

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.16277 of 2022

In the matter of an application under Section 19
of the Administrative Tribunals' Act, 1985.

.....

Nilamani Bhoi

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioner :M/s. B.S. Rayaguru, Advocate

For Opp. Parties :M/s. B. Panigrahi,
Additional Standing Counsel

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 20.10.2022 and Date of Order: 03.11.2022

Biraja Prasanna Satapathy, J.

1. Heard Mr. B.S. Rayaguru, learned Counsel appearing for the petitioner and Mr. B. Panigrahi, learned Additional Standing Counsel appearing for the State-Opp. Parties.
2. The present writ petition has been filed challenging the Order dated 28.03.2022 passed by Opp. Party No.1 in rejecting the claim of the petitioner for his appointment

under the provisions of Rehabilitation Assistance Scheme. Learned counsel for the petitioner submitted that on the death of the petitioner's father, while working as a Peon in the regular establishment of Opp. Party No.3 on 12.09.2011, the petitioner made his application for his appointment under the provisions of Rehabilitation Assistance Scheme on 04.05.2012 under Annexure-2. It is submitted that on receipt of the said application and after obtaining the distress certificate from Collector, Bolangir, Opp. Party No.4 though forwarded the application to the opp. party No.2, but vide his letter dated 24.02.2015 under Annexure-3 sought for clarification from Opp. Party No.4 as to why the petitioner in place of his elder brother Dolamani Bhoi made such application, as he was available at the relevant point of time. It is submitted that after receipt of the clarification, vide letter dated 18.08.2015 under Annexure-4, though the claim of the petitioner for his appointment under the Rehabilitation Assistance Scheme was forwarded by Opp. Party No.2 to the Government-Opp. Party No.1, but vide communication dated 23.11.2015 under Annexure-5, Government-Opp. Party No.1 requested Opp. Party No.2 to ask the elder son of the deceased-employee Dolamani Bhoi to make such application

for consideration of his appointment under the Rehabilitation Assistance Scheme.

3. Learned counsel for the petitioner submitted that pursuant to the request made by the Government-Opp. Party No.1 under Annexure-5, the application submitted by the elder brother of the petitioner, Dolamani Bhoi, though was forwarded by Opp. Party No.2 vide letter dated 21.03.2016 under Annexure-6, but the claim of the petitioner's elder brother was rejected vide communication dated 08.04.2016 under Annexure-7 on the ground that such application has been made in spite of the eligibility of the spouse of the deceased-employee to make such application, and the medical certificate declaring the spouse unfit for Government job is issued after submission of the application.

4. Learned counsel for the petitioner submitted that the said rejection of the claim of his elder brother was communicated by Opp. Party No.4 vide letter dated 25.8.2016 under Annexure-7. It is submitted that since on the request made by the Government-Opp. Party No.1 under Annexure-5, the elder brother of the petitioner made his application and the same was duly forwarded vide Annexure-6, the rejection of his claim on the ground indicated in Annexure-7 is not legal and justified. However, it is

submitted that after such rejection of the claim of his elder brother, the petitioner once again moved Opp. Party No.1 on 09.05.2017 with a prayer to consider his claim, as he was the first applicant to claim the benefit of R.A. Scheme.

5. Learned counsel for the petitioner submitted that as the prayer made by the petitioner under Annexure-9 was not considered, in spite of further request made under Annexure-10, the petitioner challenging the said action of the opp. Parties moved this Court in W.P.(C) No.29398 of 2021. This Court vide its order dated 07.10.2021 disposed of the said writ petition with a direction on opp. party no.1 to consider the claim of the petitioner as made in Annexures-9 & 10 to the writ petition.

6. Learned counsel for the petitioner submitted that opp. party no.1 without proper appreciation of the petitioner's claim, as made in Annexures-9 & 10, rejected the said same vide the impugned order dated 28.03.2022 under Annexure-13.

