

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.33651 of 2022

Lokanath Dehury

....

Petitioner

Mr. Basudev Barik, Adv.

-versus-

State of Odisha & Ors.

....

Opposite Parties

Mr. B.P. Tripathy, AGA

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER
14.12.2022

Order No

- 01.** 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Heard Mr. Basudev Barik, learned counsel for the Petitioner and Mr. B.P. Tripathy, learned Additional Government Advocate appearing for the State-Opp. Parties.
3. The Petitioner is aggrieved by the order dated 17.09.2022 passed by the O.P. No.4 under Annexure-6, wherein the claim of the Petitioner for his appointment under the provision of the Rehabilitation Assistance Scheme has been rejected relying on the notification issued by the Govt. in the GA & P.G. Department on 17.02.2020.
4. It is submitted that the Petitioner's father while working under the Opp. Parties died on 18.04.2015 and the Petitioner made his application for appointment under the provision of the Rehabilitation Assistance Scheme within the time.

5. It is submitted that the Petitioner has submitted his application along with all relevant documents and also no objection from other legal heirs of the deceased employee. It is further submitted that when the claim of the Petitioner was kept pending, the Opp. Party No.4 vide letter dated 17.09.2022 directed the Petitioner to submit a fresh application under Rehabilitation Assistance Scheme as prescribed by Govt. in G.A. & P.G. Department vide Notification dated 17.02.2020.

6. It is submitted that since the deceased employee died prior to 17.02.2020, the stipulation contained in the said notification cannot be made applicable to the case of the Petitioner and accordingly the rejection of his claim relying on the said notification is illegal.

7. Learned counsel for the Petitioner in support of the aforesaid submission relied on a decision of the Hon'ble Apex Court in the case of *Malaya Nanda Sethy vrs. State of Orissa and others*, reported in **2022(II) OLR(SC)-1**. In the said decision Hon'ble Apex Court has held that the rules prevailing at the time of the death of the concerned employee should be the criteria for consideration of the claim.

8. Since in the present case the Petitioner's father died prior to 17.02.2020, the action of the Opp. Parties in rejecting the claim of the Petitioner basing on the said notification as per the considered view of this Court is illegal and not sustainable in the eye of law.

9. Therefore, this Court has got no hesitation in quashing the said order dated 17.09.2022 passed by O.P. No.4 under Annexure-6. While quashing the same, this Court directs O.P. Nos. 2 & 4 to reconsider the matter in the light of the prevalent rule in

force at the time of death of the deceased employee. This Court also directs the O.P. Nos. 2 & 4 follow of the order passed by the Hon'ble Apex Court in the aforesaid case while taking such a decision afresh. This Court directs the said Opp. Parties to take a fresh decision within a period of two (2) months from the date of receipt of this Order. If on such consideration the Petitioner is found eligible, necessary order of appointment be issued in his favour.

10. The writ Petition is disposed of with the aforesaid observation and direction.



(A.K. Mohapatra)
Judge

Debasis