

AFR

ORISSA HIGH COURT: CUTTACK

W.P.(C) No. 2708 of 2017

In the matter of an application under Articles 226 and
227 of the Constitution of India

Hriday Shabar

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Petitioner

-Versus-

Odisha Administrative Tribunal
Principal Bench, Bhubaneswar
and Others

Opp. Parties

For Petitioner

: M/s. Bhawani Sankar Panigrahi
Mr. D.K. Rout, K.C. Sahu,
Advocate

For Opp. Parties

: Mr. A.K. Mishra
Addl. Government Advocate

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
THE HONOURABLE MR. JUSTICE SANJAY KUMAR MISHRA**

DECIDED ON : 21.07.2022

Mr. Sanjay Kumar Mishra, J. Being aggrieved and dissatisfied
with the impugned Judgment/Order dtd. 19.02.2016
passed by the Odisha Administrative Tribunal, Principal

Bench, Bhubaneswar, in O.A. No. 1057 of 2015, vide which the said Original Application of the Petitioner was dismissed, the present Writ Petition has been preferred with a prayer to set aside the said Order so also the Office Order dtd. 02.12.2014, as at Annexure-4 to the Writ Petition, vide which his Application for appointment under the R.A. Scheme was rejected by the Authority. Further, a prayer has been made by the Petitioner to direct the Opp. Parties to allow his Application for compassionate appointment under Annexure-3 Series.

2. The factual matrix of the present case, in brief, is that the father of the Petitioner Shri Radheshyam Shabar, while working as a Driver in the Office of the Commercial Tax Officer, Investigating Unit, Bolangir, expired on 25.05.2011. The Petitioner, being an unemployed Graduate belonging to ST Community, applied for his engagement under the Rehabilitation Assistance Scheme (shortly "R.A. Scheme"), on 13.11.2011, to the present Opp. Party No. 5,

consequent upon which the said Application was sent to the Collector, Bolangir, for issuance of distress certificate. However, the present Opp. Parties No. 3 and 4, without considering the case of the Petitioner and without proper verification of distress condition of the family of the Petitioner so also without applying mind, rejected the Application for appointment of the Petitioner under the R.A. Scheme vide Order dtd. 02.12.2014 on the ground that the brother of the Petitioner is serving as contractual Health Worker. It was contended before the Tribunal that the elder brother of the Petitioner, who is presently working as a Health Worker on contractual basis and not permanently, is not residing in the family of the Petitioner and is living separately with his own family members much prior to the death of the father of the Petitioner and there is no relationship/nexus between the Petitioner's family and the family of his elder brother. It was also the case of the Petitioner before the Tribunal that his elder brother is not providing any

financial help to the family of the Petitioner and they are now living with a lot of difficulty and after the death of his father a deed was executed between his elder brother and his mother for separation. But the case of the Petitioner having not found favour with by the Authority, the very purpose of providing appointment under the R.A. Scheme got frustrated.

3. The present Opp. Parties No. 3 to 5, being noticed, appeared before the Tribunal and filed their Counter indicating therein that as per the R.A. Scheme, the wife of the deceased is the first claimant for appointment. As the wife of the deceased was declared medically unfit, her elder son Gauranga Shabar was eligible for appointment in terms of Rule-2 (b) of the Orissa Civil Service (Rehabilitation Assistance) Rules, 1990 (Shortly "OCS (R.A.) Rules, 1990". However, the present Petitioner, who is the second son of the deceased Government servant, filed a medical certificate vide which the elder son of late Radheshyam Shabar was declared unfit for any job under the R.A. Scheme.

