

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.8882 of 2022

Balaram Das

..... Petitioner
Mr. D. Pr. Jena, Advocate

-versus-

State of Odisha and others

..... Opposite Parties
Mr. Y.S.B. Babu, A.G.A.

CORAM:
JUSTICE A.K. MOHAPATRA

ORDER
02.05.2022

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 prayer :-

“It is therefore prayed that the Writ Petition be admitted, relevant records be called for and after hearing the counsel for the parties this Hon’ble Court be pleased to allow the Writ Petition quashing the order dated 04.01.2022 passed by the Opp. Party No.3 under Annexure-8.

And direct the Opp. Parties specifically the Opp. Party No.2 to give appointment to the petitioner in Group-d post under Rehabilitation Assistance Scheme (RA Scheme) taking into account the petitioner’s qualification.

And/or pass any other order/direction as deem just

and proper by this Hon'ble Court.”

4. It is submitted by learned counsel for the petitioner that the authorities are not considering the grievance of the petitioner for Rehabilitation Assistance Scheme Rules, 1990. He further submits that the petitioner apprehends that his application for the rehabilitation appointment may be rejected by adopting new Rules, 2020.

5. It is further submitted by learned counsel for the petitioner that the petitioner has approached this Court by filing this writ petition with a prayer to direct the opposite parties to consider the case for appointment of the petitioner under Rehabilitation Assistance Scheme. It is submitted by learned counsel for the Petitioner that father of the petitioner died in harness on 20.03.2013 leaving behind the present petitioner as legal heir. Accordingly, the present Petitioner had submitted an application on 04.07.2013 for appointment under Rehabilitation Assistance Scheme under the Orissa Civil Service (Rehabilitation Assistance) Rule, 1990. However, learned counsel for the petitioner submits that a direction may be given to the Authority to consider the case of the petitioner afresh under the relevant Rules i.e. Orissa Civil Service (Rehabilitation Assistance) Rule, 1990, which was in force when the father of the petitioner died in harness. The law on the subject is no more res integra. As this Court finds, 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 Hon'ble 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, so far as appointment under the Rehabilitation Assistance Scheme is concerned.

6. Learned counsel for the State, on the other hand, submits that the opposite party no.4 considering the case of the petitioner has rightly rejected the same by order dated 04.01.2022. He further submits that the said authority rejected in pursuance of Rule 6(2) of the Odisha civil Services (Rehabilitation Assistance) Rule 2020, since late father of the petitioner, Board of Revenue has scored less than 60(sixty) points in both Part-I and Part-II of the Evaluation Sheet (Form-D) is in eligible for appointment under the said R.A. Scheme.

7. Looking to the date of death of the deceased involving whose appointment under the Rehabilitation Assistance Scheme is sought and the date of application for appointment under the Rehabilitation Assistance Scheme, this Court finds, the issuance of rejection letter dated 04.01.2022 under Annexure-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, remains contrary to the decision of the Apex Court in the case of ***State of Madhya Pradesh vs. Ashish Awasthi***, 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 order of rejection letter dated 04.01.2022 under Annexure-8 sets aside the same and directs Opposite Party No.3 to consider the case of the petitioner for appointment under the Rehabilitation Assistance Scheme in terms of the provision of Orissa Civil Services (Rehabilitation Assistance) Rules, 1990, 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 Government Department of Education (Primary) & Ors vs.***

Bheemesh Alias Bheemppa (Civil Appeal No.7752 of 2021).

8. The entire exercise shall be completed within a period of three months from the date of communication/production of certified copy of this order by the petitioner.

9. With the aforesaid observation and direction the writ petition stands disposed of.

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

Jagabandhu

