

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.9692 of 2022

Smita Rani Bisoi

Petitioner
Mr.S.K.Das , Advocate

-versus-

Odisha Information Commission & another ***..... Opposite Parties***

Mr. K.K.Nayak, A.S.C.

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 Additional Standing Counsel.
3. The present writ application has been filed by the Petitioner with the following prayer:

“Under the above circumstances, it is therefore humbly prayed that the Hon’ble Court be graciously pleased to direct the Opposite Party No.1 to regularise the service of the Petitioner as DPA and allow her regular scale of pay available to the post with arrears as the case of the Petitioner is squarely covered by the ratio decided in the Hon’ble Court Apex Court in the case of ***State of Uttar Pradesh and another vs. Aishwarya Pandey*** (SLP (C) No.19255 of 2021) disposed of on 03.12.2021.

And/or pass any other appropriate writ/writs, order/orders, direction/directions in the fitness of the case.”

4. The case of the Petitioner is that her husband was initially engaged as a Data Processing Assistant in the Office of the Odisha

Information Commission on ad hoc basis. While he was continuing in the said basis on temporary basis, the Petitioner along with others approached this Court by filing a writ application. During pendency of the writ application the husband of the Petitioner passed away and in his place the present Petitioner was substituted. The other persons who were approached along with the husband of the petitioner their services were regularised pursuant to the order of this Court.

5. After the death of the husband of the Petitioner, the Petitioner was given appointment on compassionate ground in the post of Data Processing Assistant vide order dated 18.08.2021 on temporary basis on a consolidated remuneration of Rs.8880/- per month. It is submitted by the learned counsel for the Petitioner that the post of Data Processing Assistant carries a different pay scale which is being offered to the Petitioner. Therefore, learned counsel for the Petitioner submits that the conduct of the authority is discriminatory inasmuch as law does not discriminate the persons on the basis of their mode of employment, whether employee can be engaged on compassionate ground or he is entitled to law to which he or she is appointed.

6. In support of his contention, learned counsel for the Petitioner relies upon a decision of the Hon'ble Supreme Court in the matter of *State of Uttar Pradesh and another v. Aiswarya Pandey (SLP (C) No.19255 of 2021* disposed of on 03.12.2021. In the said judgment of the Hon'ble Supreme Court identical issue was under consideration wherein considering the said fact the Hon'ble Supreme Court in Paragraph-3 in the said judgment is quoted herein below:

“3. It is the petitioner – State which appointed the respondent on compassionate ground on the post of Officer on Special Duty. Thereafter, it is not open for the State to contend that the respondent could not have been appointed on compassionate ground on the post of officer on Special duty as the same was required to be filled by the Public Service

Commission. There cannot be two different pay-scales for the employee appointed on compassionate ground and the employee appointed on regular basis. The moment a person is appointed on a particular post, that person is entitled to the pay-scale of the very post, even if the appointment is on compassionate ground. At this stage, it is required to be noted that even in the case of similarly situated employees, the similar benefit was granted.”

7. In view of the aforesaid pronouncement of law by the Hon’ble Apex Court in identical matter, learned counsel for the Petitioner submits that the Petitioner is entitled to get regular scale of pay attached to the Data Processing Assistant. He further submits that ventilating his grievance he has submitted a representation on 21.02.2022 before the State Chief Information Commission, Odisha, Bhubaneswar which is annexed to the writ application as Annexure-7. He further submits that the same is pending for consideration before the Chief Information Commission.

8. Learned Additional Standing Counsel on the other hand submits that since the matter is pending before the Chief Information Commission let a direction be issued to the Chief Information Commission to consider the matter in accordance with law and in the light of the ratio decided in the unreported decision of the Hon’ble Supreme Court (supra) and take a decision in the matter within a stipulated period of time.

9. Considering the rival contentions raised by the respective parties and further considering the limited nature of grievance, this Court deems it proper to dispose of the writ application at the stage of admission directing the Chief Information Commission, Opposite Party No.1 to take a decision on the representation of the Petitioner dated 21.02.2022 within a period of two months from the date of production of certified copy of this order. Further the Opposite party

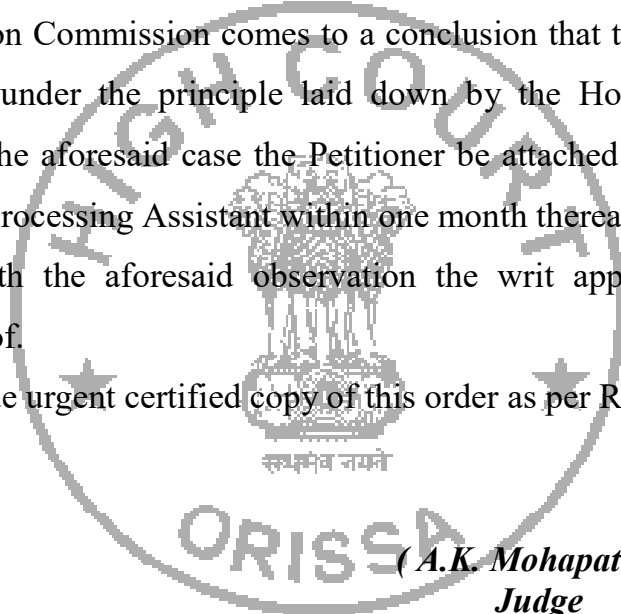
No.1 is directed to consider the representation of the Petitioner keeping in view the law laid down by the Hon'ble Supreme Court in the aforesaid judgment of the Supreme Court, a copy of which shall also be filed before the Chief Information Commission and dispose of the representation of the Petitioner by passing a speaking and reasoned order within a period of two months from the date of production of certified copy of this order. The decision so taken on the representation of the Petitioner be communicated to the Petitioner within two weeks thereafter.

10. It is needless to mention here that in the event the Chief Information Commission comes to a conclusion that the Petitioner is covered under the principle laid down by the Hon'ble Supreme Court in the aforesaid case the Petitioner be attached to the scale of the Data Processing Assistant within one month thereafter.

11. With the aforesaid observation the writ application stands disposed of.

12. Issue urgent certified copy of this order as per Rules.

RKS



(A.K. Mohapatra)
Judge