been validly issued, taken or done as if the said Sub-section were in force at all material points of time.

(5) Notwithstanding anything contained in any law, rule, executive order or any judgment, decree or order of any Court the following categories of private educational institutions shall only be eligible for consideration for payment of grant-in-aid.

(a) Upper Primary Schools imparting instructions or courses prescribed by the State Government to standards or classes VI and VII or Sanskrit Tolls imparting equivalent courses and Madrasas imparting equivalent courses in standards or classes from I to VII or any one or more of such classes.
(b) High Schools imparting instructions or course for High Schools Certificate Examination conducted by the Board of Secondary Education, Odisha or institutions imparting Madhyama Course of Sri Jagannath Sanskrit University and Madrasas imparting equivalent course.
(c) Higher Secondary Schools or junior Colleges imparting instructions or course for Higher Secondary Examination conducted by the Council of Higher Secondary Education, Odisha or institutions imparting Upasastri course of Sri Jagannath Sanskrit University and Madrasas imparting equivalent course.
(d) Colleges imparting course for B.A. B.Sc. or B.Com. degrees of the Utkal, Berhampur and Sambalpur Universities and Shastri of Sri Jagannath Sanskrit University.

(6) No educational institutions imparting any other courses of studies except those provided in Sub-section (5) shall be eligible for a grant-in-aid from Government. Educational institutions established and/or managed by Urban Local Bodies, Zilla Parishads, Panchayat Samitis, and Grama Panchayats, Public Sector Undertakings or Companies or statutory bodies shall not be eligible for grant-in-aid under this Act.

(7) A Governing Body or Managing Committee desirous of availing the facility of grant-in-aid shall make an application for the purpose within such period and shall furnish such information and documents including audited statement of accounts of the institutions as may be prescribed. It shall furnish with the application an undertaking to the effect that grant-in-aid sanctioned for the purpose or meeting part or whole of the salary costs shall be disbursed directly to employees concerned and to refund any excess inadmissible payment that may have been made.

(8) Notwithstanding anything contained in any law, rule, executive order or any judgment, decree or order of any court, the private Educational Institutions covered under clauses (a) and (b) of sub-section (5) recognized after the 31st March, 2008

> shall not be entitled for any Grant-in-aid from the State Government save as provided in sub-section (9).
>
> (9) The private Educational Institutions referred to in clause (b) of sub-section (5) located in a Grama Panchayat or in a Municipality, which is first recognized after the 31st March 2011 shall not be entitled for any Grant-in-Aid from the State Government."
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> (emphasis supplied)

It is apparent from the provisions contained in Section 7-C(1) that the aid to be provided by the Government shall be within the limits of its economic capacity and for that purpose money had to be set apart annually to be disbursed to private Educational Institution. Mere fact that an institution has been recognised under the Act, shall not entitle a private Educational Institution to receive grant-in-aid as of right and no private educational institution, which is not recognised by the State, shall be entitled to claim any aid from the State Government. Section 7-C(4) provides notwithstanding any law, rule, executive order or any judgment, decree or order of any court, the private educational institution shall not be entitled to receive aid except under the order or rules under the Act after the commencement of Odisha Education (Amendment) Act, 1994. The grant-in-aid to be released under the provisions of the Order of 1994, shall be payable from such date as may be determined by the State Government. The State Government has the right to determine the date for making payment of grant-in-aid. The proviso to Section 7-C(4) enables the State Government to continue grant-in-aid to institutions already

receiving it. Section 7-C(5) specifies the categories of the educational institutions eligible to be considered for payment of grant-in-aid.

3. In exercise of the powers under the provisions of Section 7-C of the Act, the Order of 1994 was issued by the Government published in the Orissa Gazette on 21.11.1994. It provided grant-in-aid to be released with to the approved posts only. Paragraph 3 of the Order of 1994 specified the categories of the institutions eligible for being notified as Aided Educational Institutions. Paragraph 4 of the Order of 1994 deals with the classification of the Educational Institutions and the posts in such Institutions. Paragraph 4 is extracted hereunder:

> "4. For the purposes of this Order, Non-Government Educational Institutions specified in Sub-Paras (1) and (2) of Para 3 and the posts in such institutions shall be classified into the following categories namely: -
>
> A – Category I *(i)* Non-Government Educational Institutions and approved posts in such institution which have received grant-in-aid from Government or in respect of which grant-in-aid has been sanctioned by Government prior to the commencement of the Amendment Act,
>
> (ii) Other posts in non-Government Educational Institutions covered under Category-I (i) which were admissible on the basis of workload and prevalent yardstick and had been filled up prior to commencement of the Amendment Act, but in respect of which no grant-in-aid had been sanctioned.
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> Note – If a question arises whether a post was admissible on the basis of workload and prevalent yardstick, the decision of the Director shall be final.
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> B – Category II (i) Colleges imparting instructions in and presenting regular candidates for the B.A., B.Sc. or B.Com. Examinations with or without Honours of any of the Universities which have been functioning regularly for five years or more by the 1st June 1994

> after obtaining Government concurrence or recognition and affiliation of any University or for three years or more if such institution is located in an educationally backward district, which has not been notified as an Aided Educational Institution and has not received grant in aid from Government for any post.
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> (ii) Higher Secondary Schools and Junior Colleges conducting courses in Arts, Science and Commerce which have been functioning regularly for five years or more by the 1st June, 1994 after obtaining Government concurrence or recognition and affiliation of the Council, or for 3 years or more if such an institution is located in any educationally backward district, but which have not been notified as Aided Educational Institution and have not received grant-in-aid from Government for any post.
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> C – Category III Non-Government Educational Institutions of the categories specified in Sub-Paras. – (1) and (2) of Para.3 which have already been established and have received recognition of Government and affiliation prior to the commencement of the Amendment Act but do not come within Categories I or II of this paragraph, and such institutions which may be established and granted recognition by Government under the Act or the provisions made thereunder and affiliation by the University or the Council, as the case may be, after the commencement of this Order."
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> (emphasis supplied)

The Category I includes approved posts in Non-Government Educational Institutions receiving grant-in-aid before the commencement of the Amendment Act, shall continue to receive it**.** Other posts in Non-Government Educational Institutions admissible for releasing of grant-in-aid were such which had been filled up before the commencement of Amendment Act. Category II consisted of the colleges which had been functioning regularly for 5 years or more by 1.6.1994, after obtaining Government recognition/concurrence and affiliation of any University. The period is reduced to 3 years for such institutions which are located in educationally backward districts.

Category III deals with those institutions which do not fall in the Category I or Category II and which have already been established and have received recognition of Government and affiliation of University or Council before the commencement of the Amendment Act or thereafter.

Paragraph 5 of the Order of 1994 contains a provision that all Educational Institutions in Category I(i) of Paragraph 4 shall be deemed to be Aided Educational Institutions, however, in respect of Categories II and III, as per provision contained in Paragraph 5(2) it is necessary to fulfil the prescribed conditions. Firstly, an institution has been functioning on regular basis after recognition from the Government and affiliation from the concerned University or the Council for 5 years or in the educationally backward district for 3 years. It is provided in Paragraph 5(2)(A)(iii)(a) that the number of institutions to receive grant-in-aid is to be worked out as per prescribed population ratio. Under the provisions of Paragraph 5(2)(A)(v) in case number of eligible institutions to be considered for release of grant-in-aid during an academic year are more, the Director had to select the educational institution/institutions on considerations of average enrolment during the three preceding years; performance of the institution; availability of infrastructural facilities; maintenance of discipline and academic standards; and availability of Government or

Aided Educational Institution nearby. It is not a matter of right that the institution is entitled to claim grant-in-aid. The provision for grant-in-aid is made in budget academic year wise.

