

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C)(OA) No.6 of 2018

Rakesh Ranjan Mishra

....

Petitioner

Mr.K.C. Sahu, Advocate

-versus-

State of Odisha & Others

....

Opposite Parties

Mr.S.K. Samal, AGA

COROM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

27.06.2024

Order No

- 02.** 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Heard Mr. K.C. Sahu, learned counsel for the Petitioner and Mr. S.K. Samal, learned Addl. Government Advocate for the State-Opp. Parties.
3. The present writ Petition has been filed with the following prayer:-

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

- (i) The Hon’ble Tribunal be pleased to admit & allow the Original Application;*
- (ii) The Hon’ble Tribunal be pleased to allow the case by quashing the impugned order of rejection dtd.08.04.2016 under Annexure-6 in respect of the applicant with further directing for appointment of the applicant as a Jr. Clerk under the R.A. Scheme in commensurating to his qualification as the vacancy of Jr. Clerk are*

available under Annexure-4-(Series) within a time bound period for the interest.

(iii) *The Hon'ble Tribunal may be pleased to pass any order (s) / direction(s) as deems fit and proper for the interest of justice”.*

4. It is submitted that the Petitioner's father while working as a Section Officer under Opposite Party No.3, he died in harness on 27.08.2014.

4.1. It is submitted that on such death of the deceased Govt. employee, Petitioner made an application on 09.04.2015 under the provision of OCS (R.A) Scheme and the said application was duly forwarded to O.P. No. 2 by Opposite Party No.3 after receipt of the distress certificate vide letter dtd.21.08.2015 under Annexure-4 (Series).

4.2. It is submitted that O.P. No. 2 vide letter dt.24.09.2015 under Annexure-5 forwarded the application along with relevant documents to Opposite Party No.1 for consideration of the claim of the Petitioner.

4.3. It is further submitted that while making his initial application on 09.04.2015, other legal heirs of the deceased employee gave their no objection in favour of the present Petitioner for his appointment under Rehabilitation Assistance Scheme. But it is submitted that O.P. No. 1 without proper appreciation of his claim vis-a-vis the Rules governing the field rejected the claim as reflected in the impugned communication dtd. 08.04.2016 under Annexure-6, *inter alia* holding that since the Petitioner's mother was alive at the time of the death of the Govt. employee, his case cannot be considered.

4.4. Learned counsel for the Petitioner submitted that under the provision of OCS (R.A.) Rules, 1990 family is defined under Rule 2(b) of the said Rules. “Family Members” as defined under Rule 2(b) is as follows:-

“(i) Wife/Husband;

(ii) Sons or step sons or sons legally adopted through a registered deed;

(iii) Unmarried daughters and unmarried step daughters;

(iv) Widowed daughter or daughter-in-law residing permanently with the affected family;

(v) Unmarried or widowed sister permanently residing with the affected family;

(vi) Brother of unmarried Government servant who was wholly dependent on such Government servant at the time of death.”

4.5. Learned counsel for the Petitioner accordingly submitted that as the other legal heirs gave their no objection in favour of the Petitioner, Petitioner when made his application within the time, the same was recommended favourably by O.P. No. 3 vide letter dtd.21.08.2015 under Annexure-4 and by Opposite Party No.2 vide letter dtd.24.09.2015 under Annexure-5. But O.P. No. 1 by misinterpreting the provision of Rule 2(b) of the Rules held that since the Petitioner was not the sole member of the deceased family and the spouse was alive, his claim cannot be entertained.

4.6. Learned counsel for the Petitioner further submitted that this Court while considering the provision contained under Rule 2(b) of the Rules has held that Rule 2(b) only prescribes the order of preference of the family members of the deceased employee and there is no stipulation that wife/husband of the deceased employee is to make the application only. Learned counsel for the Petitioner

in support of his aforesaid submission relied on a decision of this Court reported in **2018(II) OLR 10 (Ajit Kumar Barik vs. State of Orissa & Others)**. This Court in Para 6 & 7 of the said Judgment held as follows:-

“6. The Rules as contended in the above paragraph nowhere restricted the jurisdiction of the appointing authority to consider the application for appointment in a suitable available vacancy under his control. The Rules also define "Family Members" means include the following members in order of preference-

(i) Wife/Husband;

(ii) Sons or step sons or sons legally adopted through a registered deed

(iii) Unmarried daughters and unmarried step daughters;

(iv) Widowed daughter or daughter-in-law residing permanently with the affected family;

(v) Unmarried or widowed sister permanently residing with the affected family;

(vi) Brother of unmarried Government servant who was wholly dependent on such Government servant at the time of death.

