IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.4357 of 2022

Rabinarayan Behera .... ***Petitioner***

Mr.Sidheswar Mallik, Advocate

-versus-

State of Odisha and others .... ***Opposite Parties***

Mr. K.K. Nayak, ASC for State

CORAM:
JUSTICE A.K. MOHAPATRA

ORDER
04.04.2022

Order No.

01. **1.** This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).

2. Heard learned counsel for the Petitioner as well as learned counsel for the State.

3. The present writ petition has been filed by the petitioner with the following prayers:-

> "Under the aforesaid facts and circumstance, the Petitioner humbly prays that this Hon'ble Court may graciously be pleased to :
>
> 1) Quash the impugned order of rejection dt.15.04.2021 as at Annexure-7 rejecting the claim of the Petitioner applying the new rule of 2020.
> 2) Direct/Order that the application of the Petitioner for appointment under Rehabilitation Assistance Scheme shall be considered on the basis of the Rehabilitation Assistance Rules, 1990 which was in force and regulating the field on the date of submission of the application.
> 3) Pass such other order(s)/direction(s) as may be deemed fit and proper in the bonafide interest of justice.

4. It is stated that the father of the Petitioner, namely, Krushna Chandra Behera was working as a Statistical Field Surveyor(SFS). He was last posted under the Opposite Party No.4. He died in harness on 29.03.2016, leaving behind the widow, three married daughters and two un-married sons. In order to save the family from distress situation, the mother of the Petitioner Simanchala Behera who was more than 51 years of age and was medically unfit and as such not suitable to enter into government services. Therefore, she submitted an application on 02.05.2013 for appointment of the Petitioner supported by no objection affidavit from other members of the family for appointment under Rehabilitation Assistance Scheme. The Opposite Party No.4 sought for some documents which were submitted by the Petitioner along with his representation dtd. 17.05.2017. On 06.12.2019, Opposite Party No.2 vide his letter dtd. 06.12.2019 asked the Opposite Party No.4 to prepare compliance on the recommendation of the Committee and submit a detail verification report at an early date.

5. Opposite Party No.4 in his letter informed to the Opposite Party No.4 that the Collector, Nabarangpur requested to submit the distress certificate and a committee was constituted for the above purpose. On 15.04.2021, the claim of the Petitioner for appointment under RA. Scheme was rejected applying OCS (R.A.) Rules, 2020 which was noticed on 02.03.2021.

6. Looking to the date of death of the deceased and involving whom the appointment under the Rehabilitation Assistance Scheme is sought for and the date of application for appointment under the Rehabilitation Assistance Scheme, this Court finds, the issuance of rejection letter vide Annexure-7 & 8 applying the provision in the

2020 rule which has even not seen the light of the day either on the date of death or on the date of submission of application for appointment under the Rehabilitation Assistance Scheme and the rejection order remains contrary to the decision of the Hon'ble Apex Court in the case of ***State of Madhya Pradesh vs. Ashish Awasthi***, reported in ***2021(II) OLR (SC) 1072***, wherein the apex court in a clear and categorical term observed that the policy prevalent at the time of death of the deceased employee is only to be considered and not the subsequent policy. This Court, therefore, interfering with the rejection order dated 15.04.2021 vide Annexure-7, sets aside the same and directs the Opposite Party No.4 to consider the case of the Petitioner for appointment under the R.A. Scheme of the year 1990 in terms of the provision of Orissa Civil Service (Rehabilitation Assistance) Rules, 1990 with the amended Rules, 2016, in view of the recent decision of the apex Court in the case of ***Ashish Awasthi (supra)*** and in the case of the ***Secretary to Govt. Department of Education (Primary) & others vs. Bheemesh Alias Bheemappa*** (Civil Appeal No.7752 of 2021)

7. The entire exercise shall be completed within a period of one and half months from the date of communication of certified copy of this order by the Petitioner.

8. With the above observation, the writ petition stands disposed of.

9. Urgent certified copy of this order be granted on proper application.

(A.K. Mohapatra)
Judge

u.k.sahoo