Besides, there are other requirements as specified in Paragraph 5 of the Order of 1994, such as, the educational institution has run continuously; maintained correct record of admissions and attendance of students; accounts of receipts and expenditure and acquittance rolls of salary; and other allowances paid to teaching and non-teaching employees of the institution. The educational institution has a Governing Body duly constituted and approved under relevant rules. The Governing Body of the educational institution has applied in the prescribed form complete in all respects and in accordance with the procedure laid down in the said Order. The educational institution has fulfilled all the criteria and the Director has recommended for notification of such an institution for grant-in-aid. The provisions of Paragraph 5 is extracted hereunder:

> "5. (1) All Non – Government Educational Institutions included in Category I (i) of Para 4 shall be deemed to be Aided Educational Institutions for purposes of this Order.
>
> (2) No Non-Government Educational Institution falling within Category II or Category III or Para 4 shall be eligible to be notified as an Aided Educational Institution under this Order unless it has fulfilled the following conditions, namely:-
>
> (A) (i) An institution being a Non-Government Educational Institution falling within Category II has been functioning on a regular basis after receiving recognition from Government and affiliation from the concerned University or the Council, as the case may be, for 5 years or more, or for 3 years or more if such

educational institution is located in an educationally backward district, prior to 1st day of June 1994.

(ii) An institution being a Non-Government Educational Institution falling within Category II has been established and has been functioning on regular basis after receipt of recognition and affiliation for a qualifying period of five years:

Provided that the qualifying period shall mutatis mutandis be three years if such an institution is located in an educationally backward district or is a women's educational institution imparting education exclusively to women.

NOTE: For the purposes of this Order, no educational institution shall be deemed to be a women's educational institution unless it has received recognition and affiliation as such and any such institution shall cease to be a women's educational institution if subsequently it is converted into a co-educational institution. In the event of such conversion, the notification declaring it to be an Aided Educational Institution, if any, shall be modified.

(iii) Notwithstanding anything contained in this Order, no Junior College or Higher Secondary School or college as the case may be, falling under Category III shall be eligible to be notified as an Aided Educational Institution if, -

(a) in the case of a Junior College or a Higher Secondary School, there are already two aided Junior Colleges/ Higher Secondary Schools in that Block or if the institution is located within an urban area, there are more Aided Higher Secondary Schools/ Junior Colleges than one for every 50,000 population subject to a minimum of one.
(b) In case of a College, there is already one aided Degree College in that Block or if the Institution is located in an urban area, there is one Aided College for every one lakh population subject to a minimum of one.

NOTE – An educational institution conducting B.A., B.Sc. or B.Com. Degree Courses and Junior College or Higher Secondary Courses shall, for the purposes of this Para, be treated as two separate institutions."

4. As per the provisions contained in Paragraph 9(1) of the Order of 1994, a teaching or non-teaching post in Category I institution shall be deemed to be an approved post for which grant-in-aid has been

sanctioned at any time before insertion of Section 7-C. The post which is not covered by Paragraph 9(1), shall be eligible for approval *inter alia* subject to conditions that the post was admissible as per the work-load and the prevalent yardstick before insertion of Section 7-C. A post in an Educational Institution falling in Category II was also admissible *inter alia* as per work-load and yardstick prescribed vide Annexure III. For Category III post in the institution, more or less similar riders have been made.

5. Paragraph 9(2)(E) provides that post has to be filled up for the qualifying period on a full-time basis, not on an honorary or part-time basis, as per the procedure laid down in the Act, Rules, and instructions and persons should be qualified to hold such a post. Paragraph 9(4) provides for the date of eligibility of a post. The provisions contained in Paragraph 9(4) are extracted hereunder:

> "9. (4) (i) The date of eligibility of a post in respect of which grant-in-aid has been sanctioned prior to commencement of the Amendment Act shall be the date on which the posts were admitted to the fold of grant-in-aid for the first time.
>
> (ii) The date of eligibility of a post for which grant-in-aid has not been sanctioned shall be the first day of the academic year following the date on which an approved post completes the qualifying period as applicable to the post:
>
> Provided that the date of eligibility in respect of a post in an educational institution coming within category II or III shall in no case be a date prior to 1-6-1994."

6. As per Paragraph 10(3), a post in Category I institution for which no grant-in-aid has been sanctioned before the commencement of the Amendment Act shall be eligible to receive grant-in-aid at the rate to be increased phase-wise manner.

7. As per provisions in Paragraph 16 of the Order of 1994, a proposal for obtaining grant-in-aid has to be submitted by the Governing Body to the Director and unless a person is lawfully and validly appointed and possesses qualification and experience shall be not eligible for receiving grant-in-aid. Paragraph 16 is extracted hereunder:

> "16. (1) On receipt of a proposal from the Governing Body under Para 15, the Director shall examine each case and if he is satisfied that the person proposed by the Governing Body is eligible to receive grant-in-aid against an approved post, he shall make an order to that effect. Where the Director is satisfied that a person proposed by the Governing Body is not eligible to receive grant-in-aid, his decision shall be communicated to the Governing Body. For the purpose of satisfying himself as to the eligibility of a person to receive grant-in-aid, the Director may call for any information, clarification or document that he considers necessary for the purpose.
>
> (2) No person shall be eligible to receive grant-in-aid against an aided post unless –
>
> (i) he has been lawfully and validly appointed to that post by the competent authority in accordance with the law, rules, and instructions in force at the time of his appointment and has been continuing to hold that post on and beyond the date of eligibility of the post to receive grant-in-aid; and
>
> (ii) he possessed educational qualifications and experience required for holding that post at the time of his recruitment or on the date the post was admissible to grant-in-aid, whichever is later."

8. It is apparent from the provisions that grant-in-aid cannot be claimed as a matter of right merely on completion of the prescribed period. It is dependent upon fulfilment of various conditions. The Director is competent to examine the case concerning the post filled up before 1.6.1994. Moreover, it is discretionary to avail the benefit of grant in aid. There is no compulsion for the institution to apply for it.

9. The Government considering the financial constraint has decided to repeal the Order of 1994 substituting it by Order of 2004 with effect from 5.2.2004, promulgated in exercise of powers conferred under Section 7-C(4) of the Act. A significant departure had been made instead of salary cost to be given to the institution of the staff under the Order of 1994, the concept has been changed to block grant, which shall be a fixed sum of grant-in-aid determined by the taking into account salary and allowance as on 1.1.2004. The quantum of block grant has been made dependent upon the economic capacity of the Government as provided in Section 7-C(1) of the Act and it shall not deal with the salary and allowance payable to any such employee by the Governing Body from time to time. Paragraph 3 is reproduced hereunder:

> "**3. Admissibility of Grant-in-aid**- (1) Every private educational institution being a Non-Government college, Junior College or Higher Secondary School which has become eligible by the 1st June 1994 to be notified as aided educational institution pursuant to the Grant-in-aid Order, 1994 shall be notified by the Government as required under Clause (b) of Section 3 of the Act and the institution

so notified shall be entitled to receive grant-in-aid, by way of block grant, determined in the manner provided in the sub-para (2) :

Provided that a college, in order to be eligible to be notified as an aided educational institution, must not have more than two ministerial staff and two peons.

