IN THE HIGH COURT OF ORISSA AT CUTTACK

A.F.R.

W.A. No.1327 of 2022
CNR No.ODHC010680972022

(An application under chapter-VIII, Clause-10 of the Letter Patents Act of the High Court of Patna, read with Article-4, Rule-2 of the Orissa High Court's Order, 1948 against the order of the learned Single Judge passed in W.P.(C) No. 26434 of 2013 disposed of on 14.09.2022)

Saroj Chandra Behera **....** ***Appellant(s)***

-versus-

Hindustan Aeronautics Ltd., Koraput Division, Sunabeda-2, Koraput & Ors. **....** ***Respondent(s)***

Advocates appeared in the case through Hybrid Mode:

For Appellant (s) : *Mr. Sidheswar Mallik, Adv.*

For Respondent(s) : *Mr. Ajodhya Ranjan Dash, Adv.*
Along with Associates
(for Respondent Nos.1 to 3)

CORAM:
HON'BLE DR. JUSTICE SANJEEB K PANIGRAHI
HON'BLE MR. JUSTICE CHITTARANJAN DASH

DATE OF HEARING:-06.10.2026
DATE OF JUDGMENT:-09.11.2026

Dr. Sanjeeb K Panigrahi, J.

1. The present intra-Court appeal, at the instance of the present Appellant, is directed against the judgment and order dated 14th September, 2022, rendered by the learned Single Judge in W.P.(C) No.26434 of 2013, whereby the writ petition was dismissed on the ground that the Appellant's claim, having been pursued after an inordinate and

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unexplained lapse of time, stood disentitled to discretionary relief under Article 226 of the Constitution of India. The learned Single Judge held that the Appellant's conduct attracted the principles of waiver, acquiescence and estoppel, thereby furnishing an independent ground for declining relief. The claim was also examined on its merits and found wanting in legal substance and justification. Thus, both on the threshold of equitable considerations governing the exercise of writ jurisdiction and upon an examination of the substantive claim, the learned Single Judge found no ground warranting judicial interference.

I. FACTUAL MATRIX OF THE CASE:

2. Succinctly put, the facts of the case are as follows:

(i) The Aeronautics DAV High School (ADAV High School) was established in the year 1968 by Hindustan Aeronautics Limited (HAL) at Sunabeda in the district of Koraput, Odisha. At its inception, the institution was wholly financed, administered and managed by HAL and was affiliated with the Board of Secondary Education, Odisha.

(ii) In the year 1974, the Government of Odisha extended full grant-in-aid towards the salary expenditure of the teaching and non-teaching staff of the institution, thereby bringing the school within the statutory ambit of an aided educational institution as contemplated under Section 3(b) of the Odisha Education Act, 1969. Consequent upon such extension of financial assistance, the teaching and non-teaching employees became entitled, in terms of Rule 9 of the Odisha Education Rules, 1974, to the scales of pay admissible to their corresponding counterparts serving in Government High Schools.

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(iii) Subsequently, with a view to entrusting the administration and management of the educational institutions established by HAL at Sunabeda to a distinct institutional body, the HAL management constituted a registered society under the name and style of Aeronautics Education Society. The Society was entrusted with the management and administration of the said institutions, with the General Manager of HAL, Koraput Division, functioning as its Chairman.

(iv) The Appellant was appointed as a Trained Graduate Teacher (TGT) in the institution on 2nd September, 1980. His appointment subsequently received the requisite approval of the competent educational authority, namely, the Inspector of Schools, Koraput, vide order dated 13th May, 1982.

(v) In the year 1993, the Aeronautics Education Society expressed its willingness to take over the entire financial and administrative responsibility for the institution, dispensing with the grant-in-aid hitherto extended by the Government of Odisha. Upon obtaining the requisite consent, the State Government, vide communication dated 5th May, 1995, accorded permission for HAL to take over the management of the school, subject to the express condition that no claim for grant-in-aid would thereafter be made against the State Government. Pursuant to the said arrangement, HAL assumed responsibility for the administration, management and financial obligations of the institution with effect from the academic year 1993–94.

(vi) The grievance of the Appellant is that notwithstanding HAL having assumed complete administrative and financial responsibility for the

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institution, it failed to extend to the teaching and non-teaching staff the benefit of revised scales of pay and other consequential service benefits admissible to its own employees and to similarly placed employees serving in Government High Schools. According to the Appellant, such denial deprived the staff of their financial and service benefits to which they claimed to be legitimately entitled.

(vii) The Appellant further submitted that while the age of superannuation prescribed for employees of aided educational institutions in Odisha, as well as for employees of HAL, stood at 60 years, the authorities of the institution continued to retire its teaching and non-teaching staff upon attaining the age of 58 years. According to the Appellant, such differential treatment, was arbitrary and legally unsustainable. The Appellant, whose date of birth is 5th January, 1956, accordingly claimed that he was entitled to remain in service until 31st January, 2016, upon attaining the age of 60 years. His grievance arose from the decision of the school authorities to superannuate him with effect from 31st January, 2014, upon completion of 58 years of age, thereby allegedly curtailing his legitimate tenure of service by two years.

