

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) (OAC) No.1866 of 2015

Nirupama Mohanty @ Jena **Petitioner**

-versus-

State of Odisha & Others **Opposite Parties**

CORAM:
JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER
24.02.2023

Order No

04.

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

2. Heard Mr. P.K. Kar, learned counsel for the Petitioner and Mr. S.N. Pattanik, learned Addl. Government Advocate for the State.

3. The present Writ Petition has been filed challenging the order dated 18.05.2015 passed by the Collector, Cuttack-Opposite Party No.2 under Annexure-7, wherein the prayer for regularization of the services of the Petitioner was rejected on the ground that in absence of succession certificate to prove her status as the wife of the deceased employee, her claim cannot be considered. While passing such an order, Opposite Party No.2 also directed for termination of the Petitioner from her work.

4. Learned counsel for the Petitioner contended that on the death of the deceased employee namely Sri Ramakanta Jena, the Petitioner was engaged on ad hoc basis vide order dated 26.07.1991 under Annexure-3 to the Writ Petition. It is contended that in terms of the said order, the Petitioner is continuing on ad hoc basis as on date. The Petitioner seeking regularization of her service had earlier approached the Tribunal in O.A No.146(C) of 1994. The Tribunal

vide order dated 13.03.2012 disposed of the matter with a direction to the Opposite Party No.2 to allow the Petitioner to continue with her engagement or regularize her in service in accordance with the existing position of law i.e. OCS(RA) Rules, 1990. The relevant portion of the order is quoted hereunder:-

“.....the applicant was admittedly appointed on 44 days engagement basis only, the applicant may not have a strong claim for regularization. However, taking into account the fact that the applicant was apparently appointed as a compassionate measure on the death of her husband her appointment should normally have been under the OCS (Rehabilitation Assistance) Rules, 1990 and as she has been allowed to continue in service by virtue of interim orders of this Tribunal dtd.15.03.94, the Govt. Respondents shall be at liberty to continue engagement or regularize her in accordance with the existing position of law i.e. OCS (RA) Rules, 1990”.

4.1. It is contended that instead of considering the case of the Petitioner, Opposite Party No.2 on the ground that the Petitioner has not filed her succession certificate showing her status as wife of the deceased employee, rejected the claim and while rejecting the same directed for termination of the Petitioner. However, in terms of the interim order passed by the Tribunal on 01.06.2015, the Petitioner is continuing on ad hoc basis till date. Accordingly, it is contended that in view of such long continuance and the distress condition of the Petitioner, necessary direction be issued to the Opposite Party No.2 to take steps for absorption of the petitioner in the regular establishment as against any vacant Class-IV post.

5. Mr. S.N. Pattnaik, learned Addl. Government Advocate for the State on the other hand made his submission basing on the stand taken in the counter affidavit. It is contended that on the death of the deceased employee namely Ramakanta Jena, the Petitioner was engaged on ad hoc basis out of complete sympathy and since dispute was raised with regard to the status of the petitioner as the

wife of the deceased employee, the Petitioner was directed to produce the succession certificate showing her status.

5.1. It is also contended that the Petitioner had earlier approached the competent Court seeking issuance of succession certificate in Succession Misc. Case No.7/1999, but the same was withdrawn vide order dated 25.03.2009. Accordingly, it is contended that in view of such conduct of the Petitioner, it is to be held that the Petitioner is not wife of the deceased employee. Accordingly, it is contended that no illegality has been committed by Opposite Party No.2 while passing the impugned order at Annexure-7.

5.2. It is also contended that since 1994 to till date, the Petitioner is continuing on ad hoc basis because of the interim order passed by the Tribunal earlier in O.A No.146(C) of 1994 and in the present proceeding, which was originally filed before the Tribunal in OA No.1866 (C) of 2015.

6. To the aforesaid submissions of Mr. S.N. Pattnaik, Mr.P.K. Kar, learned counsel for the Petitioner contended that since during pendency of Succession Misc. Case No.7/1999, there was a talk of compromise the Petitioner was given permission to withdraw the Succession Misc. Case with liberty to approach again, if she so likes. After receipt of the impugned order under Annexure-7, the Petitioner though in the meantime has moved the competent Civil Court by filing Intestate Case No.4/2020, but till date no final decision has been taken and accordingly the petitioner is not in a position to produce the succession certificate. However. Mr. Kar, contended that the status of the petitioner as the wife of the deceased employee has already been accepted by the competent Civil Court i.e. Court of learned Civil Judge, (Senior Division), Kendrapara in the final decree proceeding in T.S No.38/66/27/65.

In the said final decree proceeding, the Petitioner being the wife of the deceased employee Ramakanta Jena was substituted as defendant No.1(Ga).

6.1. Mr. Kar also produced before this Court the certified copy of the final decree proceeding for perusal of this Court. This Court finds from the order dated 10.07.1991 that the present petitioner has been substituted as the wife of the deceased employee namely Ramakanta Jena as defendant No.1(Ga) with the allotment of share. Therefore, taking into account the status of the Petitioner, which has been accepted by a competent Civil Court, the Opposite Party No.7 though was produced with a copy of the same, but the legal effect of the same was not considered by Opposite Party No.2 in its proper perspective, while rejecting the claim of the Petitioner vide the impugned order at Annexure-7.

7. Having heard learned counsel for the Parties and after going through the materials available on record, more particularly the status of the petitioner so accepted by the competent Civil Court and the long continuance of the Petitioner since 1991 on ad hoc basis, this Court is inclined to quash the order at Annexure-7. While quashing the same, this Court directs Opposite Party No.2 to allow the Petitioner to continue on ad hoc basis. It is also directed that Opposite Party No.2 shall take step for absorption of the Petitioner in the regular establishment as against any Class-IV vacancy prior to her attaining the age of superannuation and thereby enabling her to get the benefit of pension and other pensionary benefits under OCS (Pension) Rules, 1992. However, it is observed that, the order passed in the present case shall not be treated as a precedent in any other cases of similar nature and the present order

is being passed on a special consideration taking into account the plight of the Petitioner.

13. With the aforesaid observations and directions, the Writ Petition stands disposed of.

(Biraja Prasanna Satapathy)
Judge

Subrat

