



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No.143 of 2024

State of Odisha & another* *Appellants

Mr. S.K. Jee, AGA

-versus-

Simanchal Rath & others* *Respondents

Mr. M. Mishra, Sr. Advocate

CORAM:

JUSTICE KRISHNA SHRIPAD DIXIT

JUSTICE CHITTARANJAN DASH

ORDER

23.02.2026

Order No.

03. This Intra-Court Appeal by the State & its functionaries seeks to call in question a learned Single Judge's judgment dated 03.08.2023, whereby Respondents W.P.(C) No.14751 of 2015 having been allowed, the following relief has been accorded to him:

“26. In view of the aforesaid analysis of law and facts further keeping in view the provisions contained in Statute 288 and 289 of the Odisha University First Statute, 1990, this Court directs the Opposite Parties to consider the cases of the petitioner in view of the legal position as has been discussed hereinabove as well as keeping in view the judgment of the Hon'ble Supreme Court in Sashi Kiran's case (supra) reported in 2022 SCC Online SC 594. Further it is directed that in the event the Opposite Parties come to a



conclusion that the petitioner has not exercised any option under the Odisha University first Statute, 1990 as prescribed under Statute 289 within the prescribed time limit then the case of the petitioner is bound to be considered under statute 289 (3). Accordingly, the case of the petitioner is to be considered under statute 289 (3). It is needless to mention that the opposite parties are bound to extend the benefits accruing in favour of the petitioner by applying the said provision to the facts of the petitioner's case. It is further directed that the Opposite Parties shall do well to consider the case of the petitioner in the light of the aforesaid direction within a period of two months from the date of communication of a certified copy of this judgment by the Petitioner.

27. Accordingly, the writ petition is disposed of in terms of the aforesaid observations. However, there shall be no order as to cost."

2. Learned AGA appearing for the Appellants vehemently argues that regardless of the stand taken by the Appellants before the learned Single Judge, correct legal position ought to have been ascertained and thereafter relief of the kind could have been granted; this having not happened, matter in the Appeal requires deeper consideration at the hands of this Court. *Per contra*, learned Senior Advocate Mr. Manoj Mishra appearing for the Respondent-employees draws attention of this Court to the specific stand which the Appellants themselves have taken before the learned Single Judge and therefore, once that



stand is acted upon rightly or wrongly, it is not open to them to change their position. So contending, he seeks dismissal of the Appeal.

3. Having heard learned counsel for the parties and having perused the Appeal papers, we decline indulgence in the matter broadly agreeing with the reasoning of learned Single Judge as is reflected in Paragraph Nos.25 & 26, which read as under:

“25. The view expressed by this Court in the present case gets ample support from the view expressed by the Hon’ble Supreme Court in para-20 and 21 of the judgment in Sashi Kiran’s case (supra). Therefore, this Court is of the considered view that since the petitioner has not exercised any option under Statute 289 of the first statute 1990 within the time prescribed in statute 289 (1) specifically, therefore, the case of the petitioner is to be considered in terms of statute 289 (3) that is by applying the deeming legal fiction provided under the first statute 1990.

26. In view of the aforesaid analysis of law and facts further keeping in view the provisions contained in Statute 288 and 289 of the Odisha University First Statute, 1990, this Court directs the Opposite Parties to consider the cases of the petitioner in view of the legal position as has been discussed hereinabove as well as keeping in view the judgment of the Hon’ble Supreme Court in Sashi Kiran’s case (supra) reported in 2022 SCC Online SC 594. Further it is directed that in the event the Opposite Parties come to a conclusion that the petitioner has not exercised any



option under the Odisha University first Statute, 1990 as prescribed under Statute 289 within the prescribed time limit then the case of the petitioner is bound to be considered under statute 289 (3). Accordingly, the case of the petitioner is to be considered under statute 289 (3). It is needless to mention that the opposite parties are bound to extend the benefits accruing in favour of the petitioner by applying the said provision to the facts of the petitioner's case."

What has been observed above stoutly comes to the rescue of the Respondent-employees.

In the above circumstances, Appeal is devoid of merits is liable to be rejected and accordingly it is, costs having been made easy.

Learned Single Judge's order shall be given effect to within a period of eight weeks without driving the Respondents to file contempt proceedings or alike.

Web copy of this order to be acted upon by all concerned.

(Krishna Shripad Dixit)
Judge

(Chittaranjan Dash)
Judge