

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.21083 of 2022

Jyotsnarani Gadnayak

..... Petitioner
Mr.S.D.Routray, Advocate

-versus-

***The Project Officer, MCL,
Jharsuguda and another***

..... Opposite Parties

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

14.11.2022

Order No.

02.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the Petitioner.
3. The present writ application has been filed with a prayer for a direction to the Opposite Parties to give appointment to the Petitioner in any suitable post befitting to her qualification in terms of the judgment passed by the Hon'ble Supreme Court as well as this Court and the Hon'ble High Court of Chhatisgarh.
4. Considering the nature of lis and the issue involved in the matter, this Court disposes of the writ application by the following order without issuing any notice to the Opposite Parties as this Court is of the opinion that no prejudice will be caused to the Opposite Parties on the following order.
5. It is submitted by the learned counsel for the Petitioner the Petitioner applied for appointment under the scheme i.e. National Coal Wage Agreement (NCWA) Clause 9.3.3 provides the dependent

for this purpose means the wife/husband as the case may be, unmarried daughter, son and legally adopted son. If no such direct dependent is available to employment, brother, widowed daughter/-in-law or son-in-law residing with the deceased and almost wholly dependent on the earnings of the deceased may be considered to be the dependent of the deceased.”

However on perusal of the aforesaid provisions, it appears that a married daughter has not been covered under the aforesaid scheme and under the above quoted clause. Therefore, the Petitioner who is admittedly the married daughter of the deceased employee has not been considered for giving appointment under Rehabilitation Assistance scheme and her application has been rejected by order dated 31.01.2022 under Annexure-10 to the writ application.

6. Learned counsel for the Petitioner further submits that an identical issue came up before the Hon’ble High Court of Chhatisgarh in W.P.(C) No.4994 of 2015 which was disposed of by order dated 15.03.2016. While disposing of the said writ application, the Hon’ble High Court of Chhatisgarh was required to adjudicate an identical issue and in paragraph-3 of the judgment the issue has been referred to by the Hon’ble High Court of Chhatisgarh. Finally after adjudicating the issue the writ application was disposed of by holding that Clause 9.3.3 of the Scheme of NCWA is violative of Articles 14 & 16 of the Constitution of India and accordingly direction was given to consider the case of the Petitioner in that case. The order passed by the Hon’ble High Court of Chhatisgarh in the aforesaid case was confirmed in appeal by the Hon’ble Supreme Court in SLP (Civil) Diary No.238 of 2020 by order dated 31.01.2020. Learned counsel for the Petitioner also submits that a Division Bench of this Court in W.P.(C) No.14945 of 2015 had also taken a similar view although

the issue before the Division Bench was whether a married daughter is entitled to the benefit under the OCS (RA) Rules, 1990. After a detail analysis of law this Court has come to a conclusion that a married daughter is eligible to be appointed on compassionate ground otherwise the same will be violative of Articles 14 & 16 of the Constitution of India. All the unmarried daughter reflected in the Rules of 1990 and Rules of 2020 was struck down by this Court on the ground that the same is ultra virus to the Constitution.

7. Reflecting the facts of the present case the issue involved as has been stated earlier is identical to the aforesaid two cases. Here question is whether the married daughter is eligible to be considered for appointment on compassionate ground. Under National Coal Wage Agreement was framed for getting appointment under dependent employment scheme. Since the Clause involved in the present case is 9.3.3 which has been specifically struck down by the Chhatisgarh High Court, subsequently confirmed by the Hon'ble Supreme Court and therefore, there is no meaning in rejecting the matter again.

8. Accordingly, the writ application is disposed for at the stage of admission by setting aside the impugned order dated 31.1.2022 under Annexure-10 and the matter is remanded back to the concerned authority to be considered in the light of the aforesaid two judgments. Let the Petitioner approach the competent authority within a period of four weeks from today.

9. It is stated by the learned counsel for the Petitioner that the Petitioner has already approached the competent authority by filing a representation dated 02.02.2022 relying upon the aforesaid two judgments which is pending before the competent authority for consideration. In such view of the matter, the Opposite Parties are

directed to consider the representation of the Petitioner dated 02.02.2022 in the light of the law laid down by the Hon'ble High Court of Chhatisgarh which has been upheld by the Hon'ble Supreme Court and Division Bench of this Court and take a decision within a period of eight weeks from the date of production of certified copy of this order.

10. Further, it is directed that the Opposite Parties shall dispose of the representation by passing a reasoned and speaking order and the decision so taken be communicated to the Petitioner within a period of two weeks.

11. With the aforesaid observation and direction the writ application stands disposed of.

12. Issue urgent certified copy of this order as per Rules.

RKS

