

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OAC) No. 631 of 2014

G.Bharat Patro

....

Petitioner

-versus-

State of Orissa & Others

....

Opposite parties

**CORAM:
JUSTICE BIRAJA PRASANNA SATAPATHY**

**ORDER
23.03.2022**

**Order
No.**

- 02.
1. This matter is taken up through Hybrid mode.
 2. Heard Mr. S.P. Das, learned counsel for the Petitioner and Mr. M. Balabantray, learned counsel for the State.
 3. This Writ Petition has been filed by the Petitioner challenging the communication dated 16.12.2013 issued by the Under Secretary to Government, Health and Family Welfare Department, wherein the claim of the Petitioner for his appointment under the provision of Orissa Civil

Service (Rehabilitation Assistance) Rules, 1990 was rejected on the ground that he is the 5th legal heir of the deceased Government Servant.

4. It is also indicated in the said communication that as per the General Administration Department's Circular, the 1st legal heir is the person, who is entitled for engagement under Rehabilitation Assistance Scheme.

5. Mr. Das, learned counsel for the Petitioner while assailing the aforesaid communication / rejection of the claim of the Petitioner strenuously argued that there is no such provision in the Orissa Civil Service (Rehabilitation Assistance) Rules, 1990, disentitling the other family members excepting the 1st legal heir from getting the benefit of appointment under the said Scheme.

6. Learned counsel for the Petitioner in support of his stand in the Writ Petition, relied on the decision of this Court in the case of **Prem Sagar Naik vs. State of Orissa and Ors.** decided on 21.08.2017 in W.P.(C) No.18981 of 2016. In the said decision, this Court while taking note of the provisions contained under Rule 2(a) and 2(b) of the Orissa Civil Service (Rehabilitation Assistance) Rules, 1990 came to a definite conclusion that the

rules do not provide that a younger son should not be treated in a preferential manner.

7. Para-7 & 8 of the aforesaid judgment of this Court is quoted hereunder:-

7. Section 2(a) of the O.C.S. (Rehabilitation Assistance) Rules, 1990 defines "deserving case". A deserving case has been defined to mean that a case where the appointing authority is satisfied, after making such enquiry as may be necessary:-

(i) that the death of the employee has adversely affected his family financially because the family has no other alternative mode of livelihood;

(ii) that there is existence of distress condition in the family after death of the employee;

(iii) that none of the family members of the employee who has died while in service is already in the employment of Government/Public or Private Sector or engaged in independent business with an earning capable to tide over the distress condition of the family arising out of the sudden death of the employee; and

(iv) that the family does not have adequate income from the immovable properties to earn its livelihood.

8. "Family members" has been defined under Rule 2(b) of the aforesaid Rules. It means 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 daughters;

(iv) Widowed daughter or daughter-in-law residing permanently with the affected family.

(vi) brother or unmarried Government servant who was wholly dependent on such Government servant at the time of death.

A plain reading of the aforesaid provision reveals that Rehabilitation Assistance to the family members, who are eligible for appointment under Rehabilitation Assistance Scheme, should be provided in order of preference as indicated above. Thus, a plain reading of the provisions means that a person who is entitled to any appointment under the Rehabilitation Assistance Scheme, the authority has to see if the spouse of the deceased employee is alive and intends to avail the benefit under the Rehabilitation Assistance Scheme. If he/she is ineligible for over age, ailment or cannot be given appointment under the Rehabilitation Assistance Scheme, as per the scheme, the second preference will be given to the sons. The Rules do not provide that a younger son should not be treated in a preferential manner and the elder son should be given appointment. There is no provision in the said Rules that while considering the second category of persons, the elder son should be given appointment and the younger son cannot be appointed. However, the State government has devised an expression namely "transferable right" and has taken a stand that since the spouse of the deceased is alive, elder son is living there, right cannot be transferred in favour of the petitioner. The decision taken by the opposite parties 1 and 2 is illegal and contrary to the basic scheme of the aforesaid Rules".

8. This Court in the said judgment while dealing with the matter of a similar nature directed the opposite parties to provide appointment to the Petitioner therein under the provision of Rehabilitation Assistance Scheme.

9. Mr. Balabantray, learned counsel for the State while supporting the rejection order vide Annexure-13, though argued that the claim of the Petitioner has been rightly rejected, but could not dispute the view of this Court rendered in the aforesaid judgment.

10. Having heard learned counsel for the Parties and after going through the materials available on record, I found that the Opposite Party No.1 vide the impugned communication dated 16.12.2013 while rejecting the claim petition for appointment under the provisions of Rehabilitation Assistance, Scheme has not followed the true intent and spirit of the provision contained under Rule 2(a) and 2(b) of the Orissa Civil Service (Rehabilitation Assistance) Rules, 1990. Under the said provision, there is no bar for other family members to make application for appointment under the said scheme. This Court in the aforesaid judgment has also opined accordingly.

11. Therefore, in view of the decision cited (supra) and the grounds of challenge made in the Writ Petition, I deem it fit and proper to quash the communication dated 16.12.2013 issued by the Opposite Party No.1. While quashing the said communication, I hereby direct the Opposite Parties to provide appointment to the Petitioner under the provisions of Rehabilitation Assistance, Scheme. I further direct that the process of appointment of the Petitioner be completed within a period of three

months from the date of production of the certified copy of this order.

12. With the aforesaid observation and direction, the WPC (OAC) stands disposed of.

(Biraja Prasanna Satapathy)
Judge

Subrat