(viii) The Appellant further contended that notwithstanding his position as the senior-most teacher of the institution and his discharge of the duties and responsibilities of In-Charge Headmaster, the authorities failed to extend to him the Grade Pay of Rs.4,600/- and conveyance allowance of Rs.400/- per month, to which he claimed to be legitimately entitled. Such denial, according to the Appellant, amounted to the withholding of

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monetary benefits commensurate with the responsibilities entrusted to him.

(ix) Additionally, the Appellant asserted that he was entitled to the benefits of the Revised Scale of Pay Rules, 1998, with effect from 01.01.1996, including Time Bound Advancement (TBA) upon completion of 15 years of service, as well as the revised pay scales under the Revised Scale of Pay Rules, 2008, with effect from 01.01.2006. He also claimed entitlement to Dearness Allowance at the rates applicable to State Government, Central Government and HAL employees.

(x) Despite submitting several representations to the concerned authorities, the petitioner received no favourable response. Consequently, he approached the High Court of Orissa by filing W.P.(C) No.26434 of 2013, seeking following relief:

> *"Under the aforesaid facts and circumstance the petitioner humbly prays that this Hon'ble Court may graciously be pleased to,*
> *1. Direct/Order that the Petitioner shall be allowed the revised scale of pay w.e.f. 1.1.1996 and 1.1.2006 and the other financial and service benefits accrued to him consequent upon such revision with a concurrent direction to pay the differential arrear salary within a stipulated period.*
> *2. Direct/Order that the petitioner shall be allowed to continue till completion of 60 years of age which is the age of retirement of the employees of the aided educational institution and also the employees of HAL.*
> *3. Direct/Order that the petitioner shall be allowed the D.A. at the same rate as has been allowed to the State Government, Central Government and HAL employee.*

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4. Pass such other orders as may be deemed fit and proper in the interest of justice.
And for this act of kindness the petitioner as in duty bound shall ever pray."

(xi) On 14th September, 2022, the learned Single Judge dismissed the above Writ Petition filed by the Appellant. Hence, the present Appeal.

II. SUBMISSIONS ON BEHALF OF THE APPELLANT:

3. Learned counsel for the Appellant earnestly made the following submissions in support of his contentions.

(i) The learned Single Judge failed to adjudicate upon the principal issue involved in the Writ Petition, namely, the legality of transferring the management of ADAV High School by the authorities of Hindustan Aeronautics Limited (HAL), Respondent No.1, to a private society, Respondent No. 2, despite the State Government having expressed its no objection under Annexure-5 to the Writ Petition for taking over the management of the school by HAL and not by any private society.

(ii) It was further submitted that the learned Single Judge fell into error in accepting the stand of the Opposite Parties that the Appellant and other members of the staff had consciously exercised their option to continue in service under the management of Respondent No.2-Society. Learned counsel contended that Annexure-L/2 to the counter affidavit, upon which the Opposite Parties themselves placed reliance, disclosed a position to the contrary. According to him, the said document unequivocally indicated that the Appellant and other staff members had opted to continue under the management of Hindustan

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Aeronautics Limited (HAL), Respondent No.1, and not under Respondent No.2-Society. It was, therefore, submitted that the finding recorded by the learned Single Judge based on an erroneous appreciation of the documentary evidence and was contrary to the materials available on record.

(iii) Learned counsel further submitted that the learned Single Judge erroneously relied upon the decision of the Hon'ble Supreme Court in ***State of Uttar Pradesh v. Principal, Abhaya Nanda Inter College***[1]. It was argued that the said decision was distinguishable on facts and had no application to the controversy involved in the present case. In the present case, the school had received Grant-in-Aid in the year 1974 and continued to enjoy such aid till 1993. During the relevant period, the school was an aided educational institution within the meaning of Section 3(b) of the Orissa Education Act and its assets had vested in the Government. Learned counsel further contended that the question involved was not whether an institution could decline to accept the conditions attached to a grant-in-aid, but whether an institution, after having received and enjoyed grant-in-aid for nearly two decades, could thereafter be reverted to a private body. It was further submitted that Section 9 of the Orissa Education Act imposed restrictions on alienation of the properties of an aided educational institution, which aspect had not been considered by the learned Single Judge.

[1] 2021 SCC OnLine SC 807

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(iv) Learned counsel further submitted that the service conditions of the teaching and non-teaching staff of aided educational institutions were governed by the Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974. Rule 9 thereof entitled the Appellant to service benefits at par with his counterparts in Government schools. It was contended that the Appellant had consciously opted to continue under HAL, a Government of India undertaking, and had never consented to serve under Respondent No.2-Society. The unilateral transfer of the school's management to the said Society was, therefore, assailed as illegal and contrary to the conditions stipulated by the State Government under Annexure-5 to the writ petition.

