

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OAC) No. 2192 of 2017

Debitosh Manna

.....

Petitioner

Mr. C.R. Lenka, Advocate

Vs.

State of Orissa and others

.....

Opposite Parties

Mr.A.K. Mishra, AGA

CORAM:

DR. JUSTICE B.R. SARANGI

ORDER

16.09.2022

Order No.

08.

This matter is taken up through hybrid mode.

2. Heard Mr. C.R. Lenka, learned counsel for the petitioner and Mr. A.K. Mishra, learned Additional Government Advocate for the State.
3. The petitioner has filed this writ petition seeking direction to the opposite party no.2-Chief Engineer, Rural Works-I, Odisha, Bhubaneswar to consider his application for giving an appointment of employment under Rehabilitation Scheme within a stipulated time.
4. Mr. C.R. Lenka, learned counsel for the petitioner contended that the petitioner's father was working as DLR basis under the opposite parties and rendered service for 27 years. But he died prematurely. It is contended that had the petitioner's father survived for another four months, then his service could have been regularized at par with the similarly situated person who were working with him. Unfortunately since he died before four months of regularization of all other employees, the benefit of government

servant as provided under Rule-3 of the OCS (RA) Rules, 1990 was not made available to him. Therefore, he contended that under Rule-16, power for relaxation has been given to the Government. If the Government thinks fit that the petitioner's father had rendered about 27 years on DLR basis under the government, they may relax the rules for consideration of the grievance of the petitioner for appointment under Rehabilitation Assistance Scheme.

5. Mr. A.K. Mishra, learned Additional Government Advocate vehemently contended that the petitioner is not entitled to get the benefit of appointment under Rehabilitation Assistance Scheme in view Rule-3 of the OCS (RA) Rules, because his father was not a regular government servant. As such, Rule-3 clearly indicates that the assistance shall be applicable to a member of the family of a Government servant who died during the service period. The DLR cannot be construed to be a Government servant so as to extend the benefit to the present petitioner.

6. Having heard learned counsel for the parties and after going through the record, it is the admitted case of both the parties that the petitioner's father was working as DLR basis and had rendered a quite long period of service as DLR, i.e. 27 years. But he died prematurely leaving behind the legal representatives. But fact remains the persons those who were rendering the service as DLR along with the father of the petitioner, their services were regularized just after four month of the death of the father of the petitioner. If the petitioner's father would have survived for four months more, his services would have been regularized and he would have considered as government servant as per Rule-3 of the OCS (RA) Rules, then the petitioner would have got the benefit

being the legal representative of the deceased government servant. Even though the petitioner's father had rendered 27 years of service, but the benefit of appointment under Rehabilitation Assistance Scheme was not extended, because he was not construed as government servant. Taking into consideration the long service rendered by the petitioner's father, i.e. for 27 years and regularization of the similarly situated person after four months of the death of the father of the petitioner, where his name was also found place, the petitioner's father would have been brought to the regular establishment and become a government servant. The State Government being a model employer, should have considered the difficulties faced by the petitioner because of the death of the bread earning member of the family and the relaxation under Rule-16 should have been extended to the petitioner, so as to consider his case for appointment under Rehabilitation Assistance Scheme.

7. In view of the above, the petitioner is permitted to file a fresh representation within a period two weeks from today claiming for relaxation of the rules so as to extend the benefit of appointment under Rehabilitation Assistance Scheme. If such a representation is filed, the opposite party no.2 shall consider and dispose of the same in accordance with law within a period of four months from the date of filing of such representation.

8. The writ petition is accordingly disposed of.

(DR. B.R. SARANGI)
JUDGE

Arun