

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C)(OA) No.1358 of 2018

Manoja Kumar Biswal

....

Petitioner

-versus-

State of Odisha & Ors.

....

Opposite Parties

CORAM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

15.09.2022

Order No

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

2. Heard Mr. S.N. Patnaik, 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 the impugned order at Annexure-5 & 6 and direct the respondents to appoint the applicant in a suitable post under RA Scheme within a period to be stipulated by Hon'ble Tribunal.*
- ii. To grant any relief/reliefs as deemed fit and proper."*

4. It is submitted that on the death of the Petitioner's father on 21.05.2015, who was working as Wireman in the office of the Executive Engineer, Ret Dam Division, Burla 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, Ganjam 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.2 vide his letter dtd.21.02.2015 under Annexure-4 forwarded the application of the Petitioner to O.P. No. 1 for taking further action in the matter. But it is submitted that on receipt of the application, O.P. No. 1 vide his letter dtd.08.04.2016 under Annexure-5 rejected the claim of the Petitioner.

6. Learned counsel for the Petitioner submitted that even though everything was complied with, but O.P. No. 3 basing on the impugned letter issued by the O.P. No. 1 on 08.04.2016 under Annexure-5 rejected the claim of the Petitioner vide the impugned communication under Annexure-6.

7. It is also submitted that the grounds on which the claim of the Petitioner was rejected and reflected in Annexure-5 so far as it relates to the Petitioner 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 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-5.

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 2nd legal heirs of the deceased employee is not entertainable and accordingly no illegality has been committed by the O.P. No. 2 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. 1 for appropriate action.

11. 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 order available at Annexure-5 & 6. 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

Sneha