

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.28341 of 2022

Subhasish Tripathy

....

Petitioner

Mr. S.R. Pattnaik, Advocate

-versus-

State of Odisha and others

....

Opposite Parties

Mr. B. Pr. Tripathy, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

01.11.2022

Order No.

01.

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

2. Heard learned counsel for the Petitioner as well as learned counsel for the State.

3. The present writ petition has been filed by the petitioner with the following prayers:-

“It is therefore prayed that this Hon’ble Court may be graciously pleased to admit this writ application and issue Rule NISI to the opp.parties as to why they shall not be directed to consider the case of the petitioner for providing him an employment on compassionate ground under the Orissa Civil Service (Rehabilitation Assistance) Rule, 1990 in base level Group-“C” post as junior clerk in the office of the opp.parties within a stipulated period fixed by this Hon’ble court in the interest of justice.”

4. The present writ petition has been filed by the petitioner challenging the inaction on the part of the opposite parties in not considering the application of the petitioner for Rehabilitation Assistance Scheme and not giving him appointment since long.

5. It is submitted by learned counsel for the petitioner that the

father of the petitioner, who was working as ACF in the office of the Divisional Forest Officer (Kendu leaves Division), Boudh-opposite party no.3, died in harness on 03.07.2018. After the death of his father, the petitioner has applied an application for appointment under the OCS (R.A.) Rules, 1990 in the year, 2018 that was within the time limit specified. However, the competent authority has not taken a decision as of now although several years have passed in the meantime.

6. Learned counsel for the petitioner further submits that let the Authority be directed to consider the case of the petitioner in the light of the judgment delivered by the Hon'ble Supreme Court of India in the case of *Indian Bank vs. Promila*, reported in (2020) 2 SCC 729, *State of Madhya Pradesh vs. Amit Shrivastava*, reported in (2020) 10 SCC 496, Hon'ble Apex Court in the case of *The Secretary to Govt., Department of Education (Primary) & Ors. vs. Bheemesh Alias Bheemappa (Civil Appeal No.7722 of 2021)* as well as in the case of *State of Madhya Pradesh vs. Ashish Awasthi*, reported in 2021(II) OLR (SC) 1072.

7. Having heard learned counsel for the parties and considering the facts and circumstances of the case, this Court observes that the conduct of the Opposite Parties is illegal and not sustainable in law. Further, considering the date of death of the deceased and involving whom the appointment under the Rehabilitation Assistance Scheme is sought for and the date of application for appointment under the Rehabilitation Assistance Scheme, this Court directs that the Divisional Forest Officer (Kendu leaves Division), Boudh (Opposite Party No.3) to look into the grievance of the Petitioner under Annexure-2 and dispose of the same in accordance with law, taking into account the judgments in the case of *Indian Bank vs. Promila*,

reported in (2020) 2 SCC 729, *State of Madhya Pradesh vs. Amit Shrivastava*, reported in (2020) 10 SCC 496, *Hon'ble Apex Court* in the case of *The Secretary to Govt., Department of Education (Primary) & Ors. vs. Bheemesh Alias Bheemappa (Civil Appeal No.7722 of 2021)* as well as in the case of *State of Madhya Pradesh vs. Ashish Awasthi*, reported in 2021(II) OLR (SC) 1072, wherein the Apex Court in a clear and categorical term observed that the policy prevalent at the time of death of the deceased employee is only to be considered and not the subsequent policy and pass a speaking and reasoned order by giving appointment to the Petitioner under the Rehabilitation Assistance Scheme, subject to availability of vacancies, within a period of three months from the date of production of certified copy of this order. Decision so taken be communicated to the Petitioner within a period of two weeks thereafter.

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

Urgent certified copy of this order be granted on proper application.

(*A.K. Mohapatra*)
Judge