(2) The block grant payable to the private educational institutions under sub-para (1) shall be a fixed sum of grant-in-aid, which shall be determined by taking into account the salaries and allowances, as on the 1st day of January, 2004, of the teaching and non-teaching employees of the educational institution which has become eligible to receive grant-in-aid by the 1st day of June, 1994 in accordance with the Grant-in-aid Order, 1994, but the determination of the quantum of such block grant shall be within the limits of economic capacity of Government as mentioned in Sub-section (1) of Section 7-C of the Act and shall have no linkage with the salary and allowance payable to any such employee by the Governing Body from time to time :

Provided that no educational institution shall be notified to receive such block grant unless it satisfies the performance criteria as envisaged in Clause (ii) and (vii) of Sub-section (1) of Section 7-D of the Act."

10. The provision as to repeal and saving contained in Paragraph 4 of the Order of 2004 is extracted hereunder:

"**4. Repeal and saving** – (1) The Odisha (Non-Government Colleges, Junior Colleges, and Higher Secondary Schools) Grant-in-aid Order, 1994 is hereby repealed, save for the purposes mentioned in sub-para (1) of para 3.

(2) Notwithstanding the repeal under sub-para (1), the private educational institutions which are in receipt of any grant-in-aid from Government under the Order so repealed immediately before the date of commencement of this Order shall continue to receive such grant-in-aid, as if the Grant-in-aid Order, 1994 had not been repealed."

The Order of 1994 has been repealed save for the purposes mentioned in Paragraph 3(1). Paragraph 4(2) of the Order of 2004 contains provisions concerning private educational institutions which

are in receipt of any grant-in-aid under the Order so repealed, shall continue to receive the same.

11. Later on, the State Government has promulgated grant-in-aid Order of 2008 notified with effect from 7.1.2009. The Order of 2004 has been repealed with certain savings. The eligibility of educational institutions is dealt with in Paragraph 3 of the Order of 2004. The eligibility criteria for consideration of Block Grant is prescribed in Paragraph 4. Paragraph 16 provides for components and admissibility of Block Grant and Paragraph 20 deals with repeal and saving. Paragraphs 3, 4, 16 and 20 are extracted hereunder:

> "3. Eligible Educational Institutions—The following Non-Government Educational Institutions shall only be eligible for consideration for Block grant for being notified as Aided Educational Institutions under Clause (b) of Section 3 of the Act, namely:-
>
> (1) Higher Secondary Schools or Junior Colleges recognised by Government and affiliated to the Council imparting instructions and presenting regular candidates for Higher Secondary Examination in Arts, Science or Commerce streams conducted by the said Council.
>
> (2) Colleges recognised by Government and affiliated to any of the Universities imparting instruction and presenting regular candidates for the +3 Arts, +3 Science and +3 Commerce Degree Examinations of the Utkal, Berhampur, Sambalpur, Fakir Mohan, North Orissa Universities and Ravenshaw Unitary University with or without Honours.
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> *** *** ***
>
> 4. Eligibility criteria for consideration for Block Grant—(1) The educational institutions described in Para 3 which have been established with recognition of Government and affiliation of the Council or the Universities as the case may be on or before the 1st June 1998 in respect of Educationally Advanced Districts, on or before the 1st June 2000 in respect of Educationally Backwards

Districts and Women's Educational Institutions established with such recognition and affiliation on or before the 1st June 2000 in both Educationally Advanced Districts and Educationally Backwards Districts are eligible for Block Grant to be determined in the manner specified in Paragraph-16.

(2) The educational institution to be considered for Block Grant in accordance with this order shall have received recognition and affiliation for each course, stream and subject taught in that institution for each academic year for a continuous period of minimum 5 years in respect of Educationally Advanced District and 3 years in respect of Educationally Backward District and a Women's Educational Institution without any break or discontinuity from the date of establishment subject to the provisions of sub-Para (1) :

Provided that in case of break or discontinuity, to acquire eligibility, the said qualifying period shall be computed from the date of revival.

*** *** ***

16. Components and admissibility of Block Grant – (1) The Block Grant payable to the Non-Government Educational Institution under paragraph 9 shall be a fixed sum of Grant-in-aid, which shall be determined at the rate of 40% of the emoluments calculated at the initial of the existing time scale of pay applicable to the employees including existing. Dearness Pay and existing Dearness Allowance as admissible prospectively from the date of Notification of the Grant-in-Aid Order, 2008 in favour of the teaching and non-teaching employees of the educational institution who have become eligible to receive Grant-in-aid by 1st day of June 2003.

(2) The balance emoluments including Dearness Pay and Dearness Allowance after payment under sub-Para. (1) shall be borne by the concerned Governing Body of the Aided Education Institution.

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20. Repeal and Saving—(1) The Orissa (Non-Government Colleges, Junior Colleges and Higher Secondary Schools) Grant-in-aid Order, 2004 hereinafter referred to as the Grant-in-aid order is hereby repealed, save for the purposes of such private educational institution being a non-Government College, Junior College or Higher Secondary School which has become eligible under the said order to be notified as Aided Educational Institution to be entitled to receive Grant-in-aid by way of Block Grant determined in the manner provided in the sub-Para. (2) of Paragraph 3 of the Grant-in-aid Order, 2004.

(2) Notwithstanding the repeal under sub-Para. (1), the private educational institutions which are in receipt of any Grant-in-aid or

> Block Grant from Government under the orders so repealed immediately before the date of commencement of this Order, shall continue to receive such Grant-in-aid or Block Grant as the case may be as if the Orissa (Non-Government Colleges, Junior Colleges, and Higher Secondary Schools) Grant-in-Aid Order, 1994 and the Grant-in-Aid Order, 2004 had not been repealed."

It is provided that such institutions established with Government recognition and affiliation of Council or Universities, as the case may be, on or before 1.6.1998 and in respect of Educationally Backward Districts and Women's Educational Institutions on or before 1.6.2000 were eligible for Block Grant to be determined in the manner specified in Paragraph 16. The rate of Block Grant and management's liability has been provided in Paragraph 9. The institution shall be eligible to grant-in-aid in the shape of Block Grant towards 40% of the salary cost of the approved teaching and non-teaching posts. The balance salary cost to be borne by the Governing Body of the institutions. The eligibility of posts for Block Grant is to be as per the work-load and yardstick, as provided in Paragraph 10. The work-load shall be determined regarding the actual enrolment, strength of students, number of candidates presented at the Higher Secondary or Degree Examination, etc. Paragraph 11 deals with the disbursement of Block Grant. As per Paragraph 12, the Governing Body has to apply in respect of eligible persons to receive Block Grant against approved posts. Eligibility is conditioned, inter alia, with aforesaid riders. Paragraph 14 limits the liability of the State Government to

provide grant-in-aid in the shape of Block Grant to the person appointed lawfully and validly against one notified post at any time. The repealing and saving clause contained in Paragraph 20 of the Order of 2008. There is saving to the institution receiving Block Grant in the manner provided in the Orders of 1994 and 2004, shall continue to receive the same.

12. Thereafter, Order of 2009 has been promulgated, notified and implemented with effect from 6.6.2009, containing various provisions in Paragraph 3 concerning eligible educational institutions, admissibility of the Block Grant is contained in Paragraph 4 and rate and disbursement of Block Grant as per Paragraph 5. Under the Order of 2009, the Block Grant payable shall be a fixed sum of grant-in-aid, which shall be determined by taking into account the initial basic pay at the pre-revised time scale of pay plus 7 increments plus Dearness Allowance at the rate of 41% as on 1.1.2004 for teaching and non-teaching employees of such institutions. The determination of the Block Grant shall be within the economic capacity of the Government.

