

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.15741 of 2022

Tapas Kumar Rout

....

Petitioner

Mr. Tapas Kumar Rout, Advocate

-versus-

State of Odisha and others

....

Opposite Parties

Mr. P.C. Das, ASC for State

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

04.07.2022

Order No.

01.

1. Heard learned counsel for the Petitioner and learned counsel for the Opposite Parties-State.
2. The Petitioner has filed this application for extension of benefits under Odisha Civil Services (Rehabilitation Assistance) Rules, 1990 and Amendment Rule 2016 there under and for a direction to Opposite Parties to provide the compassionate approximant as per the Rule prevailing as on the date of his application dtd.07.02.2020 in the light of the judgment of the Hon'ble Supreme Court in *Malaya Nanda Sethy vs State of Odisha & Others* in SLP no.936 of 2022 and in the case of *Pradeep Ku. Sahoo vs. Principal Secretary to Govt. SME Dept. Decided on 31.05.2022 in W.P.(C) No.23683 of 2021*.
3. Challenging the order dated 23.03.2021 of the District Education Officer, Kendrapara-Opp. Party No.4 in rejecting their representations for compassionate appointment under the prevailing Rule when the petitioners had submitted their application pursuant to

the order of the High Court for considering their case in the light of the judgment reported in 2015 (11) ILR-CUT-569. The petitioners have also challenged the action of the Opp. Parties in not considering their case for appointment under Rehabilitation Assistance Scheme as per the Orissa Civil Service (Rehabilitation Assistance) Rule 1990 although they had submitted their applications along with all necessary documents before the appropriate authority for appointment under Rehabilitation Assistance Scheme as per Rule 1990 due to the harness of his late father.

4. Shorn of unnecessary details, the substratum of the case has been filed before this Court that the Petitioner's father late Bidyadhar Rout while working as Gang Mulia in the working as as Gang Mulia in the Department of Works, N.H Division., Balasore, he expired on 28.04.2017, So after the death of the father of the Petitioner, the conditions of the family became very much precarious. So, the petitioner choose to file an application before the competent authority after attaining the age of majority under Rule 1990 of Rehabilitation Assistance Scheme after obtaining the death certificate and legal heir certificate. The other legal heirs gave their no objection certificate due to medically unfit. The Petitioner submitted his application in the year 2019 and accepted as per the Orissa Civil Service (Rehabilitation Assistance) Rule, 1990 and amended Rule, 2016. Till now the Petitioner has not been provided the job so far either as per the Orissa Civil Service (Rehabilitation Assistance) Rule 1990 or Amendment Rule 2016 and he has been waiting since his application and the family members are still in distress conditions.

5. Learned Counsel for the Petitioner submits that the Opp. Party

No.2 did not provide the compassionate appointment to the petitioners in time and after the Amendment Rule 2016 came into force the petitioners were asked to submit a fresh application along with all documents although the select list was prepared he was not given any appointment under Rehabilitation Assistance Scheme which is purely due to oblique motive. It is not out of place to mention here that the petitioners are not covered under the Amendment Rules, 2020 as they have submitted their applications as per the Orissa Civil Service (Rehabilitation Assistance) Rule 1990. So, their cases should have been considered in a separate category i.e. pursuant to the Rules, 1990. The Opp. Parties have delayed in not considering their cases and in this way 3 years have been elapsed. They have been waiting and on the other hand, the Opp. Parties have played mockery of the Scheme by adopting a pick and choose policy.

6. It is stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress.

7. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant. This view has been reiterated by the Supreme Court in the case of **Smt. Sushma Gosain And Ors. vs Union Of India**, reported in **AIR 0989 SC 1976** and **Smt. Phoolwati vs Union Of India & Ors.**, reported in **AIR 1991 SC 469**. Seven years of delay in the present case **AIR 1989 SC 1976**. **AIR 1991 SC 46** just goes on to show the callousness of the authorities.

8. Additionally, in the recent case of *Malaya Nanda Sethy vs. State of Orissa and others* in *SLP No.916 of 2022*, while dealing with the similar issue, the Supreme Court iterated that:

“7. Thus, from the aforesaid, it can be seen that there was no fault and/or delay and/or negligence on the part of the appellant at all. He was fulfilling all the conditions for appointment on compassionate grounds under the 1990 Rules.

For no reason, her application was kept pending and/or no order was passed on one ground or the other. Therefore, when there was no fault and/or delay on the part of the appellant and all throughout there was a delay on the part of the department/authorities, the appellant should not be made to suffer. Not appointing the appellant under the 1990 Rules would be giving a premium to the delay and/or inaction on the part of the department/authorities. There was an absolute callousness on the part of the department/authorities. The facts are conspicuous and manifest the grave delay in entertaining the application submitted by the appellant in seeking employment which is indisputably attributable to the department/authorities. In fact, the appellant has been deprived of seeking compassionate appointment, which he was S.L.P.(Civil) No. 936/2022. otherwise entitled to under the 1990 Rules. The appellant has become a victim of the delay and/or inaction on the part of the department/authorities which may be deliberate or for reasons best known to the authorities concerned. Therefore, in the peculiar facts and circumstances of the case, keeping the larger question open and aside, as observed hereinabove, we are of the opinion that the appellant herein shall not be denied appointment under the 1990 Rules.

8. In view of the above discussion and for the reasons stated above, the impugned judgment and order passed by the High Court is hereby quashed and

set aside. The respondents are directed to consider the case of the appellant for appointment on compassionate grounds under the 1990 Rules as per his original application made in July, 2010 and if he is otherwise found eligible to appoint him on the post of Junior Clerk The aforesaid exercise shall be completed within a period of four weeks from today. However, it is observed that the appellant shall be entitled to all the benefits from the date of his appointment only. The present appeal is accordingly allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.

9. Before parting with the present order, we are constrained to observe that considering the object and purpose of appointment on compassionate grounds, Le., a family of a deceased employee may be placed in a position of financial hardship upon the untimely death of the employee while in service and the basis of policy is immediacy in rendering of financial assistance to the family of the deceased consequent upon his untimely death, the authors must consider and decide such applications for appointment on compassionate grounds an per the policy prevalent, at the earliest, but not beyond a period of six months from the date of submission of such completed applications."

9. From the above discussion, this Court is of the opinion that the Petitioner should be provided with the compassionate appointment in accordance to the Orissa Civil Service (Rehabilitation Assistance) Rules, 1990 and Amended Act 2016 within a period of three months from today.

10. Having considered the matter in aforesaid perspective and guided by the precedents cited hereinabove, this Court allows both the petitions.

11. The Writ Petition is accordingly disposed of in terms of the above directions. There shall be no order as to costs.

12. Issue urgent certified copy as per rules.

(A.K. Mohapatra)
Judge

u.k.sahoo

