

HIGH COURT OF ORISSA : CUTTACK

WPC(OAC) No.4096 of 2013

An application under Articles, 226 and 227 of the Constitution of India.

Minati Sahoo Petitioner.

Versus.

State of Orissa and others Opp.parties

For petitioner : Mr. Sidheswar Mallick along with
Mr. P.C.Das, Advocate.

For opp.parties : Mr. T.K.Praharaj,
Standing Counsel

PRESENT

THE HON'BLE SHRI JUSTICE MRUGANKA SEKHAR SAHOO

Date of Hearing : 12.05.2022 : Date of judgment: 27.07.2022

M.S.SAHOO, J. The writ petition has been filed by the petitioner challenging the order dated 27.09.2012, passed by the Deputy Secretary to Government, Home Department-opposite under Annexure-14, rejecting her application for appointment under Rehabilitation Assistance Scheme after death of her father while he was working under the Government under the provisions of Orissa Civil Services (Rehabilitation Assistance) Rules,1990.

2. In the present case, after the father of the petitioner Sri Nrusingh Charan Sahoo, passed away on 15.02.2006 while working as Havildar Major of Odisha State Armed Police (OSAP), OSAP 4th Bn., Rourkela, the application was filed by the petitioner on 02.06.2006. The same was sent to the Collector, Dhenkanal vide office letter no.4292/E dated 21.08.2006 from the OSAP 4th Bn., Headquarter, Rourkela to furnish distress certificate. The Collector, Sundargarh

vide letter no.790/Esstt. dated 19.04.2008 furnished the annual income of the family to be Rs.1000/- and also intimated the family pension per annum received by the wife of the deceased employee (mother of the petitioner) to be Rs.4524/- x 12 + 1000/- making it total of Rs.55288/- which is below the ceiling limit of Rs.60,000/- fixed by the Government for being considered for appointment under the provisions of Rehabilitation Assistance Scheme/Rules.

3. The Government accorded sanction by letter of Home Department, letter no.56174 dated 14.12.2009 intimating the DG & IG of Police, Orissa, Cuttack for filling up of vacancies in the rank of Junior Assistants /Junior Clerks under Rehabilitation Assistance Scheme, i.e., to be granted to the petitioner.

4. The State Police Headquarters by letter no.22118 dated 20.04.2010 intimated the petitioner regarding the documents required to be produced by her for getting appointment under Rehabilitation Assistance Scheme.

5. The matter remained in a kind of flux till it was rejected in 2012, i.e., evident from Annexure-14 as well as Annexure-17.

6. It is submitted by the learned counsel for the petitioner referring to the averments made in the original application as well as the counter dated 01.11.2016 filed by the AIG of police, office of DG & IG of police on behalf of the State-respondents that the only ground of rejection of the candidature of the applicant-petitioner was that she is the married daughter of the deceased-employee.

It is further submitted that the authorities have ascribed no other reason other than the factum of the petitioner getting married for rejecting her Rehabilitation Assistance appointment after the Government, Home Department by office letter no.56174 dated 14.12.2009 (Annexure-4) has accorded permission for such appointment.

Learned counsel for the petitioner further relies on the decision of Division Bench of this Court dated 11.08.2021 passed in W.P.(C) No.28966 of 2011: *Urbashi Sahoo v. State* to contend that marriage of a daughter cannot disentitle her to get benefit of the appointment under Rehabilitation Assistance Scheme.

7. On 23.03.2022 after hearing the learned counsel for the parties, the following order was passed:

“The writ petition has been registered before this Court on 06.12.2021 after the original application was transferred, upon abolition of the Odisha Administrative Tribunal, Cuttack Bench, Cuttack.

On perusal of the available order-sheets of the learned Tribunal, it is found that the matter was never taken up after 16.01.2017.

It is submitted by the learned counsel for the petitioner referring to the averments made in the original application as well as the counter dated 01.11.2016 filed by the AIG of police, office of DG & IG of police on behalf of the State-respondents that the only ground of rejection of the candidature of the applicant-petitioner was that she is the married daughter of the deceased-employee.

It is further submitted that the authorities have ascribed no other reason other than the factum of the petitioner getting married for rejecting her Rehabilitation Assistance appointment after the Government, Home Department by letter dated 14.12.2009 has accorded permission for such appointment.

