

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C)(OAPC) No.145 of 2018

Bipin Kumar Naik

....

Petitioner

-versus-

State of Odisha & Ors.

....

Opposite Parties

CORAM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

13.09.2022

Order No

01. 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Heard Mr. S.C. Puspalak, 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 and circumstances of the case as discussed in the above paragraph the applicant prays for the following relief:-

- 1. The original application may kindly be allowed.*
- 2. The letter dtd.01.09.2016 issued by the deputy director Horticulture, Kalahandi, Bhawanipatna may kindly be quashed.*
- 3. The respondents may kindly be directed to reconsider the case of the Applicant for appointment under the rehabilitation assistance scheme within a stipulated period.*

And pass any other order/orders as this Hon'ble Tribunal may deem fit just and proper.

And for this act of kindness the applicant as in duty bound shall ever pray."

4. It is submitted that on the death of the Petitioner's father on 14.07.2011, who was working as a Gardener in the office of Horticulturist, Bhawanipatna, Kalahandi 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 & District Magistrate, Kalahandi also issued the distress certificate in favour of the Petitioner.

5. It is submitted that on receipt of such distress certificate from the Collector, O.P. No. 4 vide his letter dtd.04.12.2012 under Annexure-5 forwarded the application of the Petitioner to O.P. No. 3 for taking further action in the matter. But it is submitted that on receipt of the application, O.P. No. 3 vide his letter dtd.28.02.2013 under Annexure-6 requested O.P. No. 4 to furnish some further documents in order to consider the claim of the Petitioner.

6. Mr. Puspalak, learned counsel for the Petitioner submitted that even though everything was complied with, but O.P. No. 4 basing on the letter issued by the O.P. No. 3 on 02.09.2016 rejected the claim of the Petitioner vide the impugned communication under Annexure-9.

7. It is submitted that even though O.P. No. 4 in the impugned communication relied on the letter issued by the O.P. No. 3 dtd.02.09.2016, but the impugned communication strangely was issued on 01.09.2016. 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).***

8. 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 as 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-9.

9. 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 3rd legal heirs of the deceased employee is not entertainable and accordingly no illegality has been committed by the O.P. No. 4 in rejecting the same.

10. 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. 2 for appropriate action. The requirements indicated in Annexure-6 after being complied, the application of the Petitioner was also forwarded by the O.P. No. 3 to the O.P. No. 2 vide letter dtd.05.08.2014 under Annexure-8.

11. In view of such steps taken in the matter, O.P. No. 4 basing on the letter issued subsequent to the date of issuance of impugned communication, should not have rejected the Petitioner's claim. 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. 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) weeks from the date of receipt of this order.

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

(Biraja Prasanna Satapathy)
Judge

Sneha

