

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) (OAC) No. 1121 of 2017

Sukanta Kumar Bishoi *Petitioner*
Mr. Laxman Pradhan, Advocate
-versus-
State of Odisha & Others *Opposite Parties*
L. Samantaray, Additional Government Advocate

CORAM:
JUSTICE M.S. RAMAN

ORDER (Oral)

30.08.2022

Order No.

06.

1. This matter is taken up through virtual/physical mode.
2. The Petitioner challenged order dtd. 08.04.2016 issued by the Dy. Secretary Government of Odisha in Department of Water Resources rejecting the proposal to consider appointment under the Odisha Civil Service (Rehabilitation Assistance) Rules, 1990 (in short, "RA Rules").
3. The father of the Petitioner, Late Birendra Bishoi, while working as Watchman (Choukidar) in the office of the Executive Engineer, Boudh Irrigation Division-Opp. Party No.4, died on 04.06.2014. The mother of the Petitioner predeceased his father. The elder brother of the Petitioner namely Sri Sanjeeb Kumar Bishoi being unfit for taking up any job, the petitioner applied for consideration of appointment under the RA Rules on 02.09.2014 which was forwarded to the Collector, Kandhamal for enquiry and report by the Executive Engineer, Boudh Irrigation Division, Boudh on 04.10.2014. The Petitioner has stated to have furnished copies of distress certificate, legal heir certificate, death certificate, residential and caste certificates and certificate showing educational

qualifications, etc. Mr. Laxman Pradhan, Advocate for the petitioner submitted that the Opposite Party No.1 has rejected the application on flimsy ground, i.e., “Cases in which medical certificates declaring the spouses medically unfit for Government job has been issued much after submission of application”. Therefore, he prayed to quash the decision of the Government contained in Letter No.8553-III-Policy-0001/2015/WR, dated 08.04.2016 as communicated in Letter No.12165-WR-FE-III-RAS-0025-2016/WR, dated 25.05.2016 [Anenxure-11].

4. Mr. L. Samantaray, learned Additional Government Advocate appearing on behalf of Opposite Parties with reference to paragraph 5 of the counter submitted that the reason ascribing which the application for appointment under RA Rules has been rejected by the authority concerned appears to be justified and plausible. Paragraph 5 of the counter verified by Executive Engineer, Boudh Irrigation Division, Boudh, is reproduced herein below :

“That, it is pertinent to mention here that after the death of the deceased employee, the elder son was completely suitable / fit for appointment under RA scheme (spouse had died before death of the father) and thereafter, he could have apply as he was placed higher up in the order of preference as per Rule-2(b) of the OCS (RA) Rules 1990. Late submission of his unfit certificate is a testimony to that. The above rejection of RA proposal of the applicant by the Committee has been intimated to the EIC, WR vide letter No. 8553 dtd. 08.04.2016 (Annexure-11 of the OA) with an instruction to keep all concerned intimated and it is in conformity with OCS (RA) Rules, 1990 and is therefore justified.”

Therefore, it is urged that the rejection of application does not warrant interference by this Court.

5. What has been stated in paragraph 5 of the counter as quoted above appears to be contrary to the Proceeding of the District Medical Board, Kandhamal held on 28.07.2016 *vide* Annexure-6. The proceeding placed at Annexure-6 to the writ petition is extracted herein below:

*“In pursuance of letter No.25.07.2016, dtd. 27.05.2016 of the Executive Engineer, Boudh Irrigation Division, Boudh, Sri Sanjeeb Kumar Bishoi, Son of late Birendra Bishoi appear before the District Medical Board, Kandhamal on 28.07.2016. Examined Sri Sanjeeb Kumar Bishoi aged about 36 years of village/PO: Bisipadea, PS:Sadar, Phulbani in the district of Kandhamal. **His treatment records verified. It is found that, he has past spine injury leading to weakness of both lower limb and chronic Dorsolumbar Spondylosis.***

Considering the above ailments and defects, he is not fit for any kind of Government Job.”

[Emphasis supplied]

The Proceeding of the Medical Board which is not disputed by none of the parties clinches that the elder brother of the petitioner Sri Sanjeeb Kumar Bishoi had ailment and defect much prior to making application for appointment under the RA Rules by the petitioner. Perusal of aforesaid Proceeding of the Medical Board leads to understand that it is constituted on the request being made by the Executive Engineer, Bouth Irrigation Division. On the one hand the Executive Engineer had referred the matter to the Medical Board on 27.05.2016, nonetheless, in the counter he has attributed the delay in obtaining the certificate to the Petitioner. Therefore, this Court

finds the reason for rejection of application for appointment under the RA Rules, 1990 illogical and incoherent.

6. Mr. Laxman Pradhan has relied on a coordinate Bench decision rendered in the case of *Bibhuti Bhusan Patanaik Vrs. State of Odisha and others* reported in 2017 (II) ILR- CUT-896 and submitted that the fact-situation obtained in the present case is identical to the case referred to. It is, therefore, argued by Mr. Pradhan that the rejection of application for appointment under the RA Rules, 1990 submitted by the son of the deceased was not approved by this court and the matter was remitted to the authority concerned for reconsideration. This Court finds that whereas in the reported case cited *supra* the wife of the deceased employee was found unfit for employment due to defect in her eye, in the instant case, the elder brother is found to be unfit for employment and the mother has predeceased the father.

7. Taking into consideration the submissions of both the counsel, the material placed on record, the judgment cited above and the definition of “family members” contained in Rule 2(b) of the RA Rules, this Court is of the considered view that the rejection of application for appointment under RA Rules, 1990 is not tenable. Hence, the decision of the Government *vide* Letter No.8553-III-Policy-0001/2015/WR, dated 08.04.2016 as communicated in Letter No.12165-WR-FE-III-RAS-0025-2016/WR, dated 25.05.2016 [Anenxure-11] is quashed and the matter is remitted to the authority concerned for reconsideration of the case of the Petitioner for appointment on compassionate ground as per the provisions contained in the

Odisha Civil Service (Rehabilitation Assistance) Rules, 1990 as expeditiously as possible.

8. With the above observation and direction, the writ petition is disposed of.

Issue urgent certified copy as per rules.

(M.S. Raman)
Judge

Laxmikant August 30, 2022
Cuttack