Learned counsel for the petitioner further relies on the decision of division Bench of this Court dated 11.08.2021 passed in W.P.(C) No.28966 of 2011: Urbashi Sahoo v. State to contend that subsequent marriage of a candidate cannot disentitle her to get benefit of the Rehabilitation Assistance Appointment.

Learned Addl. Government Advocate prays for some further time to obtain instruction regarding the contention raised at the bar.

Accordingly, list this matter on 12.05.2022.

8. Learned Standing Counsel submits that he has obtained instructions as directed by order dated 23.03.2022. It is fairly submitted by the learned Standing Counsel that, at this stage, it is not available under law for the authority to add any further reasons or alter the reasons those were given for rejecting the application of the petitioner, who applied for employment under the Rehabilitation Assistance Scheme as per the Orissa Civil Services (Rehabilitation Assistance) Rules, 1990.

9. The order of rejection are indicated by Annexure-14 dated 27.09.2012 passed by Deputy Secretary to Government, Home Department-opposite party no.1 as well as Annexure-17 dated 13.08.2013 DG & IG of Police, Odisha, Cuttack.

10. Counter on behalf of the State-opposite parties is also perused. Paragraph-2 (internal page-3) of the counter dated 01.11.2016 filed by the AIG of Police, Personnel, State Police Headquarters, Odisha, Cuttack is extracted herein :

“The rejection order was duly communicated to the applicant vide Home Department letter No.38243 dated 27.09.2012 (Annexure-14 of the O.A.). As the applicant did not meet the eligibility criteria in terms of Rule 2(b) of Odisha Civil Service (Rehabilitation Assistance) Rules, 1990 (copy enclosed) and subsequent amendments thereon, her appointment could not be considered under Rehabilitation Assistance Scheme since she is a married daughter of the deceased employee. Basing on allegation made in the O.A. No.1631(C)/2009 filed by Manjulata Sahoo v. State of odisha and others, two Junior Clerks namely; Urbasi Sahoo and Ethel Biswasi Lugun of D.P.O. Angul were discharged from service w.e.f. 9.12.2009 even after rendering 1 year and 8 months of service. Apart from the above ca ses, the following 05 more applicants in the year 2008, 01 candidate in the year 2010 and 02 in the year 2012 were not considered for appointment under Rehabilitation Assistance Scheme on the ground that they were found married before their appointment.

In the counter, the details of eight candidates whose employment was terminated, being daughters of the deceased employees, is also given.

11. In considered view of this Court, after the decision rendered in ***Urbashi Sahoo v. State of Orissa and another*** decided on 11.08.2021 in W.P.(C) No.28966 of 2011: 2022(II) CLR 64, rejection of the candidature of a married daughter for compassionate appointment under Rehabilitation Assistance Scheme, is untenable.

12. In ***Urbashi Sahoo v. State of Orissa and another*** decided on 11.08.2021 in W.P.(C) No.28966 of 2011, relying on the earlier decision of this Court rendered in the case of ***Bibhuti Bhusan Patnaik v. State of Odisha and others*** reported in ***2017 (II) ILR-cut-896***, it has been held that daughter cannot be denied employment on the ground that the Orissa Civil Services (Rehabilitation Assistance) Rules, 1990 provides only for employment of the wife of the deceased employee or son.

13. Since for rejecting the claim of the petitioner apart from the ground that the candidate being a married daughter, no further reason is available or there is no other reason that could be available to be given by the authorities; in view of ***Urbashi Sahoo*** (supra), the order dated 27.09.2012 (Annexure-14) rejecting the application of the petitioner for appointment under Rehabilitation Assistance Scheme is set aside.

14. It is directed that the recommendation of the authorities of the OSAP, 4th Bn., the sanction accorded by the State Government and the letter issued by the State Police Headquarters to consider the appointment of the applicant are to be given effect to forthwith.

15. Since about sixteen years have passed when the applicant applied for appointment under Rehabilitation Assistance Scheme and

almost nine years have been spent in litigation, in the interest of justice and fair play, the age of the petitioner shall not be a factor to consider her for a suitable job under the Rehabilitation Assistance Scheme by the authority, according to her present physical fitness.

16. With the above observation, the writ petition is allowed.

In the facts and circumstances of the case, there shall be no order as to costs.

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M.S.Sahoo,J.

Orissa High Court, Cuttack
The 27th July, 2022/Gs/Radha