

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C)(OA) No.1054 of 2018

Tatini Behera

....

Petitioner

-versus-

State of Odisha & Ors.

....

Opposite Parties

CORAM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

28.09.2022

Order No

02.

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

2. Heard Mr. S. Mohanty, learned counsel for the Petitioner and Mr. M.K. Balabantaray, learned Standing Counsel appearing for the Opp. Parties.

3. The present writ Petition has been filed by the Petitioner challenging the rejection of his claim for appointment under the provision of Rehabilitation Assistance Scheme vide order dtd.01.10.2010 under Annexure-4.

4. It is submitted that the claim of the Petitioner was rejected only on the ground that his father while working as a NMR employee since died as such, the benefit under OCS(R.A.) Rules is not applicable.

5. Mr. Mohanty, learned counsel for the Petitioner submitted that this Court while dealing with similar issue in the case of ***Susama Rath Vs. State of Odisha and Ors.*** reported in ***2016 (1) OLR 1127***, basing on the order passed by the Hon'ble Apex Court in ***State of***

Assam & Ors. Vs. Kanak Chandra Dutta reported in ***AIR 1967 SC 884***. Hon'ble Court in Para 16 of the Judgment held as follows:-

“16. When an employee is engaged for long nine years without being disrupted being holder of civil post, his wife has got legitimate right to claim to step into shoes of her late husband. Apart from this, according to Rehabilitation Assistance Rules, 1990, there is no reason to disqualify her when her husband was holding a civil post. So, the duty of the opposite party No.3 was to comply with the order of the opposite party No.2 mentioned in the representation of the petitioner. Be that as it may, we are of the view that because of the continuance of the petitioner for quite long nine years uninterruptedly. Annexure-1 does not give rise to array him as casual labourer and there is no bar for giving engagement to the petitioner who is the dependant family member of the late deceased employee, the petitioner is entitled to relief for engagement as Watchman in place of her late husband with the contractual salary or any other Group-D post as per the norms of the State Government. Further it is also the prayer of the petitioner to sanction the leave salary of her late husband and the death benefits. Since sufficient materials for pursuing such contention are not available and the period of his leave is not clear from the facts produced before the Court, we are unable to consider the availability of the leave salary to the husband of the petitioner. So, the impugned order dated 17.2.2011 passed by the Orissa Administrative Tribunal, Bhubaneswar in O.A. No. 162 of 2011 is liable to be quashed to the extent as observed by us herein above and we do so accordingly.

We further direct that opposite parties shall appoint the petitioner on compassionate ground under the Rules on contractual basis in the post held by her late husband or in any other Group-D post within a period of three months and report compliance.

The writ petition is disposed of accordingly.”

6. It is accordingly submitted that in view of the said decision of this Court the claim of the Petitioner has not been considered in its proper perspective and rejected vide the impugned order.

7. Mr. Balabantaray, learned Standing Counsel on the other hand made his submission basing on the counter affidavit. It is submitted that prior to being brought over to the Work Charged Establishment the Petitioner's husband since died on 16.04.2009, the Petitioner cannot be extended with the benefit under the Rehabilitation Assistance Scheme.

8. But this Court in view of the decision relied on by Mr. Mohanty is of the opinion that the claim of the Petitioner needs reconsideration by the O.P. No. 1. Therefore, this Court while quashing the order dtd.01.10.2010 under Annexure-4, directs the O.P. No. 1 to take a fresh decision on the Petitioner's claim in the light of the order passed by this Court in the above noted case within a period of two (2) months from the date of receipt of this order. If on such reconsideration the Petitioner is found eligible, appropriate order be passed in that regard within the aforesaid time.

9. The writ Petition is disposed of accordingly.

(Biraja Prasanna Satapathy)
Judge

Sneha