(v) Learned counsel further submitted that the learned Single Judge committed an error in holding that the Appellant had suppressed the fact relating to acceptance of benefits and facilities extended by HAL management. It was clarified that the Appellant's specific case was that HAL had illegally transferred the management of the school to Respondent No. 2-society and that the benefits subsequently extended by the society were substantially inferior to those to which the appellant was legally entitled under the management of HAL or the State Government.

(vi) It was next contended that the learned Single Judge had misdirected himself by placing reliance upon the decision taken in the meeting held on 17.07.2012. According to learned counsel, the said decision merely related to the benefits to be extended by Respondent No. 2-society to

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the employees and was taken in the context of the school being handed over by the State Government to Respondent No.1-HAL. The said decision could not, therefore, be treated as establishing the Appellant's consent to continue under the management of the private society or as validating the subsequent transfer of the school.

(vii) Learned counsel also argued that the transfer of the management of the school by HAL to a private society had resulted in the denial of higher salary and other service benefits to the Appellant, thereby violating his fundamental rights. The learned Single Judge failed to appreciate that there could be no estoppel against the enforcement of fundamental rights and that the appellant's acceptance of certain benefits could not be construed as a waiver of his constitutional and statutory entitlements.

(viii) Lastly, learned counsel challenged the finding of the learned Single Judge regarding delay and laches. It was submitted that the Appellant approached this Court when HAL management failed to extend the benefits arising out of pay revision and Respondent No. 2-society issued notice for his superannuation upon attaining the age of 58 years, whereas employees of HAL were entitled to continue in service till attaining the age of 60 years. It was, therefore, contended that the cause of action arose upon denial of the service benefits and issuance of the superannuation notice and there was no unreasonable delay in approaching this Court. The learned Single Judge, according to learned counsel, committed an error in rejecting the appellant's claim on the

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ground of delay without properly appreciating the circumstances in which the cause of action had arisen.

(ix) On the aforesaid grounds, learned counsel for the appellant submitted that the impugned judgment and order passed by the learned Single Judge suffered from errors of law and appreciation of facts and, accordingly, prayed for setting aside the same and granting the reliefs sought for in the Writ Petition.

III. SUBMISSIONS OF RESPONDENT NOs.1 to 3:

4. Per contra, the learned counsel for Respondent Nos.1 to 3 earnestly made the following submissions:

(i) The school was established by Hindustan Aeronautics Ltd. in 1968 and was initially financed by HAL. It subsequently received GIA towards salary from the Government. The Aeronautics Education Society was constituted and registered for management of the school.

(ii) In 1993, the teachers themselves represented for direct management of the school by the Aeronautics Education Society. The representation was founded upon the facilities and benefits available under the proposed arrangement. Pursuant thereto, the Government sought the willingness of the employees. Out of 25 employees, 22, including the present Appellant, expressed their willingness to continue under the management of the Society upon withdrawal of Government aid. The three employees who did not opt for the arrangement were dealt with separately and their transfer to aided institutions was considered.

(iii) The Appellant was, therefore, not an unwilling employee upon whom a new service condition was forcibly imposed. He consciously opted to

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continue under the management of the Society and continued till his superannuation.

(iv) The Government, by communication dated 05.05.1995, had no objection to the management of the school by HAL/Aeronautics Education Society, subject to the school not claiming GIA later on.

(v) The subsequent conduct of the Appellant is equally material. He continued under the said management by the Aeronautics Education Society thereafter, for about 19 years, without challenging the same. He also accepted the service conditions and various benefits extended by the said Education Society.

(vi) The learned Single Judge was, therefore, justified in rejecting the plea that the change was unilateral or that the Appellant had been compelled to surrender any vested right.

(vii) After the change in management, the Appellant continued to receive several benefits under the Society's service arrangement, including residential accommodation, subsidised utilities, medical facilities through HAL Hospital, medical reimbursement, LTC and other facilities.

(viii) The Appellant accepted such benefits while continuing under the management of the Society. He cannot, after enjoying the benefits of the arrangement for years, selectively contend that only those conditions which correspond to Government service should be applied to him.

(ix) The principle is one of elementary fairness. A party who has consciously accepted an arrangement and acted upon it for a substantial period

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cannot subsequently approbate and reprobate according to the benefit which he seeks to claim.

(x) The conduct of the Appellant, viewed in its entirety, furnishes a sufficient and independent ground for rejecting the claim advanced in the Writ Petition as well as the challenge raised in the present intra-Court appeal.

