

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C). No.22295 of 2019

Ganesh Ch. Kar

.... Petitioner

Mr.S.S.Ray (1), Advocate

-versus-

State of Odisha and others

.... Opposite Parties

Mr.B.P.Tripathy,
Addl. Govt. Advocate

CORAM:

JUSTICE SASHIKANTA MISHRA

ORDER
02.8.2022.

Order No.

5.

1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the Petitioner and learned Addl. Government Advocate for the State.
3. The Petitioner claims to have been adopted by one Aswasthama Kar, who was working as a Teacher in Tumkela Primary School in the district of Sundargarh. He died in harness on 18th April, 2004. It is stated that the Petitioner was adopted by Late Aswasthama Kar, who was unmarried, when he was aged about 6 to 7 years. Subsequently, upon attaining the age of 21 years, a deed of adoption was executed by the adoptive and natural fathers namely, Abhimanyu Kar and Aswasthama Kar. Upon death of Aswasthama Kar, the Petitioner submitted an application for appointment on compassionate ground under

the Rehabilitation Assistance Scheme. His application was rejected ultimately by the Collector, Sundargarh (Opposite Party No.3) as per order dated 9th October, 2018, enclosed as Annexure-9 to the Writ Petition, which is impugned. It is submitted that on an earlier occasion, in the matter of ascertaining the nominee of the deceased Government servant, the Opposite Party No.3 accepted the Petitioner as adopted son of Late Aswasthama Kar and as his actual nominee on the basis of the adoption deed and local enquiry conducted in such regard. It is submitted that the very same Opposite Party No.3 has now disbelieved the adoption deed executed on 20th January, 1999 on the ground that as on that date the Petitioner had already attained the age of 21 years and thereby crossed the date line of legal adoption, which entirely contradicts his earlier decision. It is further stated that the application for appointment under the Rehabilitation Assistance Scheme was regretted by the Government as communicated vide letter No.27108/SME dated 8th December, 2014, enclosed as Annexure-C/4 to the counter affidavit filed by the District Education Officer (Opposite Party No.4).

4. A perusal of the said letter reveals that the Addl. Secretary to Government, School and Mass Education Department informed the Director, Elementary Education, Odisha, Bhubaneswar (Opposite Party No.2) that the appointment of the Petitioner under the R.A.Scheme is regretted. No reason whatsoever is cited for regretting the application. It is,

therefore, surprising that the Opposite Party No.3, has though referred to the aforesaid letter of the Government but has also gone on to refer to the provisions of the Hindu Adoption and Maintenance Act to justify such action. It is well settled that reason is the soul of an order passed by the authority without which, the order becomes vulnerable to challenge. Moreover, what had weighed in the mind of the concerned authority while rejecting the claim is unable to be known by the court deciding the correctness of such order. It is further well settled that what has not been stated in the impugned order, cannot be improved upon, supplemented or supplanted in the counter affidavit. As things stand at present, the Petitioner is deprived of knowledge as to on what ground his application was regretted by the Government.

5. In such view of the matter, the communication or the decision of the Government vide letter dated 8th December, 2014, enclosed as Annexure-C/4 to the counter affidavit filed by Opposite Party No.4 and the impugned order dated 9th October, 2018 passed by Opposite Party No.3, enclosed as Annexure-9 to the Writ Petition, cannot be sustained in the eye of law and is, therefore, quashed. The matter is remitted to the Government to consider the application of the Petitioner afresh and to pass a lawful order citing reasons. Such exercise shall be concluded within a period of four weeks from the date of communication of this order or on production of certified copy thereof by the Petitioner.

6. With these observations, the Writ Petition is disposed of.
7. Urgent certified copy of this order be granted on proper application.

AKB

(Sashikanta Mishra)
Judge

