

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OA) No.1549 of 2017

In the matter of an application under Section 19 of the
Administrative Tribunal Act, 1985.

.....

Sunayana Panda

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioner : M/s.P.Parsuram Mohapatra.

For Opp. Parties : Standing Counsel
Mr. M.K.Balabantaray.

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing:05.09.2022 and Date of Order:15.09.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.
2. Heard Mr. P.Mohapatra, learned counsel for the Petitioner and Mr. M.K.Balabantaray, learned Standing Counsel for the State-Opposite Parties.
3. The present Writ Petition has been filed by the Petitioner with a prayer to quash the order dated 19.12.2016 vide Annexure-19 and for a direction on the opposite parties to appoint her as per the recommendation made under Annexure-17 under the provision of Rehabilitation Assistance Scheme.

4. Learned counsel for the Petitioner submitted that the father of the Petitioner while working as Dak-Runner under Opposite Party No.4, he expired on 08.12.2010.

5. It is submitted that since at the time of death of the deceased Government Employee, the Petitioner was minor, her date of birth being 11.06.1995, she immediately after became major made her application for compassionate appointment on 03.10.2013 under Annexure-4.

6. Learned counsel for the Petitioner further submitted that the Petitioner along with her application also submitted no object of her mother and two other married sisters vide Annexures-7 & 8.

7. It is also submitted that on receipt of the application of the Petitioner and on being forwarded by the Opposite Party No.4, Collector, Kandhamal vide his letter dated 05.08.2014 held the Petitioner's family as is distress and issued the distress certificate as prescribed in Part-IV of the application.

8. It is submitted that on receipt of the distress certificate from the Office of the Collector, Kandhamal under Annexure-11, the Opposite Party No.4 vide his letter dated 08.09.2014 under Annexure-12 submitted the documents before the Opposite Party No.3 for taking further action in the matter with regard to appointment of the petitioner under the Rehabilitation Assistance Scheme.

9. It is submitted that subsequently on the request made by the Opposite Party No.4, the mother of the petitioner was also duly examined by the District Medical

Board, Kandhamal on 28.01.2015 and certificate was issued by the C.D.M.O., Kandhamal indicating therein that the petitioner's mother is suffering from various diseases and she is unwilling to perform the Government job.

10. It is submitted that after receipt of such report from the District Medical Board under Annexure-16, the application of the petitioner was forwarded to the Opposite Party No.1 by the Opposite Party No.2 vide letter dated 24.09.2015 under Annexure-17 with a request to accord necessary permission for appointment of the Petitioner as a Junior Clerk against the existing vacancy.

11. It is also submitted that on receipt of the recommendation under Annexure-17, the Petitioner vide letter dated 14.01.2016 under Annexure-18 was directed by Opposite Party No.1 to appear the test in English and Computer and the Petitioner also appeared the said test on the date fixed.

12. Mr. Mohapatra, learned counsel for the Petitioner submitted that after completion of all the formalities when the Petitioner was expecting her appointment under the provision of Rehabilitation Assistance Scheme, the impugned communication was issued on 19.12.2016, wherein her claim was rejected on the ground that it contradicts the provision of Rule-2(b) read with Rule-9(7) of the OCS (Rehabilitation Assistance) Rules, 1990.

13. Mr. Mohapatra, learned counsel for the Petitioner submitted that since at the time of the death of the deceased employee, the Petitioner was a minor, she on attaining her majority made her application on 03.10.2013,

which is the provision contained under Rule-9(7) OCS (Rehabilitation Assistance) Rules, 1990.

14. It is also submitted that the Petitioner's application was not only entertained but also it was recommended favourably at different stages and ultimately the Opposite Party No.2 vide Annexure-17 requested the Government to accord necessary approval for appointment of the Petitioner as against the post of Junior Clerk against existing vacancies.

15. It is also submitted that on receipt of Annexure-17, the Opposite Party No.1 directed the Petitioner to take the test of English and Computer and the Petitioner also as directed took the said test successfully. Therefore, it is submitted that instead of according approval for appointment of the Petitioner, the case of the Petitioner was rejected on the ground indicates in the impugned order dated 19.12.2016 under Annexure-19.

16. Mr. Mohapatra, in support of his submission submitted that Rule-2(b) of the OCS (RA) Rules, 1990 defines the family members of the deceased Government employee and in the said rule there is no provision that only the wife/husband of the deceased employee is eligible to make the application, if he /she is alive and competent to make such application. In support of such submission, Mr. Mohapatra, learned counsel for the Petitioner relied on the decision of this Court in the case of **Ajit Kumar Barik vs. State of Orissa & Others** reported in **2018(II) OLR-10** as well as a decision of this Court passed in W.P.(C)

No.13982 of 2014. In the aforesaid reported decision in **Ajit Kumar Case**, this Court has held that Rule-2(b) of the Rules nowhere restricts the other legal heirs from making their application under the provision of Rehabilitation Assistance Scheme save and except the wife/husband of the deceased employee.

