

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.18202 of 2022

Sudhir Aind

....

Petitioner

-versus-

State of Odisha & Ors.

....

Opposite Parties

CORAM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

12.08.2022

Order No

03.

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

2. Heard Mr. D.K. Panda, learned counsel for the Petitioner and Mr. K.K. Das, learned Additional Standing Counsel appearing for the Opp. Parties.

3. The present writ Petition has been filed by the Petitioner challenging the communication dtd.30.03.2022 passed by O.P. No. 3 under Annexure-9, wherein the claim of the Petitioner for his appointment under the provision of the Rehabilitation Assistance Scheme has been rejected basing on the Amended Rules i.e. OCS (R.A. Amendment) Rules, 2020.

4. Mr. Panda, learned counsel for the Petitioner submitted that the Petitioner being the son of the deceased employee, who died on 18.10.2011 made the application for his appointment under the provision of the Rehabilitation Assistance Scheme on 30.10.2012 under Annexure-3. It is submitted that subsequent to the submission

of such application the wife of the deceased employee was medically examined and the Medical Board vide Annexure-5 declared her unfit to join in Govt. job.

5. It is further submitted that vide Annexure-6 letter dtd.19.01.2016 O.P. No. 2 though requested Govt. to consider the claim of the Petitioner for his appointment under the provision of Rehabilitation Assistance Scheme against the vacant post of Soil Conservator Asst., but the said request was never considered and the matter was kept pending.

6. It is further submitted that subsequently vide letter dtd.25.05.2017 under Annexure-7 similar requests were also made by O.P. No. 2 to consider the case of the Petitioner for his appointment. It is submitted that instead of taking a decision on the Petitioner's claim O.P. No. 2 relying on the Amended Rule, 2020 issued a letter on 25.11.2021 under Annexure-8 directing O.P. No. 3 to consider the application of the Petitioner in accordance with the said Amended Rule, 2020.

7. It is submitted that basing on Annexure-8 the claim of the Petitioner was considered in terms of the Amended Rule, 2020 and the claim of the Petitioner was rejected by the said Opp. Party vide the impugned order dtd.30.03.2022 under Annexure-9.

8. Mr. Panda, learned counsel for the Petitioner submitted that since the Petitioner's father died in the year 2011 and the application was not only made within time, but also the O.P. No. 2 time and again requested the Govt. to consider the case of the Petitioner, but the said was kept pending. It is accordingly submitted that in view of

the fact that the deceased employee died in the year 2011, the consideration of the application relying on the Amended Rule, 2020 is not sustainable in the eye of law.

9. Mr. Panda, learned counsel for the Petitioner in support of his aforesaid submission relied on the decision rendered in the case of ***Malaya Nanda Sethi Vs. State of Odisha & Ors.*** (Civil Appeal No.4103 of 2022 decided on 20.05.2022). In the said decision Hon'ble Supreme Court while dealing with the similar issue held that the Rules prevalent at the time of death of the deceased employee shall be taken into consideration while considering the claim for appointment under the provision of Rehabilitation Assistance Scheme.

10. It is also submitted that basing on the said order passed by the Hon'ble Apex Court the Petitioner ***Malaya Nanda Sethi*** has been provided with the appointment vide order dtd.13.06.2022 of the Govt. in the Excise Department. It is also submitted that when similar issued was raised before the Hon'ble Apex Court in Special Leave (C) No. 12740 of 2022. Hon'ble Apex Court relying on the decision of the ***Malaya Nanda Sethi*** remanded the matter for consideration in the light of the Judgment passed in the aforesaid Civil Appeal No. 4103 of 2022.

11. Making all such submission made by Mr. Panda, learned counsel for the Petitioner submitted that the Petitioner's claim is to be considered as per the prevalent Rule, which was in force in the year 2011.

12. Mr. Das, learned ASC on the other hand submitted that since the claim of the Petitioner was considered after coming into force of the Amended Rules, 2020, no illegality has been committed by the Opp. Parties in considering the application as per the Commandant provision.

13. Heard learned counsel for the Parties. After due consideration of the materials available on record and the submission made by the learned counsel for the Parties, this Court finds that the late father of the deceased died in the year 2012.

14. Therefore, in view of the decision rendered by the Hon'ble Apex Court in the case of *Malaya Nanda Sethi Vs. State of Odisha & Ors.*, the rejection of the Petitioner's claim relying on the Amended Rule, 2020 is illegal and accordingly, this Court has got no hesitation in quashing the impugned order dtd.30.03.2022 passed by O.P. No. 3 under Annexure-9. While setting aside the same, this Court directs the said Opp. Party to consider the case as per the Rule prevailing at the time of the death of the deceased employee and take a fresh decision within a period of two (2) months from the date of receipt of this order.

15. The writ Petition is disposed of accordingly.

(Biraja Prasanna Satapathy)
Judge

Sneha