

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.15610 of 2022

Shakti Prasad Mohanty

....

Petitioner

-versus-

State of Odisha & Ors.

....

Opposite Parties

CORAM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

22.07.2022

Order No

02.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.

2. Heard learned counsel for the Petitioner and learned counsel for the State.

3. Perused the writ application as well as the document annexed to the writ application.

4. The present writ application has been filed challenging the order dated 07.01.2022 under Annexure-11 whereunder the Under Principal Secretary to Government in Home Department OCS(RA) Rules 2016 has already been superseded by OCS (RA) Rules 2020 and all the pending cases for appointment under RA Scheme shall be dealt in pursuance of OCS (RA) Rules, 2020 and requested to furnish fresh application in pursuance of OCS (RA) Rules, 2020 for approval at Govt. level. Being aggrieved by such decision, the Petitioner has approached this Court by filing the present writ application. It is further prayed by the Petitioner for a direction to

Opposite Party No.2 to provide employment to the Petitioner under Old R.A. Scheme.

5. It is submitted by the learned counsel for the Petitioner that the father of the Petitioner died on 10.12.2018. After the demise of his father he had applied for appointment under RA.Scheme under Old Rule i.e. OCS(R.A.) Rules, 1990 on 9.2.2012. However, he further submits that from the impugned order under Annexure-11, dated 07.01.2022, it is found that the authority has although rejected his case for Rehabilitation Assistance Scheme but have considered the case of the Petitioner under new Rule i.e. the Rule of the year 2020. It is further submitted by the learned counsel for the Petitioner that the dispute with regard to applicability of the Rule for appointment under R.A. Scheme has been set at rest by the Hon'ble Supreme Court in the matter of Indian Bank and others v. Promila and another, (2020) 2 Supreme Court Cases 729, wherein it has been specifically held by the Hon'ble Supreme Court that compassionate appointment must be decided only on the basis of relevant scheme prevalent on date of demise of employee. In such view of the matter the learned counsel for the Petitioner submits that the application of the Petitioner should have been considered under the 1990 Rules instead of Rule of the year 2020. Similar view has also been taken in State of Madhya Pradesh vs. Ashish Awasthi, reported in 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.

6. Learned Counsel appearing for the State does not dispute the aforesaid proposition of law. He further submits that if the matter is

remanded to the authority, he/she shall consider the case of the Petitioner in the light of the judgment in Indian Bank and others v. Promila and another (supra) and Asish Awasti (supra) within a stipulated period of time.

7. Having heard learned counsel for the parties and after going through the judgment relied upon by the learned counsel for the Petitioner, this Court disposes of the writ application at the stage of admission by setting aside the impugned order dated 07.01.2022 under Annexure-11 and further the Opposite Party No.1 is directed to consider the case of the Petitioner in the light of the judgment referred to herein above. The Opposite Party No.1 shall do well to consider the case of the Petitioner as directed herein above and shall complete the entire exercise within a period of two months from the date of production of a certified copy of this order. The final decision shall be communicated to the Petitioner within two weeks thereafter. Let a copy of the judgment in Indian Bank case (supra) along with a certified copy of this order be placed before the appropriate authority by the Petitioner within a period of two weeks.

8. With the aforesaid observation, the writ application stands disposed of.

9. Issue urgent certified copy of this order on proper application.

(Biraja Prasanna Satapathy)
Judge

Sneha