

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OA) No. 1499 of 2019

Mrutunjaya Behera

.....

Petitioner

*Ms. S. Sahoo, Advocate on behalf of
Mr. P.K. Khatei, Advocate*

Vs.

State of Odisha and others

.....

Opposite parties

Mr.S. Jena, SC, S&ME Deptt

CORAM:

DR. JUSTICE B.R. SARANGI

ORDER

12.10.2022

Order No.

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This matter is taken up through hybrid mode.

2. Heard Ms. Sovna Sahoo, learned counsel for the Petitioner and Mr. S. Jena, learned Standing Counsel for S&ME Deptt.

3. The petitioner has filed this writ petition claiming for compassionate appointment under OCS (RA) Rules, 1990 which was in vogue before the OCS (RA) Amendment Rules, 2016 came into force from 05.11.2016.

4. Ms. S. Sahoo learned counsel for the petitioner contended that after the death of the bread earner of the family though the petitioner applied for compassionate appointment, the same was not granted in favour of the petitioner. Therefore, the petitioner has filed this petition.

5. Mr. S. Jena, learned Standing Counsel for S&ME Deptt contended that the petitioner's father died on 05.03.1980 and by that time, the petitioner was a minor. The petitioner attained the majority on 09.05.1994 and applied for the compassionate appointment, but the same

was not considered at the relevant point of time. But in the meantime more than 28 years have been passed. Therefore, the purpose of compassionate appointment is no more subsisting. Thereby, the petitioner cannot be granted with such benefit. To substantiate his contention reliance has been placed on the decision of the apex Court in the case of *State of Maharashtra and Anr. v. Ms. Madhuri Maruti Vidhate (Since after marriage Smt. Madhuri Santosh Koli)*, Civil Appeal No. 6938 of 2022 disposed of on 30.09.2022.

6. Having heard learned counsel for the parties and after going through the record, it appears that the petitioner's father who was working as Assistant Teacher in Golabandha Primary School under Buguda Bliock was expired on 05.03.1980. He left behind his wife Padma Behera, father-Ganapati Behera and his son-petitioner, who was five years old at the time of death of his father. The LR certificate was issued by the Tahasildar Aska vide M.C. No. 185 dated 24.03.1990. On attaining the age of majority on 09.05.1994, the petitioner applied for compassionate appointment, which was transmitted to the higher authority for consideration of his appointment. But the same was not considered. Therefore, the petitioner approached this Court by filing OJC No.12416 of 2000 and this Court vide order dated 16.03.2001 disposed of the writ application with direction to opposite party no.2-Director, Elementary Education Odisha to consider the case of the petitioner under R.A. Scheme read with notification in Annexure-4 to the writ application and pass necessary orders within a period of two months from the date of communication of this order. But when the case of the petitioner was not considered and rejected, the petitioner again approached the Tribunal by filing O.A. No. 801 (C) of 2005 for quashing the order of rejection and for direction for his appointment under R.A.

Scheme. The Tribunal, vide order 28.10.2005 in O.A. No.801 (C) of 2005 directed that let the paper book be sent to the Opposite Party No.1- Govt. to consider the grievance of the petitioner and to take a decision on his representation under Annexure-4 if not disposed of in the meantime and communicate the order to the petitioner within three months from the date of receipt of a copy of this order. In spite of the order of the Tribunal, the case of the petitioner was not considered as per Rules for appointment under R.A. Scheme. In the meantime the OCS (RA) Amendment Rule, 2016 came into force on 05.11.2016, which provided that maximum of 10% of the total vacancies in a year shall be earmarked to be filled by the applicants under R.A. Scheme and the process of selection was also mentioned therein. In view of the OCS (RA) Amendment Rules, 2016, the District Education Officer, Ganjam vide letter dated 21.11.2017 directed the Block Education Officers and all Headmasters and Headmistress of the High Schools under his control for submitting the required information and documents of all the applicants for consideration of their case for appointment under R.A. Scheme. The District Education Officer, Ganjam also separately vide letter dated 23.05.2018 directed the Block Education Officer, Aska, Ganjam to furnish the required information and documents in respect of the present petitioner for consideration of his case for appointment under R.A. Scheme. After compliance of certain documents, the District Education Officer, Ganjam vide letter dated 28.01.2019 directed the petitioner to appear before him on 05.02.2019 for further verification of the documents and accordingly he appeared on 05.02.2019 before him, where a check list was prepared and the name of the petitioner found place at Sl. No. 147 of the said check list. But, in spite of that, the benefit has not been extended to the petitioner.

7. Since the father of the petitioner died prior to the commencement of the Rules, the case of the petitioner could not be considered under OCS (RA) Rules, 1990. The death of the father of the petitioner occurred in the year 1980 and the petitioner attained the majority in the year 1994 and in the meantime more than 28 years have been passed. In view of the judgment of the apex court in the case of ***Ms. Madhuri Maruti Vidhate*** (supra), wherein it has been held that after long lapse of time, the claim for compassionate appointment, no more exists, therefore, the claim made by the petitioner for compassionate appointment cannot be extended. Keeping in view the aforementioned judgment of the apex Court and applying the same to the present case, the petitioner is not entitled to appointment on compassionate ground after a number of years from the death of the deceased employee since the purpose of such appointment is no more exists.

8. In view of the above, this Court is not inclined to entertain the writ petition, since it is devoid of merit.

9. The writ petition is accordingly dismissed.

(DR. B.R. SARANGI, J.)

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