

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C)(OA) No.1373 of 2018

Sushri Sarita Mallick

....

Petitioner

-versus-

State of Odisha & Ors.

....

Opposite Parties

CORAM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

15.09.2022

Order No

- 03.** 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Heard Mr. S. Beherea, learned counsel for the Petitioner and Mr. A.P. Das, learned ASC appearing for the Opp. Parties.
3. The present writ Petition has been filed with the following prayer:-

“In view of the above facts mentioned in Para-6 above the applicant prays for the following reliefs:-

- (i) To quash/set aside the order dt.08.04.2016 at Annexure-6 at Sl. No. 160 so far as it relates to the applicant;*
- (ii) To direct the State-Respondents to appoint the applicant under Rehabilitation Assistance Scheme in any suitable post according to her qualification keeping in mind the rule and R.A. Scheme;*
- (iii) To direct the respondents to pay the arrear as well as the current financial benefits within a stipulated time;*
- (iv) And pass such any other order/orders, direction/directions as this Hon’ble Court may deem fit and proper so as to give a complete reliefs to the applicant.”*

4. It is submitted that on the death of the Petitioner's father on 27.08.2011, who was working as an Asst. Engineer the Petitioner made his application for his appointment under the provision of Rehabilitation Assistance Scheme. It is submitted that on receipt of such application and on being requested, Collector, Cuttack also issued the distress certificate in favour of the Petitioner.

5. Learned counsel for the Petitioner submitted that even though everything was complied with, but O.P. No. 2 basing on the impugned letter issued by the O.P. No. 1 on 08.04.2016 under Annexure-6 series rejected the claim of the Petitioner vide the impugned communication dtd.20.04.2016 under Annexure-6 series.

6. It is also submitted that the grounds on which the claim of the Petitioner was rejected is no more res integra in view of the decision of this Court reported in the case of ***Ajit Kumar Barik Vs. State of Odisha & Ors. (2018 (II) OLR P-10).***

7. It is submitted that in the said reported decision it has been held that "Family Members" as defined under Rules 2(b) of the OCS (R.A.) Rules, 1990 are eligible to make their application and there is no hard and first rule that only wife/husband of the deceased Govt. employee is eligible to make such application. It is also submitted that since the Petitioner complied with all the requirements and the distress certificate was issued in his favour along with the medical certificate declaring the wife of the deceased employee is not fit for Govt. job, the claim of the Petitioner should not have been rejected on the ground indicated in the impugned communication at Annexure-6.

8. Mr. A.P. Das, learned ASC on the other hand submitted that since the wife of the deceased employee was very much available, the claim of the Petitioner being the 2nd legal heir of the deceased employee is not entertainable and accordingly no illegality has been committed by the O.P. No. 2 in rejecting the same.

9. Heard learned counsel appearing for the Parties. Perused the materials available on record. This Court after going through the same finds that the grounds on which the claim of the Petitioner has been rejected is not sustainable in view of the reported decision of this Court as cited (supra). This Court also finds that the application submitted by the Petitioner was not only entertained, but also was duly processed and recommended to the O.P. No. 1 for appropriate action.

10. In view of such steps taken in the matter, the claim of the Petitioner should not have been rejected. In any view of the matter, this Court finds that the Petitioner's claim has been illegally rejected and accordingly this Court is pleased to quash the said rejection available at Annexure-6 series. While quashing the same, this Court directs the O.P. No. 1 to take appropriate step in the matter and take a fresh decision in accordance with the Rule prevalent at the time of death of the deceased employee. Such a fresh decision shall be taken within a period of two (2) months from the date of receipt of this order.

11. The writ Petition is disposed of with the aforesaid observation and directions.

(Biraja Prasanna Satapathy)
Judge