17. It is also submitted in the bar that the aforesaid decision in **Ajit Kumar Case** has been upheld by the Hon'ble Apex Court in the meantime.

18. Mr. Mohapatra, learned counsel for the Petitioner accordingly submitted that in view of the materials available on record and the decision in **Ajit Kumar Barik's** case, the impugned order passed by the Opposite Party No.1 under Annexure-19 need interference of this Court.

19. Mr. Balabantaray, learned Standing Counsel on the other hand submitted that since at the time of death of the deceased employee on 08.12.2010, the Petitioner's mother was very much alive and eligible to make her application for appointment under the provision of Rehabilitation Assistance Scheme, the application at the instance of the petitioner made on 03.10.2013 taking recourse to the provision of Rule-9(7) of the Rules is not entertainable.

20. Mr. Balabantaray, learned Standing Counsel for the State further submitted that even though by the time the Petitioner made her application in the year 2013, she was unmarried but the Petitioner must have got married in the meantime and as per the provision contained under the

OCS (RA) Rules, 1990 married daughters are not eligible to get the benefit of Rehabilitation Assistance Scheme.

21. Accordingly, Mr. Balabantaray submitted that no illegality has been committed by the Opposite Party No.1 in rejecting the petitioner's application vide Annexure-19.

22. Heard learned counsel for the Parties.

23. Perused the materials available on record. This Court after going through the same finds that the application submitted by the Petitioner on her attaining majority was not only entertained by the opposite parties but also it was processed at different stages and vide Annexure-17 dated 24.09.2015, the Opposite Party No.2 while forwarding the proposal requested the Opposite Party No.1 to accord necessary administrative approval for appointment of the petitioner as Junior Clerk against the existing vacancy. This Court further finds that on receipt of such proposal under Annexure-17, the Opposite Party No.1 vide letter dated 14.01.2016 directed the Petitioner to take the test in English and Computer skill and the petitioner also successfully took the said tests. Therefore, after allowing the Petitioner to take the tests in terms of Annexure-18, there was no occasion on the part of the Opposite Party No.1 to reject the Petitioner's claim vide impugned order dated 19.12.2016. Not only that the grounds taken while rejecting the claim relying on the provision of Rule-2(b) read with Rule 9(7) of the OCS (RA), Rules, 1990 is no more res intergra in view of the decision of this Court reported in **Ajit Kumar Barik's** case. With regard to the stand taken, learned Standing Counsel that the Petitioner might have got

married in the meantime and as a married daughter she is not entitled to get the benefit of the Rehabilitation Assistance Scheme, Mr. Mohapatra brought to the notice of this Court a decision rendered on 24.08.2022 by this Court in W.P.(C) No.14945 of 2015. In Paragraph-46 of the said decision, this Court held as follows:-

“46. *From the factual and legal analysis, as made above, it emanates that institution of marriage is an important and basic civil right of man and woman and marriage by itself is not a disqualification and impugned policy of the State Government barring and prohibiting the consideration of the ‘married’ daughter from seeking compassionate appointment merely on the ground of marriage is plainly arbitrary and violative of constitutional guarantees, as envisaged in Articles 14, 15 and 16(2) of the Constitution of India. Accordingly, the word ‘unmarried’, as prescribed in Rules, 1990 and Rules, 2020 is hereby struck down being unconstitutional and ultra vires being violative of Articles 14, 15 and 16 of the Constitution of India”.*

25. Therefore, taking into account the stand taken by the learned counsel for the Parties and the decision relined on by Mr. Mohapatra, learned counsel for the Petitioner, this Court finds that the claim of the Petitioner has been illegally rejected by the Opposite Party No.1 vide Annexure-19 and the same is liable to be quashed.

26. Hence, while quashing the same, this Court directs the Opposite Party No.1 to accord necessary administrative approval as requested in letter dated 24.09.2015 under Annexure-17 and such approval shall be issued within a period of one month from the date of receipt of this order. This Court further directs the Opposite Parties to issue necessary order of appointment in favour of the Petitioner on receipt of such administrative approval within a further period of one month.

27. With the aforesaid observations and directions, the WPC(OA) stands disposed of.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 15th of September, 2022/Subrat