It is apparent from the aforesaid Orders promulgated from time to time under the provisions of Section 7-C of the Act that initially the Government made the provisions of full cost salary in the Order of 1994. It was changed to Block Grant as specified in the Order of

2004. The Block Grant was as per criteria changed and specified further in the Orders of 2008 and 2009, depending upon the financial capacity of the State Government.

13. Shri Ashok Parija, Advocate General appearing for the State of Odisha submitted that the High Court as well as the State Education Tribunal (for short, 'the Tribunal') erred and have acted in gross violation of law to entertain the claims made by the employees. The applications were filed in the Tribunal during 2011 and 2012, to claim release of grant-in-aid under the repealed Order of 1994. The applications were filed belatedly by the employees. They were not entitled to grant-in-aid under the Order of 1994. The grant-in-aid cannot be claimed as a matter of right. There are various factors to be taken into consideration for releasing grant-in-aid. No representation was filed by the employees at the relevant time and they have filed the representations, writ petitions, and original applications belatedly. Divergent views have been taken in different cases by the High Court. The High Court and the Tribunal have opined in some of impugned judgments and orders that employees are entitled to grant-in-aid under the Order of 1994, whereas in *Lokanath Behera v. the State of Odisha,* a Division Bench of the High Court has opined that grant-in-aid cannot be claimed under the Order of 1994, after its repeal. We

have been taken through the scheme of the Act and the provisions of the Orders issued thereunder.

14. Learned counsel appearing on behalf of employees have submitted that right has accrued to the employees to receive the grant-in-aid under the Order of 1994 with respect to the posts which were in existence and the appointment had been made before 1.6.1994 on completion of 5 years or 3 years, as the case may be. The Tribunal has allowed the application in another matter in the year 2010. Thereafter, writ petitions were filed on the ground of parity to claim similar relief and the representation were filed under the order of the High Court, which was illegally rejected by the State Government. Thereafter, original applications were filed before the Tribunal, and the same rightly has been allowed. The decision in *Loknath Behera* case does not lay down law correctly as once the right has accrued and has vested to claim grant-in-aid it cannot be taken away, the orders passed by the Tribunal and High Court granting relief cannot be faulted. The decision in *Loknath Behera* deserves to be set aside. The employees were entitled to approval of their appointment and payment of grant-in-aid in terms of Order of 1994. The Order of 1994 contains long-lasting commitment towards extending the grant-in-aid benefits to the educational institutions. The communication of the Higher Education Department, Government

of Odisha dated 7.10.2017 indicate that grant-in-aid can be claimed and there is continuing eligibility notwithstanding the repeal of the provisions of the Order of 1994. There is no dispute concerning the method of selection and qualification of the respondents to occupy the respective posts. Thus, after completion of the qualifying period, the grant-in-aid has been rightly ordered to be released. An office order was passed on 5.7.2011, informing the respondents that they were approved for payment of 40% of Block Grant in terms of Order of 2008. Thereafter, cases were filed before the Tribunal. As some of the colleges are located in educationally backward districts, it would not be appropriate to deny the payment of a benefit under the Order of 1994. Similar benefits have been granted to a large number of colleges by the Tribunal as well as by the High Court. The employees cannot be forced to obtain less favourable treatment under the Order of 2008, which provides for 40% of Block Grant where grant-in-aid is available under the Order of 1994 of salary, benefits of annual increments, dearness allowance, etc. which are not included in the Order of 2008.

15. It is apparent from the provisions contained in Section 5 of the Act that permission for the establishment of an educational institution is imperative. No private educational institution which requires recognition shall be established except following the provisions of the

Act. The permission to establish has to be granted on fulfilment of certain conditions as specified in Section 5. Section 6 deals with the recognition of the educational institution. The institutions in question are recognised is not in dispute.

16. We are concerned with Section 7-C of the Act, which was incorporated by the Amendment Act of 1994. Section 7-C makes it apparent that Government has to provide grant-in-aid within the limit of its economic capacity and it has to set apart a sum of money "annually" for disbursal of grant-in-aid to the private educational institutions as may be found fit and the institutions/posts have to be approved by the Director for grant-in-aid. The grant-in-aid is optional and an application has to be filed within the specified time limit by an institution desirous of obtaining it. The release is not automatic, even on an application filed to the State Government. If the Governing Body of the institution has not received any grant-in-aid from the State Government and opts to receive it, has to apply for that purpose during the current session of the academic year concerned, for which budgetary provision has to be made by the State Government. An application for receiving the grant-in-aid has to be dealt with considering various factors as enumerated in the Order of 1994 i.e., the post has been filled up continuously for the qualifying period of 5 years/ 3 years, as the case may be, employees to have qualification

and experience. It also depends on attendance in the institution, the number of students, work-load, the validity of the appointment, various other information has also to be furnished regarding date of appointment and other details as provided in Paragraph 15 of the Order of 1994. As per Paragraph 16 of the Order of 1994, the Director has to examine each case individually. In terms of Paragraph 5(2)(v), the Director has to ascertain primary conditions i.e., number of institutions existing in the area. The Director shall select educational institution within the permissible economic limits considering the educational needs of the area, average enrolment within preceding three years, average number of students, performance of the institution in the examination, availability of infrastructural facilities, maintenance of discipline and academic standards, ratio of population vis-a-vis to number of institutions and availability of Government or Aided Educational Institution in the nearby area. The educational institution must have been imparting instruction regularly following the regulations of the University or the Council as the case may be; the Educational Institution has not refused to conduct an examination of the Council or University as the case may be, courses run are only as per the recognition or affiliation.

17. A Non-Government Educational Institution eligible to be and desirous of being notified as an Aided Educational Institution, has to

apply in Form A. The application shall be made within 3 months from the date of completion of the qualifying period of eligibility. The Director may extend the period for good and sufficient reasons as provided in Paragraph 7(2) of the Order of 1994. Further requirement as provided in Paragraph 9 is that of work-load and the other yardsticks. The work-load shall be determined regarding the actual enrolment during the academic year in which post is admissible for aid and should have completed the qualifying period. The post has to be filled up on a full-time basis, not on an honorary or part-time basis. If any post admissible for aid based on work-load and yardstick has not been filled up in the manner prescribed, that period shall not be counted towards computation of the qualifying period. As provided in Paragraph 9(3), the Director, on his satisfaction that a post is eligible for approval, shall issue an order to that effect with prior concurrence of the State Government indicating therein the date from which the post has been approved and the date of eligibility of post to receive the grant-in-aid considering various other factors.

18. It is crystal clear from the scheme of the Order of 1994 that grant-in-aid has to be claimed within the period prescribed and the Director on good and sufficient cause shown may extend the period, otherwise it cannot be claimed. Even after completion of 5 years and 3 years period, as the case may be, there is no automatic accrual of

right for receiving grant-in-aid. It is dependent upon the opinion of Director which educational institution/institutions shall be the best to cater to the need of the area.