Accordingly, the Joint Commissioner of Commercial Taxes, Bolangir Range, Bolangir, was requested to make an enquiry into the matter. Pursuant to the said request, an Enquiry Report was submitted to the CTO Mobile, Bolangir Range, Bolangir, indicating therein that the elder son of the deceased Government servant late Radheshyam Shabar is working as a contractual Health Worker and the present Petitioner, by suppressing the real fact, has applied for rehabilitation appointment, which is violative of the provisions under the R.A. Rules, 1990 and in terms of Rule-2 (a) (iii) of the OCS (R.A.) Rules, 1990, the present Petitioner is not entitled for a job under the R.A. Scheme. It was further contended by the present Opp. Party Nos. 3 to 5 before the Tribunal that the Explanation to Rule-2 (a) of the OCS (R.A.) Rules, 1990, amended for time to time, provides that the separation from the family has to be established by Registration Partition Deed made prior to the death of the Government Employee and no such deed was ever produced by the Petitioner before the

Competent Authority to the said effect to satisfy the concerned Authority that Gauranga Shabar, the elder brother of the Petitioner, was not residing with the family of the Petitioner and he was separated from the family prior to the death of the Petitioner's father Shri Radheshyam Shabar.

4. Considering the pleadings of the parties in the said Original Application so also provisions of the OCS (R.A.) Rules, 1990, i.e., Rule-2 (a) (iii) so also Explanation to the said Rule, the Tribunal dismissed O.A. No. 1057 of 2015 with an observation that in view of clear provisions under Rule-2 (a) (iii) of the OCS (R.A.) Rules, 1990 so also Explanation to the said Rule, the present Petitioner is not entitled for consideration of his case for appointment under R.A. Scheme and no illegality and irregularity has been committed by the Authority in passing the impugned Order dtd. 02.12.2014, as at Annexure-4 to the present Writ Petition. Rule-2 (a) (iii) of OCS (R.A.) Rules, 1990, which is annexed to the Counter Affidavit filed by the Opp.

Parties No. 1 to 5 as Annexure- A/1, prescribes that none of the family members of the employee who has died while in service is already in the employment of the Government/Public or Private Sector or engaged in independent business with an earning above Rs. 20,000/- (Rupees twenty thousand) a year, is entitled to be appointed under the said OCS (R.A.) Rules, 1990. Similarly, Explanation to Rule-2 of the Orissa Civil Service (Rehabilitation Assistance) Rule, 1990 well explains that the income of any earning member will be taken into account for the purpose of assessing the Annual Gross Income of the family, if his separation from the family has not been established by a registered partition deed made prior to the death of the Government Employee. Hence, in view of the inevitable facts so also clear and unambiguous provisions in terms of Rule-2 (a) (iii) of the Orissa Civil Service (Rehabilitation Assistance) Rules, 1990 and the Explanation to the said Rule, the Tribunal, vide the impugned Order dtd. 19.02.2016, as at Annexure-5,

came to a conclusion that there is no illegality or irregularity committed by the State-Opp. Parties while passing the said impugned Order dtd. 02.12.2014 and accordingly, dismissed the Original Application.

5. The learned Counsel for the Petitioner relied on the Judgments of the Apex Court in **State of Madhya Pradesh & Others Vrs. Ashish Awasthi**, reported in 2021 (II) OLR (SC) 1072, **The Secretary to Govt. Department of Education (Primary) and Others Vrs. Bheemesh Allis Bheemappa** dtd. 16.12.2021 passed in Civil Appeal No. 7752 of 2021, **Malaya Nanda Sethy Vrs. State of Orissa & Others** dtd. 20.05.2022, in Civil Appeal No. 4103 of 2022 and unreported Judgments of this Hon'ble Court i.e. **Subash Chandra Khatua Vrs. State of Odisha & Others** dtd. 05.11.2020 in W.P.(C) No. 22678 of 2020, **State of Odisha Vrs. Kartika Bhoi** dtd. 25.04.2018, passed in W.P.(C) No. 4239 of 2018, to substantiate the prayer made in the present Writ Petition. However, on examination, it was ascertained that none of the said

Judgments are applicable to the facts and circumstances of the present case.

