IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.16072 of 2022

Rojalinit Mohapatra **….** **Petitioner**

-versus-

State of Odisha & Ors. **….** **Opposite Party**

CORAM:
JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER
21.07.2022

Order No

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

2. Heard Mr. M.K. Mohanty-2, learned counsel for the Petitioner and Mr. A.P. Das, learned ASC appearing for the Opp. Parties.

3. The Petitioner is aggrieved by the order dtd.07.05.2022 passed by the O.P. No.3 under Annexure-7, wherein the claim of the Petitioner for his appointment under the provision of the Rehabilitation Assistance Scheme has been rejected relying on the notification issued by the Govt. in the GA & P.G. Department on 17.02.2020.

4. It is submitted that the Petitioner's father while working under the Opp. Parties died on 25.11.2016 and the Petitioner made his application for appointment under the provision of the Rehabilitation Assistance Scheme within the time.

5. It is submitted that the Petitioner along with his application submitted all relevant documents and no objection from other legal heirs of the deceased employee. It is further submitted that when the claim of the Petitioner was kept pending, the Petitioner approached this Court in W.P.(C) No. 29948 of 2020. This Court vide order dtd.09.11.2020 directed the O.P. No. 2 to take a decision on the claim of the Petitioner. The said Opp. Party vide letter dtd.12.03.2021 though requested O.P. No. 3 to take a decision on the claim of the Petitioner but indicated therein to follow the guideline issued vide notification dt.17.02.2020.

6. In spite of that when the claim of the Petitioner was kept pending, he again approached this Court in W.P.(C) No. 32161 of 2021 and this Court directed the Authority to take a final decision vide Order dt.03.11.2021.

7. It is submitted that since the deceased employee died prior to 17.02.2020, the stipulation contained in the said notification cannot be made applicable to the case of the Petitioner and accordingly the rejection of his claim relying on the said notification is illegal.

8. Learned counsel for the Petitioner in support of this aforesaid submission relied on a decision of the Hon'ble Apex Court passed in the case of Malaya Nanda Sethy Vs. State of Odisha & Ors. In the said decision Hon'ble Apex Court has held that the rules prevailing at the time of the death of the concerned employee should be the criteria for consideration of the claim.

9. Since in the present case the Petitioner's father died prior to 17.02.2020, the action of the Opp. Parties in rejecting the claim of

the Petitioner basing on the said notification as per the considered view of this Court is illegal and not sustainable in the eye of law.

10. Therefore, this Court has got no hesitation in quashing the said order dtd.7.05.2022 passed by O.P. No. 3 under Annexure-7. While quashing the same, this Court directs O.P. Nos. 2 & 3 to reconsider the matter in the light of the prevalent rule in force at the time of death of the deceased employee. This Court also directs the O.P. Nos. 2 & 3 follow of the order passed by the Hon'ble Apex Court in the aforesaid case while taking such a decision afresh. This Court directs the said Opp. Parties to take a fresh decision within a period of two (2) months from the date of receipt of this Order. If on such consideration the Petitioner is found eligible, necessary order of appointment be issued in his favour.

11. The writ Petition is disposed of with the aforesaid observation and direction.

(Biraja Prasanna Satapathy)
Judge

Sneha