19. The employees have filed representations to claim grant-in-aid under Order of 1994 belatedly for the first time in the year 2011-12 that too according to the directions of the High Court, which were rejected. Thereafter, they approached the Tribunal by way of filing original applications, whereas on completion of the qualifying period, the institution has to inform the Director to claim grant in aid. There is no material on record that the institutions have duly applied in the particular academic year and within the time fixed for making application as per the Order of 1994 and there is nothing on the record indicating that the requisite information was furnished. No such supporting documents have been placed on record. Be that as it may. Fact remains that there is no order placed on record whether such prayer if any made by the institution had been rejected as per the Order of 1994. The representations which have been placed on record are of 2011-12, as the grant-in-aid is annual, dependent upon economic limits and financial viability of the State Government, it was too late in the day to file the original applications or writ petitions in the year 2011-12, claiming the benefit of grant-in-aid under the Order

of 1994. In case employees/institutions were desirous of obtaining grant-in-aid under the Order of 1994, they ought to have taken the steps within the reasonable time in view of the fact that it cannot be claimed as a matter of right, but it depends upon annual budget and fulfilment of various factors as contained in the provisions of the Order of 1994.

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

21. The next question which we take up for consideration is concerning the effect of the repeal of the Order of 1994, by the Order of 2004. The provisions contained in Paragraph 4 of the Order of 2004

has repealed the Order of 1994 save for the purposes in Paragraph 3(1). Paragraph 3(1) provides every private educational institution being a Non-Government College, Junior College or Higher Secondary School which has become eligible by 1.6.1994 to be notified as aided educational institution under the Order of 1994, shall be notified by the Government as required under Section 3(b) of the Act and shall be entitled to receive grant-in-aid by way of block grant in the manner provided in Paragraph 3(2). The proviso to Paragraph 3 makes it clear that a college to be eligible as an aided educational institution must not have more than two ministerial staff and two peons. There is no other saving of the Order of 1994. However, Paragraph 4(2) of the Order of 2004 provides notwithstanding the repeal of the Order of 1994, the private educational institutions which are in receipt of any grant-in-aid from the Government under the Order so repealed shall continue to receive the grant-in-aid as if the Grant-in-aid Order, 1994 had not been repealed. Thus, it is clear that in case a college is receiving grant-in-aid, with respect to a post, shall continue to receive it under the Order of 1994, however, in case it was not receiving the grant-in-aid as saving of the Order of 1994 is only entitled for block grant under Paragraph 3(1), not eligible for receiving the grant-in-aid under the Order of 1994. The saving of Order of 1994 is for a limited purpose that the institution shall continue to receive grant-in-aid

concerning the posts which had been sanctioned before the repeal of the order of 1994.

22. Section 6 of the General Clauses Act, 1897 also deals with the effect of repeal, which is extracted hereunder:

> "6. Effect of repeal. Where this Act, or any 1 [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not
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> (a) revive anything not in force or existing at the time at which the repeal takes effect; or
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> (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
>
> (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
>
> (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
>
> (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

The provisions contained in Section 6 of the General Clauses Act stipulate that by the repeal of enactment, the benefit given to the person concerned shall not be affected. However, the repeal shall not revive anything not in force or existing at the time at which the repeal takes place. The previous operation of any enactment or anything is duly done or suffered thereunder shall not be affected or any right, privilege, obligation or liability acquired, accrued or incurred under

any enactment so repealed. However, the best guide is found in what has been saved is by reference to the repealing provisions in the order of 2004 which are clear and unambiguous.

23. In *Principles of Statutory Interpretation, 14th Edition by Justice G.P. Singh,* following observation has been made:

> "The distinction between what is, and what is not a right preserved by the provisions of Section 6, General Clauses Act is often one of great fineness[1]. What is unaffected by the repeal of a statute is a right acquired or accrued under it and not a mere 'hope or expectation of', or liberty to apply for, acquiring a right[2]. A distinction is drawn between a legal proceeding for enforcing a right acquired or accrued and a legal proceeding for acquisition of a right. The former is saved whereas the latter is not. In construing identical provisions of section 10 of the Hong Kong Interpretation Ordinance, LORD MORRIS speaking for the Privy Council observed: "It may be, therefore, that under some repealed enactment, a right has been given, but that, in respect of it, some investigation or legal proceeding is necessary. The right is then unaffected and preserved. It will be preserved even if a process of quantification is necessary. But there is a manifest distinction between an investigation in respect of a right and an investigation which is to decide whether some right should or should not be given. On a repeal, the former is preserved by the Interpretation Act. The latter is not[3]. The LORD CHANCELLOR'S (LORD HERSCHELL'S) observations in an earlier Privy Council case, that "mere right to take advantage of an enactment without any act done by an individual towards availing himself of that right cannot property be

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1 *Free Lanka Insurance Co. v. Ranasinghe,* (1964) 1 All ER 457, p.462 : 1964 AC 541 (PC); *Bansidhar v. State of Rajasthan,* AIR 1989 SC 1614, p. 1621 : 1989 (2) SCC 557.

2 *Director of Public Works v. Ho Po Sang,* (1961) 2 All ER 721, p. 731 : (1963) 3 WLR 39 (PC); *Bansidhar v. State of Rajasthan, supra; Gajraj Singh v. State Transport Appellate Tribunal,* AIR 1997 SC 412, p. 426 : (1997) 1 SCC 650.

3 *Director of Public Works v. Ho Po Sang,* (1961) 2 All ER 721, p. 731 : (1963) 3 WLR 39 (PC).
Also referred to in *Free Lanka Insurance Co. v. Ranasinghe,* (1964) 1 All ER 457, p.462 : 1964 AC 541 (PC) [Interpretation of section 6(3). Ceylon Interpretation Ordinance, 1900]; *Isha Valimohamad v. Haji Gulam Mohamad,* AIR 1974 SC 2061, p. 2065 : (1974) 2 SCC 484; *M.S. Shivananda v. Karnataka State Road Transport Corporation,* AIR 1980 SC 77, p. 81 : (1980) 1 SCC 149; *Kanaya Ram v. Rajinder Kumar,* (1985) 1 SCC 436, p. 441 : AIR 1985 SC 371 ; *Bansidhar v. State of Rajasthan,* AIR 1989 SC 1614, p. 1623 : 1989 (2) SCC 557; *Vinod Gurudas Raikar v. National Insurance Co. Ltd.,* AIR 1991 SC 2156, p. 2159 : (1991) 4 SCC 333; *P.V. Mohammad Barmay Sons v. Director of Enforcement,* AIR 1993 SC 1188, p.1192 : (1992) 4 JT 565; *Thyssen Stahlunion GMBH v. Steel Authority of India,* JT 1999 (8) 66, pp.98, 108 : AIR 1999 SC 3923, p. 3942; *Ambalal Sarabhai Enterprises Ltd. v. Amrit Lal & Co.,* AIR 2001 SC 3580, p.3589 : (2001) 8 SCC 397.

deemed a right accrued[4]", are not to be understood as supporting the view that if steps are taken under a statute for acquiring a right, the right accrues even if the steps taken do not reach the stage when the right is given[5], nor do the said observations support the view that if no steps are taken for enforcement of a right come into existence, the right is not an accrued right[6]. As explained by SINHA, C.J. the observations of LORD HERSCHLL are only authority for the proposition that "the mere right, existing at the date of a repealing statute to take advantage of provisions of the statute repealed is not a right accrued[7]. Inchoate or contingent rights and liabilities, i.e., rights and liabilities which have accrued but which are in the process of being enforced or are yet to be enforced are unaffected for clause (c) clearly contemplates that there will be situations when an investigation, legal proceeding or remedy may have to be continued or resorted to before the right or liability can be enforced[8]. Such a right or liability is not merely a 'hope' which is destroyed by the repeal[9].

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It is submitted that as pointed out by SIMON BROWN, L.J., the two expressions are generally used in saving legislations to convey the same idea and are not mutually exclusive. Yet a possible distinction may be made between cases where some step, after the Act comes into force, is needed to be taken by the claimant for getting the right and cases where the Act, without anything being further done by the claimant confers the right. In the former class of cases, it would be a right acquired after the necessary step is taken whereas in the latter class of cases it would be a right accrued by mere force of the Act.

