

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.4190 of 2013

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

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Goura Prasad Patra

....

Petitioner

-versus-

State of Odisha & Ors.

.....

Opposite Parties

For Petitioner : M/s. Sidheswar Mohanty, L.N. Patel,
N.K. Das and S. Pattnaik

For Opp. Parties : Standing Counsel
Mr. N.K. Praharaj

PRESENT:

THE HON'BLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 12.04.2022 and Date of Order: 19.04.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.
2. Heard Mr. L.N. Patel, learned counsel for the Petitioner and Mr. Praharaj, learned counsel for the Opp. Parties.

3. The Petitioner is aggrieved by the order dtd.06.09.2012 passed by the Deputy Secretary to Govt. Health & Family Welfare Department, Odisha wherein the claim of the Petitioner for his appointment under Rehabilitation Assistance Scheme was rejected on the ground that he is the 3rd legal heir of the deceased Goura Prasad Patra.

4. It is submitted by Mr. Patel, learned counsel for the Petitioner that after the death of his father on 26.12.1996, necessary application was made to provide employment to the present Petitioner under the provisions of Rehabilitation Assistance Scheme.

5. It is further submitted by Mr. Patel, learned counsel for the Petitioner that there is no bar for making application by the Petitioner as per the definition of Rule 2(b) of OCS (RA) Rules, 1990. The said Rule defines "Family Members" means and include the following members in order of preference-

- (i) Wife/Husband;
- (ii) Sons or step sons or sons legally adopted through a registered deed
- (iii) Unmarried daughters and unmarried step daughters;
- (iv) Widowed daughter or daughter-in-law residing permanently with the affected family;
- (v) Unmarried or widowed sister permanently residing with the affected family;
- (vi) Brother of unmarried Government servant who was wholly dependent on such Government servant at the time of death.

6. Accordingly, it is submitted that since the Petitioner is coming within the definition of family members, he rightly made the application and rejection of the same on the ground that he is the 3rd legal heir of the deceased employee is illegal. Accordingly, Mr. Patel sought for interference of this Court in the matter.

7. Mr. Balabantaray, learned counsel appearing for the Opp. Parties while supporting the said rejection argued that since the wife of the deceased employees was available at the relevant point of time, she should have made the application in place of the present Petitioner. Accordingly, Mr. Balabantaray submitted that the rejection has been rightly made by the Opp. Party No.1.

8. Mr. Patel taking into account the submissions made by the State counsel submitted that the issue involved in the present writ Petition is no more res integra and in a series of matter not only learned Tribunal but also this Court has interfered with such nature of rejection made by different departments of the State.

9. Mr. Patel brought to the notice of this Court the decision rendered in the case of **Ajit Kumar Barik Vrs. State of Odisha & Ors. 2018 (II) OLR-10**. In the said reported decision, this Court has held that nowhere in the Rule it is said that the application is to be made by the wife only.

10. In view of such view of this Court and since the Petitioner is coming within the definition of family as contained under Rule 2(b) of the OCS (RA) Rules, 1990, the rejection of its claim vide impugned order on the ground that he is the 3rd legal heir cannot be sustained. Accordingly, this Court has got no hesitation in quashing the said order at Annexure-16 and the same is hereby quashed.

11. While quashing the same, this Court further directs the Opp. Parties to reconsider the claim of the Petitioner and provide him appointment under the provisions of OCS(RA) Rules, 1990. The entire exercise shall be completed within a period of three months from the date of production of the order.

12. The writ Petition is disposed of accordingly.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 19th of April, 2022/Sneha