(xi) The Appellant was himself a signatory to the representation seeking transfer of the school's management to the Aeronautics Education Society. With full knowledge of the altered administrative and financial arrangements, he continued in service under the Society until his superannuation, without questioning the applicability of its service conditions. It was only in 2013 that he approached this Court, principally asserting claims dating back to 1996. The equitable doctrine of acquiescence, as explained by Lord Selborne in ***Lindsay Petroleum Co. v. Hurd***[2]**,** recognises that prolonged inaction, when accompanied by conduct inconsistent with the subsequent assertion of a right, may disentitle a party to discretionary relief. The Appellant's conduct must be examined in that light. The said principle has been resonated in so many decisions of the Supreme Court of India. One of the notable ones is the recent judgment of the Court in ***Chairman, State Bank of India v. MJ James***[3]**,** wherein it has held that having knowingly accepted the arrangement for years without protest, he cannot, in the absence of sufficient justification, seek belatedly to unsettle its consequences.

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[2] ***(1874) LR 5 PC 221***

[3] 2021 SCC OnLine SC 1061

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(xii) The learned Single Judge has rightly held that such prolonged acquiescence, coupled with the Appellant's conscious participation in the arrangement, disentitles him to challenge the same after such an extraordinary delay. The position becomes still stronger in view of the meeting held on 17.07.2012 between the management and the teachers, in which issues concerning pay, dearness allowance, gratuity, leave and retirement age were considered. It is pertinent to mention here that the Appellant admittedly participated in the said process

(xiii) The Appellant did not disclose the material facts relating to the said meeting in the writ petition. The Hon'ble Single Judge has specifically noticed this omission and rightly treated it as material to the exercise of discretionary writ jurisdiction.

(xiv) The Appellant's contention proceeds on the premise that an institution, once brought within the fold of grant-in-aid, must necessarily continue under that arrangement in perpetuity. Such a proposition cannot be accepted in the absence of any statutory provision prohibiting withdrawal from grant-in-aid or adoption of an alternative financial arrangement. The Appellant has failed to demonstrate any such statutory restrictions.

(xv) The learned Single Judge, after examining the statutory scheme and the decision of the Hon'ble Supreme Court in ***The State Of Uttar Pradesh vs. Principal, Abhay Nandan Inter College***[4], rejected the contention of the Appellant that the institution was legally incapable of declining

[4] **AIRONLINE 2021 SC 775**

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Government aid and functioning under its own management. In any event, the present case cannot be considered in the abstract. The Appellant himself participated in and consented to the arrangement. The case is, therefore, materially different from a case where an employee is unilaterally deprived of a statutory benefit without his consent.

(xvi) The Appellant has also failed to demonstrate any provision by which the assets or management of the school automatically vested in the Government because the institution had received GIA towards salary. After the school came under the management of the Aeronautics Education Society, the Appellant's service was governed by the terms and conditions applicable to the employees of the Society.

(xvii) The Appellant was not an employee of the Government or of HAL merely because the school had earlier received GIA or because certain facilities were being provided through HAL. Consequently, the revision of pay applicable to Government employees, the Rules for revision of pay applicable to aided educational institutions, or the service conditions applicable to HAL employees cannot automatically be imported into the service conditions of the Appellant.

(xviii) The Appellant has not demonstrated any statutory provision or contractual term conferring upon him an enforceable right to claim such parity. The Appellant claims the benefit of the Revised Scale of Pay Rules with effect from 01.01.1996 and 01.01.2006. The claim is misconceived. The said Rules were not shown to be applicable to the employees of the Aeronautics Education Society. The Society was an

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independent registered body managing the school. Its employees could not claim the benefit of Government Service Rules merely because the school had once received GIA.

(xix) Further, the learned Single Judge noticed that the Society had itself undertaken revision of pay from August 2009. The Appellant, therefore, cannot contend that there was an absolute denial of pay revision. The demand for retrospective application of Government pay revision rules is thus without any legal foundation.

(xx) The Appellant also seeks parity in dearness allowance and other monetary benefits with Government/HAL employees. No enforceable right to such parity has been established. The employees of the Society constituted a distinct class governed by their own service arrangement, which the Appellant has accepted.

(xxi) The Management had, in the meeting dated 17.07.2012, considered the issue of dearness allowance and resolved to extend DA at a rate which was one step below the corresponding Government rate, together with a mechanism for payment of differential arrears.

(xxii) The learned Single Judge has also noticed that the employees of the Society were receiving several non-monetary benefits, including accommodation and medical facilities, which formed part of the overall service benefits. The Appellant cannot isolate one component of the service conditions and demand parity with Government employees while disregarding the remaining terms and benefits governing his service.

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(xxiii) The Appellant claims continuation in service up to the age of 60 years. The claim is contrary to the terms governing his appointment and service under the Society. The Hon'ble Single Judge has noticed that the applicable service arrangement provided for retirement at the age of 58 years.

(xxiv) The Appellant was aware of the said condition throughout his service. No challenge was made to the condition when he entered or continued in service. The attempt to raise the issue at the far end of service, after decades of acceptance of the service condition, cannot be sustained.