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The right of a tenant, who has the land for a certain number of years and who has personally cultivated the same for that period 'to be deemed to be protected tenant' under the provisions of a statute has been held to be an accrued right which will survive the repeal of the statute[10] . Similarly, a right conferred by an Act that every lease shall be deemed to be for a period of ten years is a right acquired and will be unaffected by repeal of the Act[11]. But the so-called right

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4 *Abbot v. Minister of Land,* (1895) AC 425, 431: 72 LT 113 (PC).

5 *Director of Public Works v. Ho Po Sang,* (1961) 2 All ER 721, p. 732, 733 (PC).

6 *Sakharam v. Manikchand,* AIR 1963 SC 354, pp. 356, 357. **See further** *Hungerford Investment Trust v. Haridas Mundhra,* AIR 1972 SC 1826, p. 1832: (1972) 3 SCC 684; *Lalji Raja & Sons v. Hansraj Nathuram,* AIR 1971 SC 974, p. 979 : (1971) 1 SCC 721; *Zoharabi v. Arjuna,* AIR 1980 SC 101, p. 102 : (1980) 2 SCC 203 ; *Kanaya Ram v. Rajinder Kumar,* (1985) 1 SCC 436, p. 441 : AIR 1985 SC 371 ; *Bansidhar v. State of Rajasthan,* AIR 1989 SC 1614, pp.1621, 1622; *Thyssen Stahlunion GMBH v. Steel Authority of India,* JT 1999 (8) 66, p. 107, 108 : AIR 1999 SC 3923, pp.3947, 3948 : (1999) 9 SCC 334.

7 *Sakharam v. Manikchand, supra.*

8 *Plewa v. Chief Adjudication Officer,* (1994) 3 All ER 323, p.331 : (1995) 1 AC 249 : (1994) 3 WLR 317 (HL) (For this case see also text and note 74, p.588).

9 *Aitken v. South Hams District Council,* (1994) 3 All ER 400, p. 405 : (1995) 1 AC 262 : (1994) 3 WLR 33 (HL).

10 *Sakharam v. Manikchand*, AIR 1963 SC 354 : 1962 (2) SCR 59.

11 *Hiralal v. Nagindas*, AIR 1966 SC 367 : 1964 (6) SCR 773. For other vested rights in the context of landlord and tenant, **see** *Ishverlal v. Motibhai*, AIR 1966 SC 459 : 1966 (1) SCR

of a statutory tenant to protection against eviction under a Control of Eviction Act is mere advantage and not a right in the real sense and does not continue after repeal of the Act.[12]. Similarly on the reasoning that the right of a tenant to get standard rent fixed and not to pay contractual rent in excess of standard rent under a Rent Control Act is only a protective right and not a vested right, it has been held that when during the pendency of an application for fixation of standard rent, the Act is amended and it ceases to apply to the premises in question, the application is rendered incompetent and has to be dismissed as infructuous.[13]

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The option given to a grantee to make additional purchases of Crown land on fulfilment of certain conditions under the provisions of the statute was held to be not an accrued right when the statute was repealed before the exercise of the option.[14]

A privilege to get an extension of a licence under an enactment is not an accrued right and no application can be filed after the repeal of the enactment for renewal of the licence.[15]

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The right or privilege to claim benefit of condonation of delay is not an accrued right under a repealed provision when the delay had not occurred before the repeal of the said provision.[16]

The right of pre-emption conferred by an Act it is remedial right or in other words a right to take advantage of an enactment for acquiring a right to land or other property and cannot be said to have been acquired or accrued until a decree is passed and does not survive if the Act is repealed before passing of the final decree.[17]

The right of a Government servant to be considered for promotion in accordance with existing rules is not a vested right and does not survive if the Government takes a policy decision not to fill up the vacancy pending revision of the rules and the revised rules with repeal the existing rules do not make him eligible for promotion.[18].

367.

12 *Qudrat Ullah v. Bareilly Municipality*, AIR 1974 SC 396 : (1974) 1 SCC 202. The same result will follow if the Act ceases to apply to certain tenancies by an amendment made by the Legislature or by a notification issued by the Government in exercise of a power conferred by the Act: *D.C. Bhatia v. Union of India,* 1995 (1) SCC 104: 1994 AIR SCW 5011*; Parripati Chandra Shekhar Rao v. Alapati Jalaiah,* 1995 (3) Scale 197: AIR 1995 SC 1781 : (1995) 3 SCC 709. (Even pending proceedings will be affected); *Ambalal Sarabhai Enterprises Ltd. v. Amrit Lal & Co.*, AIR 2001 SC 3580 : (2001) 8 SCC 397 (pending proceedings will be affected).

13 *Vishwant Kumar v. Madanlal Sharma,* AIR 2004 SC 1887, pp.1888, 1889 : (2004) 4 SCC 1.

14 *Abbot v. Minister of Lands,* (1895) AC 425, 431 (PC).

15 *Reynolds v. A.G. for Nova Scotia,* (1896) AC 240 : 65 LJ PC 16 : 74 LT 108 (PC). **See further** *Gajraj Singh v. State Transport Appellate Tribunal,* AIR 1997 SC 412, p.422 : (1997) 1 SCC 650 (The text in this book from 6th Edition, p.418 is quoted).

16 *Vinod Gurudas Raikar v. National Insurance Co. Ltd.,* AIR 1991 SC 2156, p. 2160: 1991 (4) SCC 333.

17 *Nirmala Devi v. Renuka*, AIR 1973 MP 120 **approved** in *Krishna Dass Agarwal v. Kanhaiyalal,* AIR 1996 SC 3464: 1996 (9) SCC 488.

18 *Ramulu (Dr.) v. S. Suryaprakash Rao (Dr.)*, AIR 1997 SC 1803, p.1808: 1997 (3) SCC 59.

> General savings of rights accrued, and liabilities incurred under a repealed Act by force of section 6, General Clauses Act, are subject to a contrary intention evinced by the repealing Act.[19] In case of a bare repeal, there is hardly any room for a contrary intention;[20] but when the repeal is accompanied by fresh legislation on the same subject, the provisions of the new Act will have to be looked into to determine whether and how far the new Act evinces a contrary intention affecting the operation of section 6, General Clauses Act.[21] .....When a saving clause in a new Act is comprehensively worded and is detailed, it may be possible to infer that it is exhaustive and expresses an intention not to call for the application of section 6, General Clauses Act.[22]"

24. It is apparent from the aforesaid discussion that what is unaffected by the repeal of a statute is a right acquired or accrued and not mere hope or expectation of or liberty to apply for acquiring a right. There is a distinction in making an application for acquiring a

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19 *Karam Singh v. Pratap Chand*, AIR 1964 SC 1305, p. 1309 (para 10) : (1964) 5 SCR 647 ; *Ishverlal v. Motibhai,* AIR 1966 SC 459, p.466 : 1966 (1) SCR 367.

20 By a subsequent statute a penal section in an earlier statute ceased to have effect and was also repealed. It was held that even such a double repeal did not show a contrary intention and prevent prosecution for an offence committed before the repeal; *Commissioner of Police v. Simeon,* (1982) 2 All ER 813 : (1983) 1 AC 234 : (1982) 3 WLR 289 (HL).

