

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C)(OA) No.2356 of 2019

Saroj Kumar Das

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

**COROM:
JUSTICE BIRAJA PRASANNA SATAPATHY**

**ORDER
11.10.2022**

Order No

- 01.** 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Heard Mr. K.C. Sahu, learned counsel for the Petitioner and Mr. A.P. Das, learned Additional Standing Counsel appearing for the State-Opp. Parties.
3. The present writ Petition has been filed with the following prayer:-

“In view of the facts mentioned in Paragraph-6 above, the applicant prays for the following reliefs:

- i) The Hon’ble Tribunal be pleased to admit & allow the Original Application.*
- ii) The Hon ble Tribunal be pleased impugned order of rejection under Annexure-7 by further directing the respondents for providing appointment to the applicant as Peon or any other Class-IV post under the R.A. Scheme in commensuration to his qualification as per the prevailing rule which was existing on the date of submission of the application form by the applicant within a time bound period for the interest of justice.*

iii) *The Hon'ble Tribunal may be pleased to pass any order (s)/direction(s) as deems fit and proper for the interest of justice.*”

4. It is submitted that on the death of the Petitioner's father on 21.02.2011, who was working as a Peon under the office of Opp. Party Nos. 3 & 4, the Petitioner made his application for his appointment under the provision of Rehabilitation Assistance Scheme. It is submitted that on receipt of such application and on being requested, Collector & District Magistrate, Dhenkanal also issued the distress certificate in favour of the Petitioner.

5. It is submitted that on receipt of such distress certificate from the Collector, O.P. No.3 vide his letter dtd.31.07.2014 under Annexure-5 forwarded the application of the Petitioner to O.P. No. 2 for taking further action in the matter. Subsequently O.P. No. 2 vide his letter under Annexure-6 forwarded the matter to O.P. No. 1.

6. Learned counsel for the Petitioner submitted that even though everything was complied with, but O.P. No. 1 vide his letter dtd.08.04.2016 under Annexure-7 rejected the claim of the Petitioner.

7. It is also submitted that the grounds on which the claim of the Petitioner was rejected and reflected in Annexure-7 so far as it relates to the Petitioner is no more res integra in view of the decision of this Court reported in the case of ***Ajit Kumar Barik Vs. State of Odisha & Ors. (2018 (II) OLR P-10).***

8. It is submitted that in the said reported decision it has been held that “Family Members” as defined under Rules 2(b) of the OCS (R.A.) Rules, 1990 are eligible to make their application and there is no hard and first rule that only wife/husband of the deceased Govt. employee is eligible to make such application. It is also

submitted that since the Petitioner complied with all the requirements and the distress certificate was issued in his favour along with the medical certificate declaring the wife of the deceased employee is not fit for Govt. job, the claim of the Petitioner should not have been rejected on the ground indicated in the impugned communication at Annexure-7.

9. Mr. A.P. Das, learned ASC on the other hand submitted that since the wife of the deceased employee was very much available, the claim of the Petitioner being the 2nd legal heirs of the deceased employee is not entertainable and accordingly no illegality has been committed by the O.P. No. 1 in rejecting the same.

10. Heard learned counsel appearing for the Parties. Perused the materials available on record. This Court after going through the same finds that the grounds on which the claim of the Petitioner has been rejected is not sustainable in view of the reported decision of this Court as cited (supra). This Court also finds that the application submitted by the Petitioner was not only entertained, but also was duly processed and recommended to the O.P. No. 1 for appropriate action.

11. In view of such steps taken in the matter, the claim of the Petitioner should not have been rejected. In any view of the matter, this Court finds that the Petitioner's claim has been illegally rejected and accordingly this Court is pleased to quash the said rejection order available at Annexure-7. While quashing the same, this Court directs the O.P. No. 1 to take appropriate step in the matter and take a fresh decision in accordance with the Rule prevalent at the time of death of the deceased employee. Such a fresh decision shall be taken within a period of two (2) months from the date of receipt of this order.

11. The writ Petition is disposed of with the aforesaid observation and directions.

(Biraja Prasanna Satapathy)
Judge

Sneha

