

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.31758 of 2022

Nihar Ranjan Das

....

Petitioner

Mr.Ranjit Mohanty, Advocate

-versus-

State of Odisha and others

....

Opposite Parties

Mr.N.K.Praharaj, A.G.A..

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

29.11.2022

Order No.

01.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the Petitioner and learned Additional Government Advocate. Perused the writ application as well as the documents annexed to it.
3. The Petitioner has filed the present writ application with the following prayer:

“ It is, therefore, most humbly prayed that this Hon’ble Court may graciously be pleased to issue RULE NISI calling upon the Opp.Parties to show cause as to why appropriate writ/writs shall not be issued setting aside the impugned orders dated 26.04.2021 and 30.09.2021, Annexure-8, and further to show cause as to why direction shall not be issued to the Opp.Parties, in particular the Opp.Party No.2 o consider the case of the Petitioner for appointment under RA Scheme under the OCS (Rehabilitation Assistance) Rules, 1990 and to complete the process of appointment within a time stipulated period as this Hon’ble Court pleases to fix and upon perusal of the causes shown, if any or upon insufficient causes shown, make the said RULE absolute and may pass such other order/orders as deemed just and proper;

4. It is submitted by the learned counsel for the Petitioner that being aggrieved by the inaction of the authorities, the Petitioner has approached this Court for a direction to appoint the Petitioner under the OCS (Rehabilitation Assistance) Rules 1990. It is further submitted by the learned counsel for the Petitioner that the father of the present Petitioner, one Babaji Charan Das while working as Inspector of Excise in the Office of the Superintendent of Excise, Khurda breathed his last on 20.11.2004 while undergoing treatment for cancer. The deceased Government employee left behind his widow, two sons and a daughter as legal heir. Thereafter the present Petitioner, who is the son of the deceased employee died in harness submitted an application on 31.01.2005 under rule-8(1)(a) of the Rule 1990 to the competent authority seeking appointment under OCS (Rehabilitation Assistance) Rules, 1990 and the same is stated to have been received on the very same day. Thereafter the authority kept the matter pending for consideration. However, no final decision has been taken.

5. It is submitted by the learned counsel for the Petitioner that all the years several procedures under the Rule were followed repeatedly. In that context, learned counsel for the Petitioner draws the attention of this Court to the letter written by A.D.M., Jajpur wherein he expressed his anguish on the conduct of the competent authority on calling for distress certificate repeatedly and the said letter of the A.D.M., Jajpur under Annexure-4 reveals that earlier on two occasions distress certificates have been provided to the family of the present Petitioner. However, the competent authority sat over the matter and no decision has been taken on the application of the Petitioner. Finally, vide order dated 26.04.2021 the Excise Deputy Commissioner, Odisha wrote a letter to Collector & District

Magistrate, Khordha expressing his view to the effect that the Collector is the competent authority for appointment under Group D post in respect of his district and hence the Rehabilitation Assistance Scheme application of the Petitioner with its enclosures are sent herewith for necessary action as per Government guidelines. After the matter was transferred to the Office of the Collector & District Magistrate, Khurda, again a Distress certificate was called for from the Tahsildar, Jajpur vide letter dated 30.09.2021. Being aggrieved by such conduct of the authority, the Petitioner ventilated his grievance before the Principal Secretary to Government Excise Department vide his representation dated 27.06.2022 wherein the Petitioner has specifically stated in Annexure-9 that his case is squarely covered by the decision of the Hon'ble Supreme Court in **Malaya Nanda Sethy-v.-state of Orissa and others, 2022(II) OLR (SC) 1..** Further he has prayed for consideration of his case in the aforesaid judgment of the Hon'ble Supreme Court.

6. Learned Additional Government Advocate on the other hand submits that the application of the petitioner is still pending and the same has not been finally rejected by the authority. Therefore, the present writ application is premature. He further submits that the Petitioner could have approached the authority and waited for final decision of the authority. In such view of the matter, learned Additional Government Advocate submits that the writ application is not maintainable at this stage.

7. Having heard learned counsel for the respective parties and upon careful consideration of the rival contentions and further a careful scrutiny of the background of the facts, this Court is surprised to learn that the application for appointment on compassionate ground under the OCS(RA) Rules, 1990, of the year 2005 is pending

for 17 years and the Petitioner is moving from pillar to post to get a post which he is entitled to get under the Rule. Many other persons are getting appointment during all the years which shows the legal heirs who are the family members of the Government employee who died in harness. The conduct of the authority, in the considered opinion of this Court is contrary to the provisions provided under the OCS (RA) Rules.

8. Further, upon consideration of the factual background of the case and taking into consideration the date of death, date of application, this Court is of the considered view that the case of the Petitioner is squarely covered by the judgment of the Hon'ble Supreme Court in **Malaya Nanda Sethy-v.-State of Orissa and others, 2022(II) OLR (SC) 1**. Accordingly, the Opposite Parties are directed to consider the case of the Petitioner and take a final decision by applying the OCS (RA) Rules, 1990 in the case of the present petitioner and dispose of his application within a period of two months from the date of production of certified copy of this order keeping in view the principle laid down in the judgment of **Malaya Nanda Sethy**. The authorities are directed to act upon production of certified copy of this order.

9. With the aforesaid observation, the writ application stands disposed of.

10. Issue urgent certified copy of this order as per Rules.