7. Of course the first preference is to be given wife/husband of the deceased employee then son and unmarried daughter. However no where it was stated that in the case a family member in order of preference in the hierarchy is unfit and a medical certificate furnished to that effect, claim shall not be considered for engagement of the other eligible members in case of distress condition of the family. Therefore, the finding given by the Tribunal in the impugned order that she is not prepared to accept Group-'D' post and offered it to her son in ignoring the material on records is not sustainable.”

4.7. Learned counsel for the Petitioner submitted that order passed in the above noted reported decision of this Court was also confirmed by the Hon’ble Apex Court vide its order dtd.26.10.2018. Accordingly it is submitted that in view of the ratio decided in the above noted reported case of this Court, which has been confirmed by the Hon’ble Apex Court, the claim of the

Petitioner was required to be reconsidered by the O.P. No. 1 taking into account the recommendation made under Annexure-5.

4.8. It is also submitted that in view of the no objection given by the other legal heirs of the deceased employee and the reported decision of this Court, the rejection of Petitioner's claim made by O.P. No. 1 vide order dtd.08.04.2016 under Annexure-6 is illegal and liable to be interfered with by this Court.

5. Mr. S.K. Samal, learned Addl. Government Advocate while supporting the impugned rejection submitted that since other legal heirs were available at the relevant point of time, Petitioner's application has been rightly rejected vide the impugned order dtd.08.04.2016. Mr. Samal, learned Addl. Government Advocate further submitted that there is no illegality or irregularity in rejecting the Petitioner's claim by O.P. No. 1 vide Order under Annexure-6 and it requires no interference.

6. Heard learned counsel appearing for the Parties. Perused the materials available on record. This Court after going through the same finds that the Petitioner's application for compassionate appointment was not only accepted but also it was considered with recommendation made by Opposite Party No.3 vide letter dtd.21.08.2015 under Annexure-4-Series after receipt of the distress certificate from Collector on 11.08.2015. Opposite Party NO.2 on receipt of the recommendation under Annexure-4-Series forwarded the same to Opposite Party No.1 for consideration vide letter dtd.24.09.2015 under Annexure-5. But ultimately his claim was rejected vide order dt.08.04.2016 under Annexure-6 on the ground indicated hereinabove.

6.1. This Court in view of the decision of this Court reported in the case of *Ajit Kumar Barik Vs. State of Odisha & Ors.* reported in **2018 (II) OLR 10** is of the view that there is no bar on the part of the Petitioner to make his application for extension of the benefit under the provision of OCS (R.A.) Scheme.

6.2. Therefore, in view of the grounds taken in the writ Petition and the decision reported in the case of *Ajit Kumar Barik*, this Court is of the opinion that O.P. No. 1 has illegally rejected Petitioner's claim vide order dtd.08.04.2016 under Annexure-6. Therefore, this Court while quashing the same so far as it relates to the Petitioner directs O.P. No. 1 to take a fresh decision on the claim of the Petitioner as recommended on 21.08.2015 vide Annexure-4-Series.

6.3. Since the deceased employee died in harness on 27.08.2014, this Court basing on the recent decision of the Hon'ble Apex Court in the case of *Malayananda Sethi Vs. State of Odisha & Ors* Civil Appeal No.4103 of 2022 disposed of on 20.05.2022 also directs O.P. No. 1 to take decision on the Petitioner's claim in terms of the rules prevalent at the time of the death of the deceased employee. This Court directs O.P. No. 1 to complete the entire exercise within a period of two (2) months from the date of receipt of this Order with due intimation to the Petitioner.

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

Signature Not Verified

Digitally Signed
Signed by: SUBRAT KUMAR BARIK
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 09-Jul-2024 12:44:15



(Biraja Prasanna Satapathy)
Judge