

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C)(OA) No.1284 of 2019

Neelamadhaba Swain

....

Petitioner

-versus-

State of Odisha & Ors.

....

Opposite Parties

CORAM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

06.12.2022

Order No

- 03.** 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Rejoinder affidavit filed on behalf of the Petitioner along with fresh Vakalatnama be kept on record.
3. Heard Ms. Sobhana Sahoo, learned counsel for the Petitioner and Mr. N.N. Satapathy, learned Standing Counsel appearing for the Opp. Parties.
4. The present writ petition has been filed inter alia with the following prayer:-

“1. Direct the Govt./Respondents to give appointment to the applicant in any Class-III post befitting his which was in vogue prior to the OCS (R.A.) Rules, 1990 which was in vogue prior to the OCS (R.A.) Amendment Rules, 2016 came into force, with all service and financial benefits.

2. Pass any other order/Order(s) as deemed fit and proper in favour of the applicant.”

5. It is contended that the father of the Petitioner having died on 01.12.2009, the Petitioner made his application for his appointment under the provisions of Rehabilitation Assistance Scheme on 11.02.2010 under Annexure-4. It is further contended that the said application was kept pending and in the meantime basing on the request made by the Headmaster of the School the Petitioner made a fresh application once against on 07.12.2017 which was forwarded to the DEO by the Headmaster of the School. It is contended that in spite of due submission of the application initially on 29.07.2010 and subsequently in the year 2017 the claim of the Petitioner is yet to be considered.

6. Learned counsel for the Petitioner further contended that since pursuant to the request made by the Headmaster, the Petitioner has submitted a fresh application in the year 2017, a stand has been taken in the counter affidavit that the claim of the Petitioner will be considered in the light of the provision contained under 2016 Rules. It is contended that since the Petitioner's father has died on 01.12.2009 and the application was made on 29.07.2010, the Rules prevalent at the time of death should be the criteria for taking a decision on the Petitioner's claim. In support of the said submission Ms. Sahoo, learned counsel for the Petitioner relied on a decision of the Hon'ble Apex Court in the case of ***Malayananda Sethi Vs. State of Odisha***, wherein Hon'ble Apex Court has held that the Rules prevalent at the time of death of the concerned employee shall be the criteria for taking a decision.

7. In view of the decision of the Hon'ble Apex Court as cited supra, this Court while disposing the writ petition, directs the O.P. No. 3 to take a decision on the claim of the Petitioner for his appointment

under the provision of Rehabilitation Assistance Scheme and while taking such a decision the Rules prevalent at the time of death of the concerned employee shall be taken into consideration.

8. Such a decision shall be taken within a period of three (3) months from the date of receipt of this order and on such reconsideration if it is found that the Petitioner is eligible, then necessary order of appointment be issued in his favour within the aforesaid time period.

9. The writ petition is disposed of with the aforesaid observation and direction.

Sneha



(Biraja Prasanna Satapathy)
Judge