6. Law is well settled that appointments on compassionate ground have to be made in accordance with the Rules, Regulations or Administrative Instructions taking into consideration the financial condition of the family of the deceased and Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. In the case of ***Life Insurance Corporation of India -Vs- Asha Ramchandra Ambekar (Mrs) and another***, reported in (1994) 2 SCC 718, it has been held that Courts cannot order appointment on compassionate grounds dehors the provisions of statutory Regulations and instructions.

7. Further, in the case of ***General Manager (D & PB) and Others -Vrs- Kunti Tiwary and Another***, reported in (2004) 7 SCC 271, the apex Court has held that criteria of penury is to be applied only in case of condition of the Petitioner who is without any means of

livelihood and living hand to mouth that compassionate appointment was required to be accorded.

8. In another judgment of the apex Court in the case of ***Union of India and Another -Vrs- Shashank Goswami and another***, reported in (2012) 11 SCC 307, it has been held at Paragraphs 9, 10 and 13, which are being quoted here-in-below for ready reference.

“ 9. There can be no quarrel to the settled legal proposition that the claim for appointment on compassionate ground is based on the premises that the applicant was dependent on the deceased employee. Strictly, such a claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. Appointment on compassionate ground cannot be claimed as a matter of right.

10. As a rule, public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of the employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis and not to confer a status on the family. Thus, applicant cannot claim appointment in a particular class/ground of post. Appointments on compassionate ground have to be made in accordance with the rules, regulation or administrative instructions taking into consideration the financial condition of the family of the decease.

13. In Mumtaz Yunus Mulani (Smt) V. State of Maharashtra & Ors (2008) 11 SCC 384 , this Court examined the scope of employment on compassionate ground in a similar scheme making the dependent of an employee ineligible for the post in case the family

receives terminal/ retiral benefits above the ceiling limit and held that the judgment in Govind Prakesh (supra) had been decided without considering earlier judgments which were binding on the Bench. The Court further held that the appointment has to be made considering the terms of the scheme and in case the scheme lays down a criterion that if the family of the deceased employee gets a particular amount as retiral/terminal benefits, dependent of the deceased employee would not be eligible for employment on compassionate grounds”

9. In **A. Umarani Vrs. Registrar, Cooperative Societies**, reported in AIR 2004 SC 4504, while dealing with regard to issue of compassionate appointment, the Apex Court held that even the Supreme Court should not exercise the extra-ordinary jurisdiction under Article 142 issuing a direction to give compassionate appointment in contravention of the provisions of the Scheme/Rule etc. as the provisions have to be complied with mandatorily and any appointment given or ordered to be given in violation of the Scheme would be illegal.

10. Admittedly, the Petitioner in the present case not only gave false medical certificate to the Authority declaring his elder brother unfit for Government job but also failed to produce any Registered Partition Deed to satisfy the Authority that his brother was separated from the family prior to the death of his father.

11. In view of the facts and law, as discussed above, since the Petitioner gave false medical certificate declaring his elder brother to be unfit for any job under the R.A. Scheme and on enquiry it was revealed that his elder brother was working as a contractual Health Worker and no document in terms of the Explanation to Rule-2 of the OCS (R.A.) Rules, 1990 could be produced by the Petitioner to satisfy the Authority that his elder brother, who is/was working as a contractual Health Worker, was separated from the family by a Registered Partition Deed made prior to the death of his father, namely, Shri Radheshyam Shabar, the impugned Order dtd. 02.12.2014, as at Annexure-4 to the Writ Petition, which was also impugned in O.A. No. 1057 of 2015, was rightly affirmed vide Order dtd. 19.02.2016 passed in OA No. 1057 of 2015 by the Tribunal and the said Order does not call for any interference, as this Court does not find any error apparent on face of the record, in exercise of power conferred under Article 226 of the Constitution of India.

12. For the forgoing discussions, the Writ Petition merits no consideration and the same stands dismissed.

No order as to costs.

(S.K. MISHRA)
JUDGE

Dr. B.R. SARANGI, J. *I agree*

(DR. B.R. SARANGI)
JUDGE

Orissa High Court, Cuttack
The 21st July, 2022/PCD