(xxv) The writ petition was filed after an extraordinary lapse of time in respect of claims relating to the years 1996 and 2006. The Appellant had knowledge of the relevant service arrangement from the very inception. He had himself opted for continuation under the Society and thereafter continued in service without protest.

(xxvi) The challenge was, therefore, otiose. It was preceded by conscious acceptance of the arrangement and repeated conduct consistent with such acceptance. The learned Single Judge was fully justified in declining to exercise discretionary writ jurisdiction in favour of a claimant who approached the Court after such prolonged delay.

(xxvii) The writ jurisdiction of this Hon'ble Court is discretionary and equitable. A litigant invoking such jurisdiction is required to place all material facts before the Court. The Appellant did not disclose the material circumstances in which the Society assumed management, the willingness expressed and not expressed by the employees, including

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the Appellant, and the subsequent meeting dated 17.07.2012 concerning the very service benefits now claimed.

(xxviii) The learned Single Judge has specifically noticed the omission and held that the Appellant had not approached the Court with clean hands. The said finding is based upon the materials on record and furnishes an independent ground for declining relief.

(xxix) The Appellant's reliance upon Article 14 is equally misconceived. Equality does not mean that employees governed by distinct service arrangements must necessarily receive identical service benefits. The Appellant has to establish a legal basis for claiming parity.

(xxx) The Appellant is governed by the service conditions of the Aeronautics Education Society. Government employees, HAL employees and employees of aided educational institutions cannot be treated as an identical class merely because some facilities or circumstances are common. No hostile discrimination has been established.

(xxxi) The learned Single Judge has recorded independent findings on the Appellant's conscious option, prolonged acquiescence, waiver and estoppel, suppression of material facts, delay and laches, applicability of the Society's service conditions, pay revision, DA and retirement age.

(xxxii) Even if the Appellant seeks to distinguish the judgment relied upon by the Hon'ble Single Judge concerning GIA, the other findings independently sustain the dismissal of the writ petition. The appeal, therefore, cannot succeed by contending that the decision in ***Abhay Nandan Inter College*** (supra) is distinguishable. Ultimately, the

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Appellant has failed to establish any enforceable statutory, contractual or constitutional right to:

(i) retrospective application of the Government Revised Scale of Pay Rules;

(ii) parity in DA with Government or HAL employees;

(iii) continuation in service up to the age of 60 years; or

(iv) any other service benefit applicable to a different category of employees.

(x) The reliefs claimed are, therefore, not capable of being granted in exercise of writ jurisdiction. The impugned judgment is wholly based on the factual record and the conduct of the Appellant, apart from the merits of the individual claims. No ground has been made out for interference in appeal since the Appellant consciously accepted the management and service arrangement under the Aeronautics Education Society, continued under the said arrangement till superannuation, enjoyed the benefits available thereunder and raised the present claims only thereafter. Having regard to the Appellant's own conduct, the findings relating to waiver, acquiescence, estoppel, delay and suppression of material facts are sufficient to disentitle him to relief. More particularly, the Appellant has failed to establish any legal entitlement to Government/HAL pay scales, DA or retirement age of 60 years.

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(xi) Hence, the judgment dated 14.09.2022 does not suffer from both on facts and in law and calls for no interference. Under the above conspectus, learned counsel prays for dismissal of the Writ Appeal and affirm the judgment dated 14.09.2022 passed by the learned Single Judge in W.P.(C) No. 26434 of 2013.

IV. FINDINGS OF THE LEARNED SINGLE JUDGE:

5. The learned Single Judge held that the Appellant was not entitled to the reliefs claimed in the Writ Petition, primarily on the grounds of delay, waiver, acquiescence and estoppel. The Court observed that the Appellant, along with other employees, had voluntarily consented to the withdrawal of grant-in-aid and takeover of the School by the Aeronautics Education Society (AES) and had accepted the altered service conditions and various benefits provided by the Society for nearly two decades without raising any objection. The Court further noted that the Appellant was a signatory to the minutes of the meeting dated 17.07.2012, wherein the issues relating to pay revision, DA, gratuity, leave benefits and age of superannuation were discussed and settled with the consent of the employees. Having accepted the said decisions, the Appellant was estopped from subsequently challenging the same.

6. The Court also took serious note of the Appellant's failure to disclose the material fact regarding the meeting dated 17.07.2012 in the Writ Petition and observed that he had not approached the Court with clean hands. On merits, the Court held that the Appellant, being an employee of an independent registered Society governed by its own service conditions,

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could not claim parity with employees of the State Government, Central Government or HAL. I

7. It further held that the Appellant was bound by the agreed retirement age of 58 years and that there was no justification for interfering with the DA arrangement accepted by the employees. Accordingly, finding no legal or justifiable ground to grant the reliefs sought, the Court dismissed the Writ Petition as devoid of merit, without any order as to costs.

