

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.31922 of 2022

Buna Naik

.... ***Petitioner***
Mr. S. Rout, Advocate

-versus-

State of Odisha and others

.... ***Opp. Parties***
Mr. P.K. Rout, A.G.A.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

01.12.2022

Order No.

01. 1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the petitioner as well as learned counsel for the State. Perused the record.
3. The present writ petition has been filed by the petitioner with the following prayers:

“Under these circumstances, the petitioner most humbly pray that this Hon’ble Court may be graciously pleased to issue a Rule Nisi in the nature of any appropriate writ/writs and/or any other writ/writs and/or order/orders and/or direction/directions calling upon the Opp. Party No.3 to show cause as to why the order dated 22.03.2021 shall not be quashed on the basis of the settled position of law as laid down by Hon’ble Apex Court in *Malaya Nanda Sethy Vs. State of Orissa and Ors.* (2022 SC Online SC 684) and *The Secretary to Govt. Department of Education (Primary) and others v. Bheemesh alias Bheemappa*, 2021 SCC Online SC 1264 as the application should be considered the relevant scheme and/or the rules prevalent at the time of death of the application in favour of the petitioner and upon showing insufficient cause or no cause direct the Opp. Parties to appoint the petitioner under Rehabilitation Assistance Scheme.

And further be pleased to pass any other appropriate

writ/writs, order/orders, direction/direction as this Hon'ble Court deems fit and proper for ends of justice.”

4. It is submitted by learned counsel for the petitioner that the husband of the Petitioner, who was working as Sweeper at Government Hospital, i.e., C.H.C., Purunakatak, died in harness on 19.11.2017, as a result of which, the entire family is facing financial crisis and further grant of family pension alone is not adequate. It is further submitted by learned counsel for the Petitioner that the Rehabilitation Assistance Scheme, 1990 amended in the year 2016. It is further submitted that although the Petitioner had approached before the authority concerned for her appointment as a Sweeper on compassionate ground under the Orissa Civil Service (Rehabilitation Assistance) Rules, 1990 on 5th November, 2018 along with the death certificate and legal heir certificate and affidavit showing that no objection from other family members, but her case was not considered by the authority.

5. Learned counsel for the State, on the other hand, submits that since the Petitioner is not eligible for appointment under RA Scheme as per OCS (RA) Rules, 2020, the authority has rightly rejected her application.

6. Upon careful analysis of the submissions made by the learned counsel for the respective parties, this Court is of the humble view that the case of the Petitioner has not been considered by the authorities as per the prevalent policy since the Petitioner has made application in the year 2018, therefore, her case should have been considered as per old Rules, 1990 and not under new Rules, 2020.

7. In such view of matter, the impugned order dated 22.03.2021 under Annexure-1 is hereby set aside. Accordingly, it is directed that Opposite Parties shall grant similar benefits to the Petitioner as has been done in the case of similarly situated persons as per the law laid

down by the Hon'ble Supreme Court in the case of ***Malaya Nanda Sethy vs. State of Orissa and others***, reported in ***2022(II) OLR(SC)-1*** [The Hon'ble Supreme Court in its judgment dated 20.05.2022 in Civil Appeal No.4103 of 2022 (Arising out of S.L.P.(Civil) No. 936/2022)] as well as judgment of this Court in the case of ***Tapan Kumar Nayak vs. State of Odisha and others***, reported in ***2022(II) OLR 735***. Additionally, the Opposite Party No.3 is directed to consider the case of the Petitioner and dispose of the same by passing a speaking and reasoned order within three months hence. Any decision so taken on the same shall be communicated to the Petitioner within a period of two weeks thereafter.

8. With the aforesaid observation/direction, the writ petition is disposed of.

Urgent certified copy of this order be granted on proper application. Judgment

