

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 18840 of 2022

Sansodhan Das

Petitioner

Mr. S.K. Mishra, Advocate

-versus-

State of Odisha and others

Opposite Parties

Mr. P.K. Rout, AGA

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

**ORDER
14.11.2022**

Order No.

03. 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
2. Heard learned counsel for the Petitioner and learned Additional Government Advocate appearing for the State-Opposite Parties.
3. This writ petition has been filed by the Petitioner with a prayer to quash the rejection order No.4841 dated 29.04.2022 passed by Opposite Party No.1-Principal Secretary to Government of Odisha, Fisheries & ARD Department, Bhubaneswar under Annexure-8 to the writ petition with a direction to the Opposite Parties to consider his application under Odisha Civil Service (Rehabilitation Assistance Scheme), Rules, 1990 and amended rules 2016 and the benefits as due and admissible under the said rules be extended to the Petitioner.

4. The fact of the case, in brief, is that the mother of the Petitioner, namely, Sanjukta Das was appointed as an Attendant under LAC Bahanaga by the Opposite Parties by following due procedure of selection. While she was continuing as an Attendant in the contractual post, she was deployed to different Blocks in the district of Balasore. However, the mother of the Petitioner died in harness on 03.06.2018. After the death of the mother of the Petitioner, the Petitioner, who is her major son and eligible for appointed in any of the Group-D services, made an application to the Opposite Party No.4-Sub-Divisional Veterinary Officer, Balasore on 31.12.2018. The application so made by the Petitioner was not considered by the competent authority and the same was kept pending for long time. In the meantime, the Rehabilitation Assistance Rules, 1990 was replaced by a new set of rules in the year 2020. While the matter stood thus, the Petitioner was informed by the Opposite Party No.3-Director of Animal Husbandry & Veterinary Services, Odisha that the Petitioner's case cannot be considered for appointment as the mother of the Petitioner was engaged on contractual basis.

5. Learned counsel for the Petitioner submits that after the death of mother of the Petitioner on 3.6.2018, the Petitioner immediately applied for a job under the Rehabilitation Assistance Scheme on 31.12.2018 and a copy of such application has been filed with the writ petition as Annexure-3. A perusal of Annexure-3 reveals that the same has been filed by the Petitioner before the Chief District Veterinary Officer, Balasore seeking for a job on compassionate ground on the death of her mother in harness. Therefore, it is contended by counsel for the Petitioner that the Petitioner has submitted his application within the time stipulated

under the Rules. It is further contended that in view of the letter No.32424 dated 10th November, 2020 issued by the Revenue and Disaster Management Department, Government of Odisha to the ADM, Koraput, the benefit of Rehabilitation Assistance has also been extended in respect of the contractual employees appointed under Odisha Group-B, Group-C & Group-D post (Contractual Appointment) Rules, 2013. It is further contended that appointment under the Rehabilitation Assistance Scheme was also earlier available to contractual employees and in fact the mother of the Petitioner was appointed under the Rehabilitation Assistance Scheme after the death of her husband. Therefore, the authorities should have considered the case of the Petitioner under the OCS (RA) Rules, 1990 as date of death Petitioner's mother is 3.6.2018 in view of the law laid by the Hon'ble Supreme Court in the cases of *Indian Bank vs. Promila*, reported in (2020) 2 SCC 729; *State of Madhya Pradesh vs. Amit Shrivastava*, reported in (2020) 10 SCC 496; *The Secretary to Govt., Department of Education (Primary) & Ors. vs. Bheemesh Alias Bheemappa (Civil Appeal No.7722 of 2021)*; *State of Madhya Pradesh vs. Ashish Awasthi*, reported in 2021(II) OLR (SC) 1072; and *Malaya Nanda Sethy vs. State of Orissa and others* (Civil Appeal No.4103 of 2022).

6. Learned Additional Government Advocate appearing for the State-Opposite Parties, on the other hand, submits that the Petitioner has not submitted his application in time. Further referring to the record, he submits that the application was made only on 31.12.2018. Therefore, the same was beyond the time prescribed and further it is submitted that there was no application seeking condonation of delay in submitting the application. Therefore, the authorities have rightly rejected his application vide order dated

29.4.2022 under Annexure-8. It is further submitted that the case of the Petitioner was to be considered under the OCS (RA) Rules, 2020, but since the same was not within the time stipulated as per the rules, the application of the Petitioner was considered and accordingly the same was rejected.

7. Having heard the learned counsel for the respective parties and upon perusal of the pleadings as well as the materials placed before this Court for consideration, this Court is of the considered view that the ground taken by the authorities that the application was not made within the time is prima facie wrong in view of the fact that the Petitioner had submitted his application on 31.12.2018 before the Chief District Veterinary Officer, Balasore, although the same was not in proper format. However, nothing prevented the authorities to intimate the Petitioner that he should have applied in a proper format as provided under the rules. Therefore, it cannot be presumed that the application was not made within the time stipulated under the rules. Moreover, the application of the Petitioner, as it appears from the impugned rejection order under Annexure-8 has been considered and rejected under the OCS (RA) Rules, 2020 which in view of the judgment of the Hon'ble Supreme Court in the case of *Malaya Nanda Sethy* (supra) is not applicable to the facts of the Petitioners' case.

8. In this context, this Court observed that in view of the law laid down in the above referred judgments, particularly, in the case of *Malaya Nanda Sethy* (supra) specifically dealing with OCS (RA) Rules, 1990, the Hon'ble Supreme Court has directed that the rule which was in force at the time of death in harness of the employee shall be taken into consideration while considering the application under the Rehabilitation Assistance Scheme. Therefore, this Court is of the

considered view that the application under the Rehabilitation Assistance Rules for appointment on compassionate ground has not been properly considered by the Opposite Party No.1. As such, the impugned order under Annexure-8 is unsustainable in the eye of law and the same is hereby set aside. Further, it is directed that the Opposite Parties shall consider the case of the Petitioner under the OCS (RA) Rules, 1990 by taking into consideration the date of death of the mother of the Petitioner as 3.6.2018 and further keeping in view the law laid down by the Hon'ble Supreme Court in the case of *Malaya Nanda Sethy* (supra) and take a final decision in the matter within a period of two months from the date of production of certified copy of this order. Needless to mention here that in the event the Opposite Parties consider that there is a delay in submitting the application, it is open for them to condone the same as has been done in similar other cases and consider the application of the Petitioner in accordance with the aforesaid direction.

9. With the aforesaid observation and direction, the writ petition stands disposed of.

(A.K. Mohapatra)
Judge

Debasis