

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 18433 of 2016

Sanjay Kumar Mohanty

.....

Petitioner

Mr. G.R. Sethi, Adv.

Vs.

Union of India and another

.....

Opposite party

Mr. M.K. Pradhan, CGC

CORAM:

DR. JUSTICE B.R. SARANGI

MR JUSTICE S.K. MISHRA

ORDER

27.07.2022

Order No.

07.

This matter is taken up through hybrid mode.

2. Heard Mr. G.R. Sethi, learned Counsel for the Petitioner and Mr. M.K. Pradhan, learned Central Government Counsel appearing for the Opposite Parties.

3. The Petitioner has filed this Writ Petition seeking to quash the Orders dated 08.01.2016, 24.08.2012 and 25.07.2013 under Annexure-12, 4 and 8 respectively, and to issue direction to the Opposite Parties to appoint him under Compassionate ground.

4. Mr. G.R. Sethi, learned Counsel for the Petitioner vehemently contended that so far as rejection of claim for compassionate appointment of the Petitioner is concerned, the same has been done taking into consideration the subsequent rules, which are not applicable to the Petitioner and, as such, the Opposite Parties have exceeded their jurisdiction by rejecting the claim of the Petitioner for giving compassionate appointment, taking into consideration the rules prevalent at the time of death. Therefore, the tribunal instead of remanding the matter to the authorities for reconsideration, should have directed the authorities to issue appointment order in favour of the Petitioner in terms of the rules applicable at the time of death of his

father.

5. Mr. M.K. Pradhan, Central Government Counsel contended that once the case of the petitioner for grant of compassionate appointment was rejected, the tribunal could not have directed to reconsider the same by passing the order impugned. He further contended that the Petitioner is not eligible to get such appointment and, as such, while considering his case for compassionate appointment, the authority found him not eligible and accordingly rejected his application. Therefore, the authorities have rightly rejected the claim of the Petitioner.

6. Having heard learned counsel for the parties and after going through the records, this Court finds that the Petitioner claims for compassionate appointment and to that effect though he had filed application, the same was rejected mechanically without any application of mind, taking into consideration subsequent rules/guidelines which are not applicable to the opposite party.

7. In *State of Madhya Pradesh v. Ashish Awasthi*, 2021(II) OLR (SC) 1072, 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. Similarly, in *Malaya Nanda Sethy v. State of Orissa*, 2022 (II) OLR (SC) 1, the apex Court held that the appellant shall be entitled to appointment on compassionate ground as per the Rules in vogue at the time of death of the concerned employee. But in the present case, there is deviation from that. Therefore, the tribunal has quashed the order of rejection passed by the authority refusing to grant compassionate appointment, and directed to reconsider the case of the Petitioner again in terms of the rules/guidelines applicable at the relevant point of time.

8. In the above view of the matter, this Court disposes of the Writ

Petition directing the Opposite Party-Authorities to reconsider the case of the Petitioner in terms of the rules applicable to the Petitioner at the time of death of the deceased employee in terms of the judgments of the apex Court in the cases of *Ashish Awasthi* and *Malaya Nanda Sethy (supra)*, so as to give compassionate appointment to the Petitioner and pass appropriate order as expeditiously as possible, preferably within a period of four months from the date of production of certified copy of this Order.

Issue urgent certified copy as per Rules.

(DR. B.R. SARANGI)
JUDGE

Ashok/Padma

(S.K. MISHRA)
JUDGE

