

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.16860 of 2022

Shaswat Jaswant Bastia ***Petitioner***
Mr. A.K. Chhatoi, Advocate
-versus-
State of Odisha and others ***Opposite Parties***
Mr. P.C. Das, A.S.C.

**CORAM:
JUSTICE A.K. MOHAPATRA**

**ORDER
20.10.2022**

Order No.
03.

I.A. No.13210 of 2022

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the Petitioner as well as learned counsel for the State.
3. Considering the submissions made by learned counsel for the Petitioner, Order No.01 dated 11.07.2022 passed in W.P.(C) No.16860 of 2022 is hereby recalled, and in its place the following modified order is passed afresh. –
4. The present writ petition has been filed by the petitioner with the following prayers:-

“In view of the facts stated above the Petitioner prays that this Hon’ble Court may graciously be pleased to issue a writ in the nature of writ of mandamus or any other appropriate writ/writs, direction/directions, order/orders, issue appropriate order quashing the order bearing No.3834 dtd.20.09.2021 as at Annexure-7 and direct the Opp.Parties to consider appointment

of the petitioner under the rehabilitation assistance scheme in terms of Odisha Civil Service (Rehabilitation Assistance) Rules, 1990 as amended Rules, 2016 vide G.A. Department notification No.23345/Gen, dated 05.11.2016.

And further be pleased to issue pass any other order/orders as the Hon'ble Court deems fit and proper..”

5. The present writ petition has been filed by the petitioner challenging the impugned rejection order dated 20.09.2021 issued by the Managing Director, Odisha State Cooperative Marketing Federation Ltd. (MARKFED), Bhubaneswar (Opposite Party No.3) under Annexure-7 wherein the Opposite Party No.3 has rejected the application of the petitioner for Rehabilitation Assistance Scheme.

6. It is submitted by learned counsel for the petitioner that the father of the petitioner died on 05.10.2017 and is covered under the OCS(RA) Rules, 1990. It is further submitted by learned counsel for the petitioner that although the application has been submitted by the petitioner i.e. in the year 2017, the Authority sat over the matter and finally by virtue of the impugned order under Annexure-7, the same came to the light.

7. Learned counsel for the petitioner further submits that let the Authority be directed to consider the case of the petitioner in the light of the judgment delivered by the Hon'ble Supreme Court of India in the case of *Indian Bank vs. Promila*, reported in (2020) 2 SCC 729, *State of Madhya Pradesh vs. Amit Shrivastava*, reported in (2020) 10 SCC 496, Hon'ble Apex Court in the case of *The Secretary to Govt., Department of Education (Primary) & Ors. vs. Bheemesh Alias*

Bheemappa (Civil Appeal No.7722 of 2021) as well as in the case of ***State of Madhya Pradesh vs. Ashish Awasthi***, reported in ***2021(II) OLR (SC) 1072***.

8. Having heard leaned counsel for the parties and considering the facts and circumstances of the case, this observes that the order dated 20.09.2021 under Annexure-7 is not sustainable in law and therefore, the same is hereby quashed and looking to the date of death of the deceased and involving whom the appointment under the Rehabilitation Assistance Scheme is sought for and the date of application for appointment under the Rehabilitation Assistance Scheme, this Court directs the Opposite Parties to consider appointment of the Petitioner under the Rehabilitation Assistance Scheme in accordance with law, taking into account the judgments in the case of ***Indian Bank vs. Promila***, reported in ***(2020) 2 SCC 729***, ***State of Madhya Pradesh vs. Amit Shrivastava***, reported in ***(2020) 10 SCC 496***, Hon'ble Apex Court in the case of ***The Secretary to Govt., Department of Education (Primary) & Ors. vs. Bheemesh Alias Bheemappa (Civil Appeal No.7722 of 2021)*** as well as in the case of ***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 as well as the case of ***Malayananda Sethi vs. State of Orissa and Others***, reported in ***2022 SCC 684*** and pass a speaking and reasoned order by giving appointment to the Petitioner under the Rehabilitation Assistance Scheme, subject to availability of vacancies, within a period of three months from the date of

production of certified copy of this order. Decision so taken be communicated to the Petitioner within a period of two weeks thereafter.

9. With the above directions and observations, the Writ Petition and the I.A. are disposed of.

Urgent certified copy of this order be granted as per rules.

(A.K. Mohapatra)
Judge

S.K. Parida