V. REASONING, ANALYSIS AND FINDINGS OF THIS COURT:

8. Heard learned counsel for the parties and perused the judgment rendered by the Learned Single Judge, pleadings and the documents annexed to the appeal.

9. Before this Court ventures to deal with the issue presented before this Court by the parties, this Court is remined of the fact that an appeal under Clause 10 of the Letters Patent is not a fresh hearing of the writ petition. The appellate Bench examines whether the learned Single Judge has committed an error of law, misread the record or reached a conclusion so that no reasonable mind could reach on the material before it. Where the view taken is a possible view on the record the appellate Bench does not substitute its own view. The Supreme Court in ***Management of Narendra & Company Pvt. Ltd. v. Workmen of Narendra & Company***[5]**,** held that a Division Bench in an intra-court appeal ought not to interfere with the judgment of the Single Judge unless there is a

[5] **(2016) 3 SCC 340**

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patent error or perversity in the findings. The existence of an alternative or superior view of the evidence is insufficient grounds for interference.

10. The crux of the submission of Mr. Mallik is that once ADAV High School became an aided educational institution within the meaning of Section 3(b) of the Odisha Education Act, 1969, it could never revert to the status of a private school. In fact, the status of an aided educational institution is not an attribute that inheres in the institution forever. It is a status that arises from the receipt of aid. The definition in Section 3(b) itself makes the receipt of aid the defining feature. When aid ceases the foundation of that status ceases with it. Learned counsel for the appellant has not shown us any provision of the Act or the Rules which compels an institution to keep receiving aid or which forbids the State from discontinuing aid with the consent of the management.

11. The ratio of ***Abhay Nandan Inter College(supra)*** is that aid is not a matter of right and that an institution unwilling to accept the conditions attached to aid is free to decline it and go its own way. We see no principled distinction between declining aid at the threshold and ceasing to take it later. If the institution is free to stay out of the aided fold it is equally free to leave it subject to the conditions that the State may impose for the exit. The distinction drawn by the appellant is one of timing and not of principle.

12. The appellant then relies on Section 9 of the Act to contend that the properties of an aided institution cannot be alienated. Insofar as that provision is concerned that is with respect to the property of the institution. It protects the public investment made through aid. It does

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not confer on an individual teacher a right to be paid on Government scales for the rest of his career. No relief touching the property of the school was sought in the writ petition. The appellant has no grievance in his individual capacity that can be founded on a provision of this nature.

13. What matters most is that the change was not the act of the management alone rather the State Government consented to it by letter dated 05.05.1995 on the condition that grant-in-aid would not be claimed thereafter. The Inspector of Schools by letter dated 22.06.1995 informed the school that aid would not be released from 01.06.1995. The State which is the guardian of the aided regime did not object to it and it accepted the same on the exit terms.

14. The appellant's case in the appeal is quite narrower than the case so vehemently pleaded in the writ petition. He now accepts that he exercised an option but his grievance is that the option at Annexure-L/2 was to serve under HAL and not under the Society, and that HAL breached the condition in the letter dated 05.05.1995 by handing the school over to the Society. The correspondence which is so vehemently relied on by the appellant himself somewhat tells a different story. By letter dated 03.04.1993/Annexure-2, HAL informed the Director of Secondary Education that the Aeronautics Education Society would fully finance the school from 1993-94. By letter dated 06.05.1994 (Annexure-3) the Inspector of Schools asked HAL whether it agreed to take over the school and manage it under the Aeronautics Education Society. By letter dated 22.08.1994/Annexure-4, the General Manager replied that the Society formed by HAL was prepared to manage and fully finance the

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School. The Society was named in every communication from the beginning. It was not introduced after the State's consent.

15. In fact, the appellant's own pleading answers his grievance very clearly. He pleads that the Society was constituted and registered by HAL and the General Manager of the Koraput Division is its chairman, further its Vice-Chairmen are drawn from the Finance, Administration and Industrial Relations departments of HAL. The institutions run by the Society are fully owned and controlled by HAL and on his own showing the Society is the vehicle through which HAL manages its educational institutions at Sunabeda. The appellant cannot plead that the Society is HAL for one purpose and a stranger to HAL for another purpose.

16. The materials on record further reveal that the teaching and non-teaching staff, including the Appellant, had submitted a joint representation dated 10.05.1993 seeking transfer of the school's management to the Aeronautics Education Society, having regard to the facilities enjoyed by employees of other institutions managed by the Society. Subsequently, on 27.06.1995, 22 out of 25 aided employees, including the Appellant, expressly consented to the withdrawal of grant-in-aid and agreed to be governed by the rules and regulations of the Society. The remaining three employees, who declined to exercise such option, were accommodated in other aided institutions. Significantly, the 22 consenting employees also applied for final withdrawal of their General Provident Fund (GPF) accumulations pertaining to the period from February, 1994 to May, 1995. These circumstances assume considerable significance in th present case. The Appellant's express consent, followed by conduct consistent

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with the altered service arrangement, is difficult to reconcile with his subsequent assertion that he had never agreed to cease to be governed by the aided-institution regime. His present stand thus stands at variance with his own contemporaneous conduct.

