IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 12534 of 2015

State of Odisha and others ….. ***Petitioners***

Mr. A.K. Mishra, AGA

Vs.

Dipti Ranjan Jena ….. ***Opposite parties***

Mr. R.K. Bisoi, Advocate

CORAM:
DR. JUSTICE B.R. SARANGI
MISS JUSTICE SAVITRI RATHO

ORDER
15.03.2022

Order No.
15. This matter is taken up through hybrid mode.

2. Heard Mr. A.K. Mishra, learned Additional Government Advocate for the State-petitioners and Mr. R.K. Bisoi, learned counsel for the opposite party.

3. The petitioners have filed this writ petition assailing the order dated 20.03.2015 passed by the Odisha Administrative Tribunal, Principal Bench, Bhubaneswar in O.A. No. 1163 of 2014, whereby the Tribunal quashed the order dated 20.11.2013 and directed the petitioners to consider the case of the opposite party for his appointment as Junior Clerk under DDA, Kendrapara by relaxing the provisions of Rule 9 (7), in pursuance of Rule 16 of the OCS (RA) Rule, 1990.

4. Mr. A.K. Mishra, learned Additional Government Advocate appearing for the State, emphatically submitted before this Court that the father of the opposite party, who is the applicant before the Tribunal, while working as Agriculture Overseer expired leaving behind his widow, one daughter and one son (the present opposite party). The mother of the opposite party submitted an

application for appointment of her daughter under R.A. Rules, 1990, as she was a major at that time. But subsequently, on 23.12.1999, the mother of the opposite party was requested by the petitioner no.3 to submit the application in prescribed form. On 05.01.2000, the mother of the opposite party submitted another application indicating that her son will apply for the job under R.A. Rules, 1990 after he attains majority on 04.05.2009. As a consequence thereof, the present opposite party submitted application for his appointment under R.A. Rules, 1990, on 05.06.2009 which was forwarded to the Government for consideration on 21.09.2011. But the same having been delayed, the opposite party filed a representation before the opposite party no.2 on 13.09.2012 to consider his case for appointment. Accordingly the Government directed the petitioner no.2 to take a decision on the representation of the opposite party vide letter dated 17.12.2012. As a consequence thereof, the Joint Director of Agriculture (Admn.) requested the State Government to consider the case of the opposite party sympathetically vide his letter dated 21.03.2013. The State Government, however vide order dated 20.11.2013 rejected the application of the opposite party under Rule 9 (7) of OCS (R.A) Rules, 1990. The said rejection was the subject matter of challenge before the Tribunal in O.A. No. 1163 of 2014 by the present opposite party. Pursuant to the notice issued by the tribunal, counter affidavit was filed on 12.12.2014. On consideration of the record, the Tribunal allowed the original application vide order dated 20.03.2015, which is under challenge by the State authorities in the present writ petition. According to Mr. Mishra, since opposite party has filed the application at a belated stage, therefore, his application cannot be considered in

view of Rule 9 (7) of the R.A. Rules, 1990.

5. Mr. R.K. Bisoi, learned counsel for opposite party contended that the rejection of the claim of the opposite party invoking Rule 9 (7) of R.A. Rules, 1990 cannot sustain in the eye of law in view of the fact that it is not a case of the petitioners that the opposite party has not applied after attaining majority within the time specified as per rules. Since the opposite party applied after attaining the age of majority within the time specified and his application has been taken into consideration, and when he requested to give him appointment as Junior Clerk under DDA, Kendrapara, then immediately without understanding the difficulties of opposite party, the petitioners rejected the claim contending that under Rule 9 (7) of the RA Rules, 1990, the claim of the opposite party cannot sustain in the eye of law. Therefore, such rejection is an outcome of non application of mind and, thereby the same is liable to quashed.

6. Having heard learned counsel for the parties and after going through the records, it appears that on the basis of the undisputed facts as has been placed before us by the learned Additional Government Advocate, the case of the opposite party for giving him appointment under Rehabilitation Assistance Rules, 1990 has been considered after he attained majority, pursuant to the application filed by him, but the dispute started when the mother of opposite party made a request to give appointment to the opposite party under DDA, Kendrapara instead under DDA, Rayagada and accordingly the petitioners have rejected the claim of the plea of Rule 9 (7) of the RA Rules, 1990. Against such rejection order, the opposite party approached the Tribunal. The Tribunal has taken into consideration the entire facts in its proper

