

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 1877 of 2018

State of Orissa and others

.....

Petitioners

Mr. A.K. Mishra, AGA

Vs.

Minati Mohanty

.....

Opposite Parties

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE SANJAY KUMAR MISHRA

ORDER

28.07.2022

Order No.

09.

This matter is taken up through hybrid mode.

2. Heard Mr. A.K. Mishra, learned Additional Government Advocate for the State.

3. The State-Petitioners have filed this Writ Petition challenging the order dated 04.05.2017 passed by the Orissa Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 3977 (C) of 2016, by which the Tribunal quashed the rejection of the application of Opposite No.1 for appointment under Rehabilitation Assistance Scheme and directed the Petitioners to consider the application of Opposite Party No.1 for appointment strictly in accordance with OCS (R.A.) Rules, 1990.

4. The factual matrix of the case in brief is that, the husband of Opposite Party No.1 was appointed as Peon under the Rehabilitation Assistance Scheme provisionally on 89 days basis. He was brought over to the regular establishment vide order dated 02.01.2000. While

he was so continuing, his services were terminated as per order dated 08.03.2000 due to reduction of establishment. The husband of Opposite Party No.1 challenged the said order in O.A. No. 1008 (C) of 2000, wherein interim order to maintain status quo was passed. On the strength of the said interim order, he continued in service. While he was so continuing in service, he died on 15.12.2007. After his death, Opposite Party No.1 made an application for her appointment under Rehabilitation Assistance Scheme. However, when no action was taken, she approached the Tribunal in O.A. No. 397 (C) of 2016, in which the Tribunal vide order dated 15.03.2016 directed for consideration of her representation within two months. Thereafter, on consideration of the representation, Petitioner No.1 rejected the claim of the Opposite Party on the ground that the case filed by her late husband challenging the order of retrenchment has not yet been adjudicated. Therefore, Opposite Party cannot claim for appointment under the Rehabilitation Assistance Scheme. Challenging such order, the Opposite Party approached the Tribunal in O.A. No. 3977 (C) of 2016. The Tribunal vide order dated 04.05.2017 quashed the order of rejection for grant of compassionate appointment of the Opposite Party and directed the present Petitioners to consider the case of Opposite Party No.1 for appointment under Rehabilitation Assistance Scheme, strictly in accordance with the OCS (R.A.) Rules, 1990. Against such order, the State authorities have filed the present Writ Petition.

5. Mr. A.K. Mishra, learned Additional Government Advocate contended that the only question revolves around, which has been stated at ground No.b, is that as to whether the husband of Opposite Party was in service on the date of his death so as to enable the

Opposite Party to get the benefit of appointment under OCS (R.A.) Rules, 1990. He further contended that the relevant provisions of OCS (R.A.) Rules, 1990 would show that rehabilitation assistance is given for the members of the family of a Government Servant, who died while in service. The Tribunal instead of examining as to whether the husband of Opposite Party was continuing in Government Service at the time of his death, has erroneously proceeded to pass the aforesaid order. Thereby, the Tribunal has committed an error by passing the said order. Accordingly, he prayed for quashing of the same.

6. On perusal of the record, it is clear that there is no doubt that the husband of Opposite Party No.1 was continuing in service after being appointed under Rehabilitation Assistance Scheme. Showing him a surplus employee, he was terminated from service. The same was challenged by him by filing O.A. No. 1008 (C) of 2000, where the Tribunal passed an order of status quo. Pursuant to such order, he was continuing in Government Service. As such, while he was continuing in Government Service by virtue of the Interim Order passed by the Tribunal, the status of the person concerned cannot be changed. He is continuing till the matter is adjudicated upon by the Tribunal finally with regard to the continuation of the husband of Opposite Party No.1. But fact remains that when the husband of Opposite Party No.1 got the appointment under Rehabilitation Assistance Scheme, he could not have been treated as surplus staff. Thus, the order of termination could not have been issued in his favour. Therefore, the very step taken by the Government declaring the husband of Opposite Party as surplus employee and terminating him from service cannot sustain in the eye of law. In any case,

during subsistence of the interim order and continuance of the husband of Opposite Party in service, he died prematurely. In that case, the relief claimed by the Opposite Party for giving appointment under Rehabilitation Assistance Scheme cannot be said to be unreasonable and contrary to law. In view of such position, the Tribunal is well justified by entertaining the Original Application and directing the Petitioners to consider the case of Opposite Party for appointment under Rehabilitation Assistance Scheme. There is no error apparent on the face of the order of the Tribunal.

7. In view of the above, this Court is not inclined to interfere with the impugned order passed by the Tribunal. Thus, the Writ Petition merits no consideration and the same stands dismissed accordingly.

(DR. B.R. SARANGI)
JUDGE

(S.K. MISHRA)
JUDGE

Arun