

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.27680 of 2022

Pinaki Nanda

....

Petitioner

-versus-

State of Odisha & Ors.

....

Opposite Parties

CORAM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

20.10.2022

Order No

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

"It is therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to admit this application and issue rule NISI calling upon the Opp. Parties to show cause as to why annexure-1 and 2 should not be set aside and the Petitioner be given an appointment under Rehabilitation Assistance Scheme forthwith,

And if the Opp. Parties fail to show cause or show insufficient cause, make the said rule absolute by issuing a writ in the nature of certiorarified mandamus by quashing annexure-1 & 2 and directing the Opp. Parties to forthwith appoint the Petitioner under Rehabilitation Assistance Scheme forthwith.

And further be pleased to pass any other order/orders, direction/directions as deem fit and proper,

And for which act of kindness, the Petitioner as in duty bound shall ever pray."

4. It is submitted that on the death of the Petitioner's father on 20.05.2013, who was working as HEW in the office of the Assistant Director Horticulture, Khurda-O.P. No. 3, the Petitioner made an application for her appointment under the provision of Rehabilitation Assistance Scheme in the post of Junior Assistant as her mother was physically and mentally unfit for any kind of job.

5. It is submitted that on receipt of such application along with the no objection from other legal heirs of the deceased employee, O.P. No. 3 directed Petitioner's mother to appear before the Medical Board. It is submitted that on receipt of such medical report of the Petitioner's mother, Petitioner was issued with a letter to appear in the test of English knowledge and computer skill on 27.08.2015 vide letter dtd.19.08.2015 under Annexure-6.

6. It is submitted that the Petitioner not only took the tests but also passed the same successfully. While the Petitioner was waiting for her appointment, Opp. Party No. 1 vide his order dtd.19.08.2016 under Annexure-1 rejected her claim on the ground that the Petitioner is not the 1st legal heir and the medical report declaring the spouse unfit has been issued much after the submission of the application form.

7. It is submitted that Petitioner seeking cancellation of the order issued under Annexure-7 approached the O.P. No. 1 on 26.11.2018 under Annexure-8. Petitioner while seeking cancellation of order dtd.19.08.2016, also prayed for her appointment under the R.A. Scheme.

8. It is submitted that when the claim as made in Annexure-8 was not considered, petitioner approached this Court in W.P.(C) No.17656 of 2019 and this Court vide order dt.01.10.2019 disposed

of the matter with a direction on O.P. No. 1 to take a decision on Annexure-8 within a period of three (3) months from the date of production of the certified copy.

9. Learned counsel for the Petitioner submitted that Opp. Party No. 1 in an absolutely casual manner and without applying his mind rejected the Petitioner's claim once again on similar plea vide its order dtd.17.02.2020 under Annexure-2.

10. It is submitted that the ground on which the claim of the Petitioner was rejected and reflected in Annexure-2 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)*.

11. 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 fast 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 filed the no objection certificate in her 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.

12. Mr. R.N. Mishra, learned AGA 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. 1 in rejecting the same.

13. 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 by directing the Petitioner to take the required test vide Annexure-6.

14. In view of such steps taken in the matter, the claim of the Petitioner should not have been rejected. This Court finds that the Petitioner's claim has been illegally rejected and accordingly this Court is inclined to quash the said order of rejection available at Annexure-2 as well as the earlier order available at Annexure-7. While quashing the same, this Court basing on the recent decision of the Hon'ble Apex Court in the case of *State of Odisha & Ors. Vs. Malayananda Sethi* 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. On such reconsideration if the Petitioner is found otherwise eligible, steps be taken to provide her appointment under the provisions of R.A. Scheme. The entire exercise shall be completed within a period of two (2) months from the date of receipt of this order.

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

(Biraja Prasanna Satapathy)
Judge

Sneha