

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 2534 of 2022

P. Biswaraj and another

.....

Petitioners

Mr. K.P. Mishra, Advocate

Vs.

State of Odisha and others

.....

Opposite parties

Mr. Y.S.P. Babu, AGA

CORAM:

DR. JUSTICE B.R. SARANGI

ORDER

03.02.2022

Order No.

1

This matter is taken up through video conferencing mode.

2. Heard Mr. K.P. Mishra, learned counsel for the petitioners and Mr. Y.S.P. Babu, learned Additional Government Advocate.

3. The petitioners have filed this writ petition challenging the letter dated 17.12.2020 wherein it has been indicated that the claim of the petitioner no.1 for appointment under Rehabilitation Assistance Scheme has been processed as per the provisions of Odisha Civil Service (Rehabilitation Assistance) Rules, 2020 communicated vide G.A. & P.G. Department Notification dated 17.02.2020 and the same has been rejected.

4. Learned counsel for the petitioners contended that since the death of the father of the petitioner No.1 has been occurred prior to the commencement of the 2020 Rule, the said rule has no application to the case of the present petitioner.

5. Mr. Y.S.P. Babu, learned Additional Government Advocate contended that since the Government has framed a new rule called Odisha Civil Service (Rehabilitation Assistance) Rules, 2020, communicated vide G.A. & P.G. Department Notification dated 17.02.2020, by applying the same, the petitioner no.1 is not eligible to be considered for appointment under the Rehabilitation Assistance Scheme. The authority is well justified by passing the order under Annexure-9, which does not warrant any interference by this Court, at this stage.

6. As it appears, petitioner No.1 is the son of the government employee and petitioner no.2 is the wife of the said employee, who while working under opposite party no.3 died prematurely on 28.02.2015 as per the death certificate issued under Annexure-1. As such there is no dispute that the death of the government employee was occurred during the existence of Orissa Civil Services (Rehabilitation Assistance) Rules, 1990. Thereby, the said rule is applicable to the case of the petitioners while considering the appointment under Rehabilitation Assistance. Because of the delay caused on the part of the opposite parties the petitioners suffered and as such they should not have been dragged to the application of the new rule, i.e. Odisha Civil Service (Rehabilitation Assistance) Rules, 2020. Similar question had come up before the apex Court in the case of *State of Madhya Pradesh v. Ashish Awasthi*, 2021(II) OLR (SC) 1072, wherein the apex Court held that by the time the person had expired, the rule governing the field, should apply for consideration of compassionate appointment. Referring the said ratio, this Court has already disposed of W.P.(C) No. 38030 of 2021 on 16.12.2021 (*Kamal Lochan Giri v. Odisha Mining Corporation Ltd. & Ors*).

7. In view of the above, the communication under Annexure-9 dated 17.12.2020 cannot sustain in the eye of law and the same is hereby quashed. The matter is remitted back to the opposite parties to re-consider the case of the petitioners for appointment under the Rehabilitation Assistance Scheme in terms of the provision at Orissa Civil Services (Rehabilitation Assistance) Rules, 1990 and extend the benefit as due and admissible to the petitioners as expeditiously as possible within a period of four months from the date of communication of the order.

8. With the aforesaid observation/direction, the writ petition stands disposed of.

9. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a print out of the order available in the High Court's website, at par with certified copy,

subject to attestation by the concerned advocate, in the manner prescribed, vide Court's Notice No.4587 dated 25th March, 2020, as modified by Court's Notice No. 4798 dated 15th April, 2021, and Court's Office Order circulated vide Memo Nos.514 and 515 dated 7th January, 2022.

Arun

(DR. B.R. SARANGI, J.)