17. Even if Annexure-L/2 is construed in the manner suggested by the Appellant, it does not advance his case. An option to continue under the management of HAL cannot, by any stretch of interpretation, be equated with absorption into its regular establishment or conferment of the pay scales and service benefits admissible to HAL employees. Neither the State Government's communication dated 05.05.1995 nor does any other material on record disclose an undertaking by HAL to absorb the school's staff into its own cadre or extend to them its service conditions. The only stipulation imposed by the State Government was that no grant-in-aid would thereafter be claimed and compliance with that condition is not in dispute. The finding of the learned Single Judge that the change in management was neither unilateral nor imposed upon the Appellant is thus firmly supported by the contemporaneous record. Being a finding of fact based on relevant materials and free from perversity or legal infirmity, it warrants no interference in the present intra-Court appeal.

18. Rule 9 of the Odisha Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974, assures employees of aided educational institutions especially the scales of pay admissible to their counterparts in Government schools. But the protection of the Rule is inseparably linked to the aided character of the institution. Once the school, with the consent

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of its employees, ceased to receive grant-in-aid in 1995, the statutory foundation upon which the Appellant rested his claim to parity of pay no longer subsisted. A benefit flowing from a particular statutory status cannot be claimed in perpetuity after the institution has ceased to possess that status. Equally, the Odisha Revised Scales of Pay Rules, 1998 and 2008, governing Government servants, do not, by their own force, extend to employees of a registered society. The Appellant's reliance upon the revised pay scales of HAL employees is equally misplaced. HAL's role in financing and managing the school through the Society did not make the Appellant an employee of HAL. Financial patronage does not, by itself, create an employer-employee relationship, nor does administrative control necessarily confer equality of service conditions. The Appellant cannot, therefore, claim the benefits of one establishment merely because the institution in which he served was supported by another. The learned Single Judge was justified in declining the claim for parity of pay on that basis.

19. The reliance was placed on the advertisement under Annexure-6 is equally misconceived. The advertisement was issued for recruitment to posts in Aeronautics Girls High School and cannot be construed as governing the terms and conditions of the Appellant's service in a different institution. An invitation to apply for employment does not, by itself, create an enforceable right in favour of an existing employee of another institution. At best, the advertisement indicates that the Society had adopted Government pay scales as a benchmark for the advertised posts. But such adoption of a pay scale as a measure of remuneration is

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one thing, incorporation of the entire statutory regime governing its future revisions is quite another. In the absence of any express stipulation or binding undertaking, the Appellant cannot claim that every subsequent revision of Government pay scales must automatically inure to his benefit, much less with retrospective effect from the date prescribed for Government servants.

20. The Society has, in fact, revised the scales of its staff with effect from August 2009 and has extended TBA by its own circular. The pay structure at Annexure-I to the Society's order dated 23.09.2009 adopts the revised scales with grade pay. The appellant claims that this order revised the scale with effect from 01.01.2006 and that arrears were withheld for want of funds. The respondents state that the revision operates from August 2009. The prayer in the writ petition was however founded on the Government Revised Scales of Pay Rules and not on the Society's order. Any claim to arrears under the Society's own instrument is a claim on its terms. It must be worked out under that instrument. It cannot be converted into a right to Government scales.

21. In the meeting dated 17.07.2012 between the Society and the representatives of the teachers, it was resolved to pay DA at 58% from July 2012, one step below the State pattern, to follow the same pattern in future, to pay the differential once a year from the date the State declares its rate and to work out arrears for August 2009 to June 2012 two steps below the State rate. It is important to note that the appellant participated in that process and the said decision has not been challenged. The employees of the Society receive benefits not available to Government

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employees such as residential quarters with subsidized water and electricity, free treatment at HAL Hospital, reimbursement of medical expenses, LTC, leave encashment and contributory PF at 12% under the EPF Act, 1952. In fact, the service package must be read as a whole. The appellant cannot pick the DA component of the Government package and leave the rest hence we find no basis for parity in DA.

22. We may now turn to the contested question of the Appellant's age of superannuation. Admittedly, the Appellant was born on 05.01.1956 and was superannuated upon attaining the age of 58 years, in accordance with the service conditions prescribed by the Aeronautics Education Society. The decision dated 17.07.2012 expressly retained the age of superannuation at 58 years. The Appellant, however, seeks to draw sustenance from the higher age of retirement prescribed for employees of aided educational institutions, HAL and the Central Government. The contention overlooks a fundamental distinction. The age of superannuation is a creature of the rules governing the service, it is not a benefit that travels from one establishment to another merely because their functions or sources of financial support bear some resemblance. The enhancement of the retirement age by the State Government binds those institutions and employees to whom the governing rules apply. It does not, without statutory mandate or contractual adoption, extend to employees of a Society operating outside that regulatory framework. No provision of law or binding condition of service has been shown by the appellant herein which entitles the him to continue until the age of 60 years. Parity in the nature of work does not, by itself, establish parity in

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the tenure of service. The claim for extension of his service by two years, therefore, lacks a legally enforceable foundation and was rightly rejected by the learned Single Judge.