21 *State of Punjab v. Mohar Singh*, AIR 1955 SC 84, p.88 : (1955) 1 SCR 833 ; *Indira Sohanlal v. Custodian of E.P.,* AIR 1956 SC 77, p. 83 : (1955) 2 SCR 1117 ; *Brihan Maharashtra Sugar Syndicate v. Janardan,* AIR 1960 SC 794, p. 795 : (1960) 3 SCR 85; *Mahadeolal v. Administrator General of WB,* AIR 1960 SC 936, pp.938, 939 (para 7) : (1960) 3 SCR 578; *State of Kerala v. N. Sami Iyer,* AIR 1966 SC 1415, pp.1417, 1418; *Jayantilal v. Union of India*, AIR 1971 SC 1193, p.1196 : (1972) 4 SCC 174; *T. Barai v. Henry Ah Hoe*, AIR 1983 SC 150, p.156 : (1983) 1 SCC 177; *Bansidhar v. State of Rajasthan*, AIR 1989 SC 1614, p.1619 : (1989) 2 SCC 557; *Manphul Singh Sharma v. Ahmedi Begum*, JT 1994 (5) SC 49, p.53 : (1994) 5 SCC 465; *D. Srinivasan v. The Commissioner,* AIR 2000 SC 1250, p.1255 : (2000) 3 SCC 548. For the construction of a Saving Clause which opens with the words 'Save as expressly provided in this Act', **see** *S.N. Kamble v. Sholapur Municipality,* AIR 1966 SC 538 : (1966) 1 SCR 618. For a saving clause which preserves old rights but applies new procedure, **see** *Ramachandra v. Tukaram,* AIR 1966 SC 557: 1966 (1) SCR 594.

22 *Kalawati Devi v. CIT*, AIR 1968 SC 162, p.168 : (1967) 3 SCR 833; *ITO, Mangalore v. Damodar,* AIR 1969 SC 408, p.412 : (1969) 2 SCR 29; *Mahmadhusen Abdulrahim Kalota Shaikh v. Union of India,* (2009) 2 SCC 1 para 34 (f) : (2008) 13 Scale 398. **But see** *Tiwari Kanhaiyalal v. Commissioner of Income-tax*, AIR 1975 SC 902 : (1975) 4 SCC 401, which holds that the detailed savings contained in section 297, of the Income-tax Act, 1961 are not exhaustive. Recourse, in this case, was taken to section 6, General Clauses Act for holding that a person's liability for an offence under section 52 of the Income-tax Act, 1922 continued even after its repeal. In *Commissioner of Income-tax, U.P. v. Shah Sadiq and Sons,* (1987) 3 SCC 516, p.524: AIR 1986 SC 1217. Section 6 of the General Clauses Act was again applied to continue the right of set-off accrued under section 24(2) of the 1922 Act after its repeal by the 1961 Act.

[Note: For convenience, the cases/citations in the extracts has been renumbered.]

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

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

26. In the present case, it is apparent that there is no absolute right conferred under the Order of 1994. The investigation was necessary

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

27. The High Court in *Loknath Behera* has rightly opined that due to repeal, the provisions of the Order of 1994 cannot be invoked to obtain grant-in-aid. The High Court has rightly referred to the observations of this Court in *State of Uttar Pradesh and others v. Hirendra Pal Singh, and others,* (2011) 5 SCC 305, wherein it was observed:

> "22. It is a settled legal proposition that whenever an Act is repealed, it must be considered as if it had never existed. The object of repeal is to obliterate the Act from the statutory books, except for certain purposes as provided under Section 6 of the General Clauses Act, 1897. Repeal is not a matter of mere form but is of substance. Therefore, on repeal, the earlier provisions stand obliterated/abrogated/wiped out wholly i.e. pro tanto repeal (vide *Dagi Ram Pindi Lall* v. *Trilok Chand Jain*, (1992) 2 SCC 13; *Gajraj*

> *Singh* v. *STAT*, (1997) 1 SCC 650; *Property Owners' Assn.* v. *State of Maharashtra*, (2001) 4 SCC 455 and *Mohan Raj* v. *Dimbeswari Saikia*, (2007) 15 SCC 115).
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> 24. Thus, there is a clear distinction between repeal and suspension of the statutory provisions and the material difference between both is that repeal removes the law entirely; when suspended, it still exists and has operation in other respects except wherein it has been suspended. Thus, a repeal puts an end to the law. A suspension holds it in abeyance."

28. Reliance has also been placed on the decision of *Board of Control of Cricket in India v. Kochi Cricket Private Limited*, (2018) 6 SCC 287, wherein decision rendered in *State of Punjab v. Mohar Singh*, AIR 1955 SC 84, has been relied upon while holding that when the repeal is followed by fresh legislation on the same subject, the provisions of the new Act have to be looked into so as to ascertain whether it manifests an intention to destroy the rights or keep them alive.

29. Considering the various provisions of Section 7-C of the Act and the Order of 1994, it is apparent that institutions which received grant-in-aid and post with respect of which grant-in-aid was being released, have been saved. The reference of the institution means and includes the posts. They cannot be read in isolation. It cannot be said that right to claim grant-in-aid has been fixed, accrued, settled, absolute or complete at the time of the repeal of the order of 2004. As per the meaning in *Black's Law Dictionary*, vesting has been defined thus:

> "**vest,** *vb.* (15c) **1.** To confer ownership (of property) upon a person. **2.** To invest (a person) with the full title to property. **3.** To give (a person) an immediate, fixed right of present or future enjoyment. **4.** *Hist.* To put (a person) into possession of land by the ceremony of investiture. – **vesting,** *n.*"

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

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

person cannot claim rights to be treated equally as the right does not exist, negative equality when the right does not exist, cannot be claimed. In *Basawaraj and another v. Special Land Acquisition Officer,* (2013) 14 SCC 81, it was held thus:

> "8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. (Vide *Chandigarh Admn.* v. *Jagjit Singh*, (1995) 1 SCC 745, *Anand Buttons Ltd.* v. *State of Haryana*, (2005) 9 SCC 164, *K.K. Bhalla* v. *State of M.P*, (2006) 3 SCC 581 and *Fuljit Kaur* v. *State of Punjab,* (2010) 11 SCC 455.)"

In *Chaman Lal v. State of Punjab and others,* (2014) 15 SCC 715, it was observed as under:

> "16. More so, it is also settled legal proposition that Article 14 does not envisage for negative equality. In case a wrong benefit has been conferred upon someone inadvertently or otherwise, it may not be a ground to grant similar relief to others. This Court in *Basawaraj* v. *Land Acquisition Officer*, (2013) 14 SCC 81 considered this issue and held as under: (SCC p. 85, para 8)
>
> > "*8.* It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on

> others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. (Vide *Chandigarh Admn.* v. *Jagjit Singh*, (1995) 1 SCC 745, *Anand Buttons Ltd.* v. *State of Haryana*, (2005) 9 SCC 164, *K.K. Bhalla* v. *State of M.P,* (2006) 3 SCC 581 and *Fuljit Kaur* v. *State of Punjab,* (2010) 11 SCC 455.)""

