

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.39242 of 2021

Lipan Kumar Rout

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

COROM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

12.08.2022

Order No

1. This matter is taken up through Hybrid Mode.
2. Heard learned counsel for the Petitioner and learned counsel for the State.
3. This writ petition involves the following prayer:
 4. *“Under the facts and circumstances as narrated above, this Hon’ble Court may graciously be pleased to admit this writ petition, issue Rule Nisi to the opposite parties and if the opposite parties will fail to show cause or shown insufficient cause made the said rule absolute by directing the opposite parties to provide employment to the petitioner as per prevalent Rules and further be pleased to quash the letter dated 22.4.2021 under Annexure-7; And further be pleased to pass any other order/orders as may be deemed fit and proper. And for this act of kindness, the humble petitioner as in duty bound shall ever pray.”*
4. Taking this Court to the pleadings, the death of the deceased taking place on 6.8.2014 and application for Rehabilitation Assistance was filed by the mother requiring service in favour of her son by way of Rehabilitation Assistance appointment, it is contended that the application being filed on

14.10.2019 and death having taking place in the year 2014, the OCS (RA) Amendment Rule, 2016 prevailing at the relevant point of time, should have been considered instead the public authority has applied (OCS) RA Rules, 2020 and rejected the claim of the petitioner. It is on this premises, application of non-existing rule to the case of the petitioner, prayer is made to allow the writ petition in setting aside of Annexure-7. To substantiate the request involved herein, learned counsel for the petitioner refers a W.P.(C.M.P. No.1360 of 2015 W.P.(C). No.10168 of 2021 decision of this Court dated 05.03.2021 in W.P.(C).No.8486 of 2021.

5. To the contrary, learned Additional Government Advocate appearing for the State submits that at the time of consideration of the application the Rule 2016 was already in vogue, the authority was constrained to consider the rule already taken place in the meantime and thus claimed that there is no illegality in Annexure-7. Learned A.G.A however did not dispute applicability of decision of this Court in W.P.(C).No.8486 of 2021 to the case at hand.

6. Considering the rival contentions of the parties, this Court finds for the settled position of law through the Hon'ble Apex Court, a rule which has not seen the light of the day, has no application to the cases taking place prior to such rule come into existence. Admittedly, the death involved herein took place in the year 2016, consequently, the application for Rehabilitation Assistance appointment was also filed in 2017 when Rule 2016 was in place and Rule 2020 had not come into existence even. Petitioner claim for application of judgment in W.P.(C).No.8486 of 2021 to the case at hand finds justified.

7. In view of the settled position of law, this Court sets aside the order at Annexure-7 and directs the opposite party no.2 to issue appointment order in favour of the petitioner following the

recommendation already there in favour of petitioner by completing the entire exercise within a period of four weeks.

8. The writ petition stands disposed of with the observation and direction made hereinabove.

(Biraja Prasanna Satapathy)
Judge

Sangita