23. Equality is a guarantee among those similarly placed. In the present case, the employees of the Society form a distinct class with their own employer, their own source of funds and their own service conditions. Government servants, HAL employees and the staff of aided schools are differently placed. Treating unequals differently is not discrimination. No hostile discrimination within the class of the Society's employees has been shown.

24. We would refine the finding on delay. A claim to pay is a recurring claim and the bar of delay ordinarily limits the arrears that can be granted rather than defeating the claim altogether, as held in ***Union of India v. Tarsem Singh***[6]**.** The challenge to retirement at 58 was also brought before the appellant retired and to that extent delay alone would not have defeated the writ petition. The foundation of every claim of the appellant is however the change of status of the school in 1995. That was a single completed event. The appellant consented to it, withdrew his GPF, served under the Society for about nineteen years and accepted its benefits without demur. He questioned the change for the first time in 2013. A challenge to the very basis of his service raised after so long is barred by delay and acquiescence. The recurring nature of the monetary

[6] ***(2008) 8 SCC 648***.

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claims cannot revive a challenge to the basic event that is being referred to.

25. Mr. Mallik, learned counsel for the Appellant, while relying upon ***Olga Tellis v. Bombay Municipal Corporation***[7]**,** contends that there can be no estoppel against the enforcement of fundamental rights. There is no difference of opinion on this proposition, but its invocation in the present case is misplaced. The Appellant has failed to establish any fundamental or statutory right to claim Government pay scales or superannuation at the age of 60 years. The question here is not one of surrendering a constitutional guarantee, but of accepting the terms of a service arrangement and subsequently seeking to disown its consequences. Having consciously opted for service under the Society and continued thereunder availing himself of its benefits, the Appellant cannot selectively repudiate the conditions governing that very arrangement. One cannot accept the benefits of an arrangement and reject its obligations merely when they cease to be advantageous. The doctrine against approbation and reprobation, recognised by the Supreme Court in R.N. Gosain v. Yashpal Dhir, (1992) 4 SCC 683, squarely addresses such inconsistent conduct which is reproduced herein below:

> *"Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that "a person cannot say at one time that a transaction is valid any thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for*

[7] ***(1985) 3 SCC 545***

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the purpose of securing some other advantage". [See: Verschures Creameries Ltd. v. Hull and Netherlands Steamship Co. Ltd., (1921) 2 R.B. 608, at p.612, Scrutton, L.J]. According to Halsbury's Laws of England, 4th Edn.,Vol. 16, "after taking an advantage under an order (for example for the payment of costs) a party may be precluded from saying that it is invalid and asking to set it aside."

Further, the principle in Olga Tellis does not rescue a claim for which no independent constitutional or statutory foundation has been established.

26. On non-disclosure, the writ petition did not mention the representation of 10.05.1993, the option of 27.06.1995, the withdrawal of GPF or the meeting dated 17.07.2012. The last of these dealt with the very subjects of the writ petition, namely pay, DA, gratuity, leave and the age of retirement. These were not peripheral facts rather they bore directly on whether the appellant could seek discretionary relief or not. A litigant who invokes the writ jurisdiction must place all material facts before the Court and learned Single Judge was justified in taking this conduct into account.

VI. CONCLUSION:

27. In the conspectus of the foregoing discussion, we find that the conclusions reached by the learned Single Judge rest on firm factual and legal foundations. The Appellant's conscious exercise of option, his prolonged acquiescence spanning nearly nineteen years, the decision dated 17.07.2012 retaining the age of superannuation at 58 years and above all, the absence of any enforceable legal right to the reliefs

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claimed, cumulatively and independently sustain the impugned judgment. The findings are neither perverse nor contrary to the materials on record, nor do they disclose any error of law warranting appellate interference. An intra-Court appeal is not an occasion to unsettle a well-reasoned judgment merely because the litigant remains dissatisfied with its conclusion. We, therefore, find no merit in the appeal and decline to interfere with the judgment of the learned Single Judge.

28. Accordingly, the Writ Appeal stands **dismissed**. There shall be no order as to costs.

29. Interim order, if any, passed earlier stands vacated.

(Dr. Sanjeeb K Panigrahi)
Judge

Chittaranjan Dash, J. I agree.

(Chittaranjan Dash)
Judge

Orissa High Court, Cuttack,
Dated the 9th Nov., 2026/ -

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