

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C) No.29927 of 2022**

***Jayakrushna Mohapatra*** ..... ***Petitioner***

*Mr. P.K. Mohapatra, Advocate*

*-versus-*

***State of Odisha and others*** ..... ***Opposite Parties***

*Mr. B. Pr. Tripathy, A.G.A.*

**CORAM:**

**JUSTICE A.K. MOHAPATRA**

**ORDER**

**15.11.2022**

**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. Perused the record.
3. The present writ petition has been filed by the petitioner with the following prayers:

“Under the aforesaid facts and circumstances of the case, it is therefore, prayed that this Hon’ble Court may graciously be pleased to;

- i) direct/order the opp. Parties to give appointment to the Petitioner under Rehabilitation Assistance Scheme as per O.C.S.(R.A) Rules, 1990, as the Petitioner had applied on 02.06.2013 due to death of his father in harness on 15.08.2012 and thereby quash the order, dated 17.08.2019 and 02.03.2021 as at Annexure-8 and 9 respectively in the light of Decisions vide Annexure-ii for the interest of justice;

- ii) pass such other order(s) or issue direction(s) as may be deemed fit and proper in the bona fide interest of justice;”

4. The present writ petition has been filed by the petitioner challenging the impugned rejection order dated 02.03.2021 issued by the Special Secretary to Government, General Administration and Public Grievance Department, Odisha (Opposite Party No.5) under Annexure-9 and the rejection order dated 17.08.2019 issued by the Collector District Magistrate, Keonjhar (Opposite Party No.3) under Annexure-8 wherein the Opposite Party No.5 and Opposite Party No.3 have rejected the applications 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 15.06.2012 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 2021, the Authority sat over the matter and finally by virtue of the impugned order under Annexure-8, 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 vs. 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 learned counsel for the parties and considering the facts and circumstances of the case, this Court observes that the order dated 17.08.2019 and 02.03.2021.2021 under Annexures-8 and 9 are not sustainable in law and therefore, the same are hereby quashed and the matter is remanded to the Principal Secretary, Revenue and Disaster Management Department, Odisha, Bhubaneswar (Opposite Party No.1) and looking to the date of death of the deceased and involving whom the appointment under the Rehabilitation Assistance Scheme is sought for and the date of application for appointment under the Rehabilitation Assistance Scheme, this Court directs that the Principal Secretary, Revenue and Disaster Management Department, Odisha, Bhubaneswar (Opposite Party No.1) to look into the grievance of the Petitioner under Annexure-12 and dispose of the same in accordance with law, taking into account the judgments 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**, wherein the Apex Court in a clear and categorical term observed that the policy prevalent at the time of death of the deceased employee is only to be considered and not the subsequent policy and pass a speaking and reasoned order by giving appointment to the Petitioner under the Rehabilitation Assistance Scheme, subject to availability of vacancies, within a period of three months from the date of production of certified copy of this order. 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.

Jagabandhu