In *Fuljit Kaur v. State of Punjab and others*, (2010) 11 SCC 455, it was observed thus:

> "11. The respondent cannot claim parity with *D.S. Laungia v. State of Punjab*, AIR 1993 P&H 54, in view of the settled legal proposition that Article 14 of the Constitution of India does not envisage negative equality. Article 14 is not meant to perpetuate illegality or fraud. Article 14 of the Constitution has a positive concept. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim the benefits on the basis of the wrong decision. Even otherwise Article 14 cannot be stretched too far otherwise it would make function of the administration impossible. (Vide *Coromandel Fertilizers Ltd.* v. *Union of India*, 1984 Supp SCC 457, *Panchi Devi* v. *State of Rajasthan*, (2009) 2 SCC 589 and *Shanti Sports Club* v. *Union of India,* (2009) 15 SCC 705)"

In Doiwala Sehkari Shram Samvida Samiti Ltd. v. State of Uttaranchal and others, (2007) 11 SCC 641, this Court in the context of negative equality observed thus:

> "28. This Court in *Union of India* v. *International Trading Co.* has held that two wrongs do not make one right. The appellant cannot claim that since something wrong has been done in another case, directions should be given for doing another wrong. It would not be setting a wrong right but could be perpetuating another wrong and in such matters, there is no discrimination involved. The concept of equal treatment on the logic of Article 14 cannot be pressed into service in such cases. But the concept of equal treatment presupposes existence of similar legal foothold. It does not countenance repetition of a wrong action to bring wrongs on a par. The affected parties have to establish strength of their case on some other basis and not by claiming negative quality. In view of the law laid down by this Court in the above matter, the submission of the appellant has no force. In case, some of the persons have been granted permits wrongly, the appellant cannot claim the benefit of the wrong done by the Government."

In Bondu Ramaswamy and others v. Bangalore Development Authority and others, (2010) 7 SCC 129, this Court observed thus:

> "146. If the rules/scheme/policy provides for deletion of certain categories of land and if the petitioner falls under those categories, he will be entitled to relief. But if under the rules or scheme or policy for deletion, his land is not eligible for deletion, his land cannot be deleted merely on the ground that some other land similarly situated had been deleted (even though that land also did not fall under any category eligible to be deleted), as that would amount to enforcing negative equality. But where large extents of land of others are indiscriminately and arbitrarily deleted, then the court may grant relief, if, on account of such deletions, the development scheme for that area has become inexecutable or has resulted in abandonment of the scheme."

In *Kulwinder Pal Singh and another v. State of Punjab and others*, (2016) 6 SCC 532, this Court while relying upon *State of U.P. v. Rajkumar Sharma*, (2006) 3 SCC 330, observed as under*:*

> 16. The learned counsel for the appellants contended that when the other candidates were appointed in the post against dereserved category, the same benefit should also be extended to the appellants. Article 14 of the Constitution of India is not to perpetuate illegality and it does not envisage negative equalities. In- *State of U.P.* v. *Rajkumar Sharma,* (2006) 3 SCC 330 it was held as under (SCC p. 337, para 15)

> "*15.* Even if in some cases appointments have been made by mistake or wrongly, that does not confer any right on another person. Article 14 of the Constitution does not envisage negative equality, and if the State committed the mistake it cannot be forced to perpetuate the same mistake. (See *Sneh Prabha* v. *State of U.P,* (1996) 7 SCC 426; *Jaipur Development Authority* v. *Daulat Mal Jain,* (1997) 1 SCC 35; *State of Haryana* v. *Ram Kumar Mann,* (1997) 3 SCC 321; *Faridabad CT Scan Centre* v. *DG, Health Services,* (1997) 7 SCC 752; *Jalandhar Improvement Trust* v. *Sampuran Singh,* (1999) 3 SCC 494; *State of Punjab* v. *Rajeev Sarwal,* (1999) 9 SCC 240; *Yogesh Kumar* v. *Govt. (NCT of Delhi),* (2003) 3 SCC 548; *Union of India* v. *International Trading Co.,* (2003) 5 SCC 437 and *Kastha Niwarak Grahnirman Sahakari Sanstha Maryadit* v. *Indore Development Authority,* (2006) 2 SCC 604.)"
>
> Merely because some persons have been granted benefit illegally or by mistake, it does not confer right upon the appellants to claim equality."

In *Rajasthan State Industrial Development & Investment Corporation v. Subhash Sindhi Cooperative Housing Society, Jaipur and others*, (2013) 5 SCC 427, this Court held as under:

> "19. Even if the lands of other similarly situated persons have been released, the Society must satisfy the Court that it is similarly situated in all respects, and has an independent right to get the land released. Article 14 of the Constitution does not envisage negative equality, and it cannot be used to perpetuate any illegality. The doctrine of discrimination based upon the existence of an enforceable right, and Article 14 would hence apply, only when invidious discrimination is meted out to equals, similarly circumstanced without any rational basis, or to relationship that would warrant such discrimination. [Vide *Sneh Prabha* v. *State of U.P.*, (1996) 7 SCC 426, *Yogesh Kumar* v. *Govt. (NCT of Delhi)*, (2003) 3 SCC 548, *State of W.B.* v. *Debasish Mukherjee,* (2011) 14 SCC 187 and *Priya Gupta* v. *State of Chhattisgarh,* (2012) 7 SCC 433.]"

In *Arup Das and others v. State of Assam and others,* (2012) 5 SCC 559, this Court observed as under

> "19. In a recent decision rendered by this Court in *State of U.P.* v. *Rajkumar Sharma*, (2006) 3 SCC 330, this Court once again had to consider the question of filling up of vacancies over and above the

> number of vacancies advertised. Referring to the various decisions rendered on this issue, this Court held that filling up of vacancies over and above the number of vacancies advertised would be violative of the fundamental rights guaranteed under Articles 14 and 16 of the Constitution and that selectees could not claim appointments as a matter of right. It was reiterated that mere inclusion of candidates in the select list does not confer any right to be selected, even if some of the vacancies remained unfilled. This Court went on to observe further that even if in some cases appointments had been made by mistake or wrongly, that did not confer any right of appointment to another person, as Article 14 of the Constitution does not envisage negative equality and if the State had committed a mistake, it cannot be forced to perpetuate the said mistake."

In *State of Orissa and another v. Mamata Mohanty,* (2011) 3 SCC 436, it was observed:

> "56. It is a settled legal proposition that Article 14 is not meant to perpetuate illegality and it does not envisage negative equality. Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief. (Vide *Chandigarh Admn.* v. *Jagjit Singh*, (1995) 1 SCC 745, *Yogesh Kumar* v. *Govt. of NCT of Delhi*, (2003) 3 SCC 548, *Anand Buttons Ltd.* v. *State of Haryana*, (2005) 9 SCC 164, *K.K. Bhalla* v. *State of M.P.*, (2006) 3 SCC 581, *Krishan Bhatt* v. *State of J&K*, (2008) 9 SCC 24, *State of Bihar* v. *Upendra Narayan Singh*, (2009) 5 SCC 65 and *Union of India* v. *Kartick Chandra Mondal*, (2010) 2 SCC 422)"

31. It is apparent on consideration of Paragraph 4 of order of 2004 that only saving of the right is to receive the block grant and only in case grant in aid had been received on or before the repeal of the Order of 2004, it shall not be affected and the Order of 1994 shall continue only for that purpose and no other rights are saved. Thus, we approve the decision of the High Court in *Lok Nath Behera* (supra) on the aforesaid aspect for the aforesaid reasons mentioned by us.

32. Thus, we find that the orders passed by the Tribunal and the High Court in favour of employees are not sustainable. The judgment and order of the High Court in *Loknath Behera* and *Manas Purohit* are upheld for the reasons mentioned in the order. The appeals filed by the State of Orissa are allowed and that of employees are hereby dismissed. Parties to bear their own costs as incurred.

.....J.
(Arun Mishra)

.....J.
(S. Abdul Nazeer)

New Delhi: **.....J.**
September 16, 2019 **(M.R. Shah)**