perspective and as such, in paragraphs 5 and 6, it has stated as follows:-

> *5) Rule 9(7) of O.C.S. (Rehabilitation Assistance) Rules prescribes that "If at the time of death of the Government servant, there is a ward who is minor and who alone is available in the family of the deceased government servant from employment, he/she shall apply for the job under these rules on attaining the age of eighteen years and in no case beyond three years from the date of attaining the age of eighteen years". In this case no doubt, at the time of death of deceased Govt. servant, except the applicant, his mother and sister are there. Firstly, the mother of the applicant had applied for appointment of her daughter under Rehabilitation Assistance Scheme, but she again represented for appointment of his son (applicant) on attaining majority, since the applicant was minor at the time of death of her father. Under Rehabilitation Assistance Scheme (R.A.S) as she had not applied only due to her lack of educational qualification and look after her minor son. When the applicant got majority, he applied for his appointment under Rehabilitation Assistance Scheme (R.A.S) before the Director, Agriculture and Food Production, Orissa, Bhubaneswar along with all other documents as at Annexure -3, who also forward the same to the Deputy Secretary to Govt. Agriculture Department, Orissa, Bhubaneswar in his letter No.2570 dt.21.9.2011 as at Annexure -4. The Joint Secretary to Govt. vide his office letterNo.21485 dt 17.10.2012 as at Annexure -5 also directed the Director of Agriculture & Food Production, Odisha, Bhubaneswar to take necessary action as per rule and furnish a report compliance. When the matter stood thus, the mother of the applicant represented for consideration of appointment of the applicant under DDA, Kendrapara Range instead of Rayagada Range due to some domestic problem. So, the Joint Director of Agriculture (Admn.) vide his office letter No.891 dt.21.03.2013 also requested the Govt. to consider the case of the applicant symbolically and communicate necessary approval for his appointment under DDA, Kendrapara range instead of Rayagada Range. However, the Govt. vide letter No.16910 dt.20.11.2013 rejected the case of the applicant as per Rule 9(7) of OCS (RA) Rules, 1990 as at Annexure-8.*
>
> *It was found that when the Govt. was going to appoint the applicant under Rehabilitation Assistance*

Scheme (RAS) under DDA, Rayagada, the representation of the mother of the applicant to appoint under DDA, Kendrapara resulting outcome of Annexure -8. SO, when after observing all the formalities the Govt. was going to appoint the applicant, now state respondents taking the plea that the applicant is not entitled to get appointment under R.A Scheme taking resort to Rule 9(7) of OCS (RA) Rules rejected the claim of the applicant. At the first instance when the mother of the applicant made a representation for appointment of her son after attaining the age of the majority, the respondents could have rejected the representation. The claim of the mother of the applicant for appointment of the applicant after attaining the age of majority was never rejected by the respondents. As such when the applicant got majority had applied for appointment under RAs and after observing all the formalities the Respondent No.1 had already directed to consider the appointment of the applicant in Rayagada. It is only when the mother of the applicant requested for the appointment of the applicant in DDA, Kendrapara instead of DDA, Rayagada, the Govt. vide its order dt.20.11.2013 rejected the claim of the applicant for appointment. The claim of the mother of the applicant for appointment of the applicant after attaining the age of majority, was never rejected by the respondents. Now, at a belated stage, when the applicant has been claiming for the appointment basing on the representation of his mother of the year 2000, the respondents rejected the same which is not genuine. The communication of the respondents as at Annexure -4,5 and 6 does not speak anything about Rule 9(7) of OCS (RA) Rules, but these are all positive communications. The respondents also may take resort to Rule 16 of OCS (RA) Rules for extending the appointment to the applicant.

> ***Further, Rule 16 of OCS (R.A) Rules provides that (1) The State Government where satisfied that the operation of all or any provisions of these rules causes undue hardship in any particular case, it may dispense with or relax the provisions to such extent as it may consider necessary for dealing with the case in a just and equitable manner.(2) Such cases shall be examined in General Administration Department and orders of Chief Minister shall be obtained.***

So the order at Annexure-8 is bed in the eyes of law and liable to be quashed.

6) In view of the peculiar facts & circumstances

that as the Respondents once have decided to appoint the applicant under R.A Scheme in Rayagada range and subsequently when the mother of the applicant represented for appointment of the applicant under Kendrapara range they have rejected the claim of the applicant taking resort to Rule 9 (7) of the OCS (RA) Rules, it is a deserving case for appointment of the applicant under Rehabilitation Assistance by relaxing the provision of Rule 9 (7) of OCS (RA) Rules. Accordingly the order dt. 20.11.2013 as at Annexure -8 is hereby quashed. The Respondents are directed to consider the case of the applicant for his appointment as Jr. Clerk under DDA, Kendrapara by relaxing the provision of Rules 9 (7) in pursuance of Rules 16 of OCS (RA) Rule, 1990.

7. In view of such position, we are of the considered vide that no error has been committed by the Tribunal while passing the order impugned and as such the writ application merits no consideration and the same is accordingly dismissed.

(DR. B.R. SARANGI)
JUDGE

Arun

(SAVITRI RATHO)
JUDGE