

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.29604 of 2022

Bijoy Kumar Behera

....

Petitioner

Mr. D.K. Dhar, Advocate

-versus-

State of Odisha and others

....

Opposite Parties

Mr. P.K. Rout, A.G.A.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

14.11.2022

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:-

“The Petitioner therefore prays that your lordship be graciously pleased to admit this Writ Petition, issue Rule Nisi, calling upon the Opp. Parties as to why a writ of Mandamus or any appropriate writ(s) shall not be issued;

- i) By quashing the order dt.28.07.2021 passed by the Excise Commissioner, Odisha, O.P. No.2, vide its office order No.L-27/145917.
- ii) To direct the Opp. Parties to give appointment to the Petitioner under OCS (RA) Rules, 1990.
- iii) If the Opp. Parties fails to show cause or show insufficient cause to make the rule absolute.

And may further be pleased to pass any other order(s)/direction(s) as deem fit and proper in the facts

and circumstances of the case;”

4. The present writ petition has been filed by the petitioner challenging the impugned rejection order dated 28.07.2021 issued by the Excise Commissioner, Odisha, Cuttack (Opposite Party No.2) under Annexure-9 wherein the Opposite Party No.2 has rejected the application of the petitioner for Rehabilitation Assistance Scheme.

5. It is submitted by learned counsel for the petitioner that the father of the petitioner died on 26.01.2014 and is covered under the OCS(RA) Rules, 1990. It is further submitted by learned counsel for the petitioner that although the application has been submitted by the petitioner i.e. in the year 2014, the Authority sat over the matter and finally by virtue of the impugned order under Annexure95, the same came to the light.

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. It is also submitted that basing on the said order passed by the Hon'ble Apex Court the petitioner *Malaya Nanda Sethi vs. State of Odisha and others*, has been provided with the appointment vide order dated 13.06.2022 of the Government in the Excise Department. Moreover, it is also submitted that when similar issue was raised before the Hon'ble Apex Court in Special Leave (C)

No.12740 of 2022. Hon'ble Apex Court relying on the decision of *Malaya Nanda Sethi vrs. State of Odisha and others* remanded the matter for consideration in the light of the judgment passed in the aforesaid Civil Appeal No.4103 of 2022.

7. Having heard leaned counsel for the parties and considering the facts and circumstances of the case, this observes that the order dated 28.07.2021 under Annexure-9 is not sustainable in law and therefore, the same is hereby quashed and the matter is remanded to the Excise Commissioner, Odisha, Cuttack (Opposite Party No.2) to consider afresh, if required, further enquiry be conducted with regard to the annual income of the petitioner and take a decision by providing opportunity of hearing to the petitioner. Let the petitioner be approached before the Excise Commissioner, Odisha, Cuttack (Opposite Party No.2) within a period of two weeks from today and the Excise Commissioner, Odisha, Cuttack (Opposite Party No.2) consider the case of the petitioner within a period of eight weeks thereafter. 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