

IN THE HIGH COURT OF ORISSA AT CUTTACK
WPC(OAC) No.273 of 2016

Suvalaxmi Nayak

.... ***Petitioner***
Mr. Niranjan Lenka, Advocate

-versus-

State of Odisha & Others

.... ***Opposite Parties***

Mr. L. Samantaray, AGA

CORAM:
JUSTICE M.S. RAMAN

Order No.

ORDER
18.07.2022

- 01.**
- 1.** This matter is taken up by virtual/physical mode.
 - 2.** The Original Application No.273(C) of 2016 was filed before the Odisha State Administrative Tribunal, Cuttack Bench, Cuttack. After its abolition, the same has been transferred to this Court which is renumbered as WPC(OAC) No.273 of 2016.
 - 3.** The Petitioner, married daughter of deceased Govt. employee, namely Smt. Bini Sahoo, who died on 28.12.2013 while working as Multi-purpose Health Worker (Female), approached this Court invoking Article 226/227 of the Constitution of India for consideration of her case under the Odisha Civil Service (Rehabilitation Assistance) Rules, 1990.
 - 4.** Mr. N. Lenka, learned counsel for the Petitioner submits that Smt. Bini Sahoo, who was working as Multi Purpose Health Worker (female) while she was in Govt. Service in 2013, she had only daughter namely, Suvalaxmi Nayak, the present Petitioner. It is submitted that even though she got married to one Sri Susanta

Kumar Behera, she is entitled to be considered for employment under the Odisha Civil Services (Rehabilitation Assistant) Rules, 1990. The Petitioner submitted an application to the competent authority for appointment under the said Rules. It is submitted at the Bar that till date, the said application is lying with the competent authority for consideration.

5. A counter has come to be filed by the Opposite Party Nos. 4 and 5 taking the stand that in terms of definition of “family members” as contained in Rule 2(b) of OCS (RA) Rules, 1990, “married daughter” is not covered. For benefit of understanding the definition of the term “family members” as contained in Rule 2(b) is quoted hereunder:

“(b) ‘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 daughter;*
- (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.”*

In the counter-affidavit it has been stated that the application along with other documents were returned to the

Appointing Authority, i.e., Chief District Medical Officer, Dhenkanal.

6. Learned counsel for the Petitioner submitted that since there is no other progeny available, the married daughter should have been considered by the competent authority under the aforesaid Rehabilitation Assistance Rules even though the term “married daughter” does not find place in the definition as enumerated herein above.

Mr. Lenka, learned counsel for the Petitioner cited a Judgment of this Court rendered in the case of *Smt. Ketaki Manjari Sahu vs. State of Orissa and Others* reported in 1998 (II) OLR 452. This Court at para-3 of the said judgment observed as follows:

“3. We find in the instant case that abnormal cases require abnormal prescription. The petitioner wants to help the family in distress. The family includes her widow mother and an unemployed husband. It is an extreme case of hardship where it may need relaxation of strict compliance of the definition “family member to discard a married daughter” in this peculiar circumstance.”

7. It may be apt to refer to Rule 16 of the Odisha Civil Service (Rehabilitation Assistance) Rules, 1990 as noticed by this Court in the Judgment in the case of *Ketaki Manjari Sahu* referred to *supra* which is to the following effect:

“16.(1) The State Government where satisfied that the operation of all or any provisions of these rules causes undue hardship in any particular case, it may dispense with or relax the provisions to such extent as it

may consider necessary for dealing with the case in a just and equitable manner.

(2) Such cases shall be examined in General Administration Department and orders of Chief Minister shall be obtained.”

In the wake of aforesaid provision, thrashing the application at the threshold, as contended in the counter-affidavit, may not be justified on the part of model employer-the State of Odisha. Therefore, considering the above, without entering into any merit of the matter, it is felt appropriate to direct the Opposite Party No. 1 to consider and dispose of the application as stated to have been filed before the Opposite Party No.3 within a period of three months from the date of production of certified copy of this order along with the copy of the application as enclosed to the writ petition at Annexure-5. The Opposite Party No. 1 is at liberty to consider the application in its own perspective keeping in view the Judgment rendered by Division Bench of this Court cited by the learned counsel for the Petitioner as also the provisions of the Odisha Civil Service (Rehabilitation Assistance) Rules, 1990.

8. With the above observation and direction, the writ petition stands disposed of.

Issue urgent certified copy as per rules.

(M.S. Raman)
Judge