

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.4082 of 2016

In the matter of an application under Section 19 of the
Administrative Tribunal's Act, 1985.

.....

Prajnya Paramita Sethi

....

Petitioner

-versus-

State of Odisha & Ors.

....

Opposite Parties

For Petitioner : M/s. B. Satapathy(Advocate)

For Opp. Parties : Mr. A.P. Das
Additional Standing Counsel

PRESENT:

THE HON'BLE JUSTICE BIRAJA PRASANNA SATAPATHY

सत्यमेव जयते

Date of Hearing: 12.09.2022 and Date of Judgment:21.10.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Heard Mr. Banshidhar Satapathy, learned counsel for the Petitioners 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 facts and circumstances stated above this Hon’ble Tribunal be pleased to direct the Respondents to take steps for appointment of the applicant befitting to her qualification on compassionate ground quashing order dt.13.07.2016 and 23.07.2016 under Annexure-5 & 6 respectively.

And/or pass any other order(s)/direction(s) as deems fit and proper in the interest of justice.”

4. It is submitted that on the death of the Petitioner’s father on 01.06.2011, who was working as a Junior Engineer under Executive Engineer, Kendrapara Irrigation Division, Kendrapara, Petitioner’s mother made her application for appointment under the provision of Rehabilitation Assistance Scheme. It is submitted that since prior to consideration of the claim, Petitioner’s mother died on 17.08.2011, Petitioner being the unmarried daughter of the deceased employee made a fresh application after attaining majority.

5. It is further submitted that when the claim of the Petitioner was kept pending, she approached learned Tribunal in O.A. No. No. 3571(C) of 2012 and learned Tribunal vide its order under Annexure-5 disposed the matter with a direction to consider the claim of the Petitioner.

6. It is submitted that though everything was complied with, but O.P. No. 1 without proper appreciation rejected the claim vide the impugned order dtd.13.07.2016 under Annexure-6 on the ground that the spouse of the deceased employee since was alive at the time of death of the deceased employee, the Petitioner’s claim cannot be considered for appointment under Rehabilitation Assistance Scheme.

7. It is submitted that the grounds on which the claim of the Petitioner was rejected 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, the claim of the Petitioner should not have been rejected on the ground indicated in the impugned communication at Annexure-6.

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 No. 1 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.

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 Petitioner made a fresh application, when during pendency of the claim originally made by the spouse, she died on 17.08.2011. the Petitioner not only made the application on attaining the age of 18 years, but also learned Tribunal in O.A. No. 3571(C) of 2012 directed the O.P. No. 1 to take a decision.

11. In view of such steps taken in the matter, the claim of the Petitioner should not have been rejected on the grounds indicated in the impugned order. In any view of the matter, this Court finds that the Petitioner’s claim has been illegally rejected and accordingly this Court is inclined to quash the said rejection available at Annexure-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 in view of the decision of the Hon'ble Apex Court in the case of *Malayananda Sethi Vs. State of Odisha*. Such a fresh decision shall be taken within a period of two (2) months from the date of receipt of this order. If on such recommendation, the Petitioner is found eligible, necessary order of appointment be issued within the above said time period.

12. The writ Petition is disposed of with the aforesaid observation and direction.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 21st of October, 2022/Sneha