7. It is submitted that on the death of the deceased employee on 12.09.2011, the present petitioner made his application within the stipulated time vide Annexure-2. It is also submitted that after receipt of the distress certificate from the Office of Collector, Bolangir, the application of the

petitioner was duly forwarded to the Government-Opp. Party No.1 vide Annexure-4. But, it is submitted that on the request made by the Government under Annexure-5, the petitioner's elder brother not only made the application, but the same was duly forwarded to the Government-Opp. Party No.1 vide Annexure-6. Accordingly, it is submitted that since the elder brother of the petitioner made his application basing on the request made by the Government under Annexure-5, his claim should not have been rejected on the ground mentioned in the communication dated 08.04.2016 under Annexure-7.

8. It is submitted that in view of the decision of this Court rendered in the case of ***Ajit Kumar Barik Vs. State of Odisha & Ors (2018) (II) OLR 10***, the petitioner as well as his elder brother being coming within the definition of "Family Member" as defined under Rule 2(b) of the OCS (RA) Rules, 1990, the claim of the petitioner's elder brother should not have been rejected on the ground indicated in Annexure-7.

9. Learned counsel for the petitioner submitted that since the claim of the petitioner's elder brother was rejected on the ground, which is not sustainable in the eye of law, in view of reported decision of this Court as cited (supra), the

petitioner taking into account the fact that in the communication dated 8.4.2016, the petitioner's name is indicated at Sl. No.73, in place of his elder brother, petitioner once again made an application under Annexure-9 to consider his case by reviving his application and by revoking the rejection communicated vide letter dated 08.04.2016 under Annexure-7. However, it is submitted that Opp. Party no.1 once again taking similar view, which is contrary to the decision of this Court as cited (supra), rejected the claim vide the impugned order dated 28.03.2022 under Annexure-13. Mr. Rayaguru, learned counsel appearing for the petitioner accordingly submitted that since the impugned order under Annexure-13 has been passed contrary to the decision of this Court in the case of Ajit Kumar Barik Vs. State of Odisha & Ors, the said order needs interference of this court.

10. Mr. B. Panigrahi, learned counsel appearing for the State-Opp. Parties, on the other hand, submitted that once the claim of the petitioner's elder brother is rejected vide letter dated 08.04.2016 under Annexure-7 and the said order having never been challenged by the petitioner's elder brother, no further prayer of the petitioner is entertainable. Accordingly, it is submitted that no illegality has been

committed by Opp. Party No.1 in rejecting the petitioner's claim vide the impugned order under Annexure-13.

11. Heard learned counsel for the parties. Perused the materials available on record.

12. This Court after going through the same finds that the present petitioner on the death of his father on 12.09.2011, made his application on 04.05.2012 under Annexure-2. It is also found that after receipt of the distress certificate, the claim of the petitioner was forwarded to the Government-Opp. party No.1 vide letter dated 18.08.2015 under Annexure-4. However, it is found that basing on the request made by the Government under Annexure-5, the petitioner's elder brother/1st son of the deceased-employee made an application and the said application was forwarded to the Government vide Annexure-6. However, while rejecting such claim vide communication dated 08.04.2016 under Annexure-7, the name of the petitioner in place of his elder brother was reflected at Sl. No.73 of the said list enclosed to Annexure-7. Because of such anomaly in the rejection order dated 08.04.2016, the petitioner prayed for reconsideration by reviving his claim under Annexure-9. However, Opp.Party no.1 once again basing on similar

stand, rejected the claim vide the impugned order under Annexure-13.

13. In view of the decision of this court in the case of Ajit Kumar Barik Vs. State of Odisha & Ors, this Court is of the view that without proper appreciation of the said decision, the petitioner's claim has been rejected vide order at Annexure-13. Therefore, this Court is inclined to quash the said order under Annexure-13 and while quashing the same, directs opp. party no.1 to take a fresh decision on the claim of the petitioner, taking into account the recommendation made under Annexure-4 to the writ petition and in the light of the decision of the Hon'ble Apex Court in the case of Malayananda Sethi Vs. State of Odisha as well the decision of this Court rendered in W.P.(C) No.26372 of 2022 and batch. This Court directs opp. party No.1 to complete the entire exercise within a period of one month from the date of receipt of this order.

14. With the aforesaid observation and direction, the Writ Petition is disposed of.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack

Dated the 3rd November, 2022/sangita

