

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.C(OA) NO.2898 OF 2018

Bapi Das

....

Petitioner

-versus-

State of Odisha

....

Opp. Party

COROM:
JUSTICE BIRAJA PRASANNA SATAPATHY

Order
No

ORDER
16.11.2022

- 2.** **1.** This matter is taken up through Hybrid Mode.
- 2.** The petitioner, who is the son of the deceased employee, has filed this writ petition assailing the communication dated 05.02.2016 & 09.03.2018 issued by the Under Secretary to Government in Finance Department to the Director of a Treasury- Opp. Party No.2 rejecting his application for appointment under Rehabilitation Assistance Scheme.
- 3.** The father of the petitioner, Lokonath Kumar Das, who was working as Accountant under the Finance Department, Government of Odisha in the office of Sub-Treasury Officer, R. Udayagiri died prematurely on 21.12.2013. After obtaining death certificate on 07.01.2014 and legal heir certificate on 30.03.2014, son of the deceased employee applied for compassionate appointment under the OCS (Rehabilitation Assistance) Rules, 1990 vide application dated 13.11.2014 before the Opp. party

No.2. Subsequently, the opposite party no.2 forwarded his application to opposite party no.1 for consideration.

4. Mr. R.K. Bisoi, learned counsel for the petitioner stated that as the mother of the petitioner faced ailments with regard to spinal problem and was medically declared unfit for the nature of employment sought by her under the rehabilitation assistance scheme, in spite of she being the next candidate suitable for employment, the claim of the petitioner should not have been rejected by resorting to Rule 2(b) of the OCS (RA) Rules, 1990.

5. Mr. A.P. Das, learned Standing Counsel appearing for opposite parties nos.1 to 2 relying upon counter affidavit stated that in view of the provisions contained in Rule-2(b) of the OSC (RA) Rules, 1990, the first priority for appointment is to be given to the wife of the deceased and thereafter the son. Since the widow is alive, the son is not eligible for compassionate appointment. Therefore, the action of the authority is justified in rejecting the application of the petitioner for compassionate appointment.

6. Heard learned counsel for the parties and perused the records. Pleadings have been exchanged between the parties, the writ petition is

being disposed of at the stage of admission with the consent of learned counsel for the parties.

7. There is nothing before this Court to dispute that the petitioner is the son of the deceased employee Lokanath Kumar Das, who died prematurely, while working as Accountant, on 21.12.2013. As there was full compliance of the provisions of OCS (Rehabilitation Assistance) Rules, 1990, meaning thereby after complying all the requirements, the application submitted by the petitioner was recommended for verification by the competent authority.

8. In [Haryana State Electricity Board v. Hakim Singh](#), (1997) 8 SCC 85, the apex Court explained the rationale of the rule relating to compassionate appointment in following words:

"The rule of appointments to public service is that they should be on merits and through open invitation. It is the normal route through which one can get into a public employment. However, as every rule can have exceptions, there are a few exceptions to the said rule also which have been evolved to meet certain contingencies. As per one such exception relief is provided to the bereaved family of a deceased employee by accommodating one of his dependants in a vacancy. The object is to give succor to the family which has been suddenly plunged into penury due to the untimely death of

its sole breadwinner. This Court has observed time and again that the object of providing such ameliorating relief should not be taken as opening an alternative mode of recruitment to public employment.

Similar view has also been taken in [Director of Education v. Pushpendra Kumar](#), AIR 1998 SC 2230, and [Commissioner of Public Instructions v. K.R. Vishwanath](#), (2005) 7 SCC 206.

9. In [State of Haryana v. Ankur Gupta](#), (2003) 7 SCC 704: AIR 2003 SC 3797, the apex Court held that the compassionate appointments cannot be made dehors any statutory policy.

10. In [National Institute of Technology v. Niraj Kumar Singh](#), (2007) 2 SCC 481: AIR 2007 SC 1155, the apex Court held that the grant of compassionate appointment would be illegal in the absence of any scheme providing therefor. Such scheme must be commensurate with the constitutional scheme of equality.

11. In exercise of powers conferred by the proviso to [Article 309](#) of the constitution of India, the Government of Odisha have made the following rules to regulate recruitment to the State services and posts as a measure of rehabilitation assistance, i.e., the Odisha Civil Service (Rehabilitation Assistance) Rules, 1990.

Rule-2(b) of the aforesaid Rules, reads as follows:
"Family Members" shall mean and 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

dependant on such Government servant at the time of death." The above named family members thus are eligible to receive compassionate appointment as has been indicated elaborately in the above rules. Sub-Clause (ii) of Clause (b) of Rule-2 states that family members includes sons or step sons or sons legally adopted through a registered deed. Sub-Clause (i) of Clause(b) of Rule-2 states that first preference is to be given to wife/husband.

12. In the instant case, the Father having been died, his wife to be given preference for compassionate appointment. Since she relinquished her claim because of her illness, recourse should have taken by the authority to Clause (ii) of Sub-Clause-(b) of Rule-2, i.e., second preference category to which the petitioner, who is the son of the deceased and his case should have been considered for such appointment. For that, all endeavours had been made by the State Government, particularly, the very same authority by calling upon the petitioner to produce the relevant documents and also no objection certificate from other legal heirs of the deceased employee. The same having been furnished, on subsequent stage instead of considering for giving appointment to the petitioner, the very same authority passed the order impugned in Annexures-6 & 7 stating that the claim of the petitioner cannot be considered in view of the provisions contained in Rule-2(b) of the OCS (RA) Rules, 1990.

13. On perusal of the provisions contained in Rule 2(b) of the OCS (RA) Rules, it appears that the son is the second priority for consideration of compassionate appointment. If the widow has relinquished her claim, the case of the petitioner has to be taken into consideration. As such, the authority has accepted the request and required certain documents in that regard. The petitioner

filed the required documents. At a belated stage, the authority could not have rejected the application of the petitioner for compassionate appointment stating that it is hit by Rule-2(b) of the OCS (RA) Rules, 1990.

14. In that view of the matter, this Court is of the considered view that the order dated 5.2.2016 & 9.3.2018 in Annexure- 6 & 7 passed by the authority is without application of mind and the same is liable to be quashed. Accordingly, the order dated 5.2.2016 & 9.3.2018 are quashed and the matter is remitted back to the authority concerned for reconsideration of the case of the petitioner for appointment on compassionate ground as per the provisions contained in OCS(RA) Rules, 1990 as expeditiously as possible, preferably within two months from the date of receipt of copy of this judgment.

15. With the above observation and direction, the writ petition is disposed of. No order as to cost.

(Biraja Prasanna Satapathy)
Judge

