

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.27635 of 2021

Somnath Behera

....

Petitioner

Mr. Soumya Ranjan Das, Advocate

-versus-

State of Odisha and another

....

Opposite Parties

Mr. YSP Babu, AGA for State

CORAM:

JUSTICE A.K.MOHAPATRA

ORDER

13.04.2022

Order No.

02. 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
2. Heard learned counsel for the Petitioner and learned counsel for the State.
3. The present writ petition has been filed with a prayer for a direction to Opposite Party No.2 to engage the Petitioner as F.O. under the Rehabilitation Assistance Scheme due to death of his father on 22.08.2018. The Petitioner further challenges the order under Annexure-5 rejecting the claim of the Petitioner.
4. The factual background is that the father of the present Petitioner was working as F.O. under Opposite Party No.2. While working as such, he died in harness on 22.08.2018. After the death of his father, he applied for job under the Rehabilitation Assistance Scheme on 19.02.2019 along with all necessary documents in support of his claim including the Legal Heir Certificate. Learned

counsel for the Petitioner submitted that Petitioner possess all the requisite eligibility criteria for appointment under the Rehabilitation Assistance Rules. He further alleges that Opposite Party No.2 has not taken any action on the application of the Petitioner for two years and in the meantime, the Rehabilitation Assistance Rules, 1990 has been amended and a new rule, i.e. OCS Rehabilitation Rules, 2020 has come into force. Learned counsel for the Petitioner contends that since the Petitioner's father had died in the year 2018 and he has submitted an application for appointment under R.A. Scheme immediately thereafter, the new rule is not applicable to the case of the Petitioner as per the decision of the Hon'ble Apex Court in the case of ***State of Madhya Pradesh vs. Ashish Awasthi***, reported in ***2021(II) OLR (SC) 1072***, wherein the Hon'ble 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, so far as appointment under the Rehabilitation Assistance Scheme is concerned. In such view of the matter, learned counsel for the Petitioner submits that the impugned order is not sustainable in law.

5. The Petitioner's application has been rejected by referring to Rehabilitation Assistance Scheme under *the Orissa Civil Service (Rehabilitation Assistance) Rule, 2020* vide order dated 15.08.2021. This according to the Petitioner is absolutely illegal, arbitrary and the same is contrary to law laid down by the Hon'ble Apex Court in the case of ***Ashish Awasthi (supra)***.

6. Learned counsel for the State on the other hand does not dispute the law laid down by the Hon'ble Apex Court in the case of ***Ashish Awasthi (supra)*** and submits that the matter be remitted back

to the Superintendent of Police, Signals, Odisha, Cuttack-Opposite Party No.2, who shall consider the same again and afresh in accordance with law and keeping in view the law laid down by the Hon'ble Apex Court in the case of *Ashish Awasthi (supra)*.

7. Considering the aforesaid submission and keeping in view the principle laid down by the Hon'ble Apex Court in the case of *Ashish Awasthi (supra)*, this Court disposes of the writ petition by setting aside the order dated 05.08.2021 under Annexure-5 and the matter is now remitted back to the Opposite Party No.2 to consider the matter afresh taking into account the ratio of the Hon'ble Apex Court in the case of *Ashish Awasthi (supra)*. The entire exercise shall be completed within a period of three months from the date of production of certified copy of this order. Opposite Party No.2 shall do well to conclude the matter in terms of the judgment of the Hon'ble Apex Court by passing a speaking and reasoned order. Decision so taken be communicated to the Petitioner within a period of two weeks thereafter.

8. With the aforesaid observation, the writ petition stands disposed of.

9. Issue urgent certified copy as per rules.

(A.K. Mohapatra)
Judge