

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No. 7659 of 2016

Anubhab Mishra

....

Petitioner

Mr. K.K.Swain, Advocate

-versus-

State of Odisha and others

....

Opposite Parties

Mr. R.N.Mishra, AGA for OPs.1 & 2

For O.P. No.3-None

CORAM:

JUSTICE M.S.SAHOO

ORDER

6.4.2022

Order No.

13.

1. This matter is taken up by hybrid mode.
2. The petitioner in the writ petition challenges the order dated 19.1.2016 (Annexure-17) passed by the Government of Odisha, Department of Higher Education rejecting the claim of the petitioner to get appointment under Rehabilitation Assistance Scheme under OCS (Rehabilitation Assistance) Rules, 1990.
3. It is submitted by learned counsel for petitioner that the order dated 19.1.2016 passed by the O.P. No.1-Government (Annexure-17) was issued on the purported ground that the gap between the date of death of the deceased employee and the date of medical certificate declaring the spouse of the deceased employee to be medically unfit for the Govt. job is six years, is not factually correct.

It is submitted that the Govt. in the Department of Higher Education by order dated 12.11.2015 (Annexure-13) directed the Director, Higher Education to instruct the Principal of the college under whom the deceased was working, to obtain medical certificate regarding fitness or otherwise of the spouse of the deceased employee.

4. It is further submitted by learned counsel for the petitioner that after the said order dated 12.11.2015 by the Government, the Medical Board examined the spouse of the deceased employee on

1.12.2015 and found her unfit i.e. within about twenty days as directed by the Government.

5. Learned AGA relying on the counter affidavit on behalf of the O.P.-State, submits that the application was considered under the Rule 9(6) of the OCS (Rehabilitation Assistance) Rules, 1990 particularly, Rule-2(b), according to which the wife was to get employment.

There is agreement at the Bar (as has been fairly submitted by learned AGA) that the said aspect remains no more res integra in view of the judgment rendered by this Court in **2017(II) ILR-Cut 896 (Bibhuti Bhusan Patnaik v. State of Odisha and others)** wherein a coordinate Bench of this Court observed that the reading of the Rules does not indicate only the wife or the husband as the case may be are to get employment in case of unfortunate death of the spouse.

6. Relying on the counter affidavit filed by the opposite party no.2, it is further submitted by learned AGA that the certificate produced by the mother, i.e., wife of the deceased employee regarding her unfitness to undertake a Government job, is after lapse of about more than four years and for the said reasons, the application for consideration of the son of the deceased employee under the rehabilitation assistance scheme, has been rejected.

7. It is submitted by learned counsel for the petitioner that in any event, after entire process of scrutiny of the application, issuance of distress certificate etc, the matter was considered by the Government. The Government directed for production of fitness certificate of the spouse of the deceased employee after being examined by the medical board. The report was produced in about a month of the direction of the Government, therefore, reasons stated in the order dated 19.1.2016 indicating the delay of six years, is contrary to the records.

8. Having heard learned counsel for the parties, this Court is of the considered view that the apparent reason stated in the order

dated 19.1.2016 regarding delay of six years, is contrary to the available materials on record. Accordingly, the order is set aside.

9. The authorities are directed to consider the matter afresh in accordance with law as expeditiously as possible preferably within a period of four months from the date of communication of the certified copy of this order along with relevant documents sought to be relied upon by the petitioner.

10. The writ petition is allowed accordingly. In the facts and circumstances of the case, there shall be no order as to costs.

(M.S.Sahoo)
Judge

dutta

