

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.34117 of 2022

Padmabati Majhi @ Bhoi

....

Petitioner

Mr. D.R. Mishra, Advocate

-versus-

State of Odisha and others

....

Opposite Parties

Mr. B. Pr. Tripathy, A.G.A.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

21.12.2022

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.
3. The present writ petition has been filed by the petitioner with the following prayers:-

“Under the above circumstances, it is therefore humbly prayed that this Hon’ble court may be graciously pleased to issue a writ in the nature of writ of Mandamus or any other appropriate writ, direction or order by quashing the communication made by the opposite party/Selection Committee dated 09.12.2020 vide Annexure-4 to the writ application.

And this Hon’ble Court is further pleased to direct the opposite parties to issue appointment order in favour of the petitioner in OCS (Rehabilitation Assistance) Rules, 1990 any other appropriate order/orders, direction/directions may kindly be passed as deemed equitable by this Hon’ble Court in the interest of justice.”

4. The present writ petition has been filed by the petitioner challenging the impugned rejection order dated 09.12.2020 issued by the Divisional Level Selection Committee on Rehabilitation

Assistance Scheme of Malkangiri (Opposite Party No.4) under Annexure-4 wherein the Opposite Party No.4 has rejected the application of the petitioner for Rehabilitation Assistance Scheme.

5. The sole grievance of the petitioner in the writ petition that the husband of the petitioner died due to harness on 19.05.2017 and is covered under the OCS(RA) Rules, 2020. It is submitted by learned counsel for the petitioner that although the application has been submitted by the petitioner, the Authorities have not taken any action on the same as of now. Being aggrieved on inaction of the authorities, the present writ petition has been filed.

6. Further, it is submitted by learned counsel for the petitioner that the application of the petitioner was rejected by the competent authority under Annexure-4 on the ground that the petitioner has not been able to secure the required mark as provided under Rule-6 of Odisha Civil Services (Rehabilitation Assistance) Rule-2020.

7. Learned counsel for the State submits that he has no objection, if a direction is given to the authorities to consider the grievance petition of the petitioner in accordance with law within a stipulated period of time.

8. Learned counsel for the petitioner further submits that let the Authority be directed to consider the case of the petitioner in the light of the judgment delivered by the Hon'ble Supreme Court of India in the case of *Indian Bank vs. Promila*, reported in (2020) 2 SCC 729, *State of Madhya Pradesh vs. Amit Shrivastava*, reported in (2020) 10 SCC 496, Hon'ble Apex Court in the case of *The Secretary to Govt., Department of Education (Primary) & Ors. vs. Bheemesh Alias Bheemappa (Civil Appeal No.7722 of 2021)* as well as in the case of

State of Madhya Pradesh vs. Ashish Awasthi, reported in **2021(II) OLR (SC) 1072**. It is also submitted that basing on the said order passed by the Hon'ble Apex Court the petitioner ***Malaya Nanda Sethi vrs. State of Odisha and others***,: reported in 2022(II) OLR(SC) 1 has been provided with the appointment vide order dated 13.06.2022 of the Government in the Excise Department. Moreover, it is also submitted that when similar issue was raised before the Hon'ble Apex Court in Special Leave (C) No.12740 of 2022. Hon'ble Apex Court relying on the decision of ***Malaya Nanda Sethi vrs. State of Odisha and others*** remanded the matter for consideration in the light of the judgment passed in the aforesaid Civil Appeal No.4103 of 2022.

10. Having heard learned counsel for the parties and considering the facts and circumstances of the case, this Court observes that the order dated 03.12.2021 under Annexure-3 is not sustainable in law and therefore, the same is hereby quashed and looking to the date of death of the deceased and involving whom the appointment under the Rehabilitation Assistance Scheme is sought for and the date of application for appointment under the Rehabilitation Assistance Scheme, this Court directs that the Divisional Forest Officer, Malkangiri (Opposite Party No.4) to look into the grievance of the Petitioner under Annexure-4 and dispose of the same in accordance with law, taking into account the judgments in the case of ***Indian Bank vs. Promila***, reported in **(2020) 2 SCC 729**, ***State of Madhya Pradesh vs. Amit Shrivastava***, reported in **(2020) 10 SCC 496**, Hon'ble Apex Court in the case of ***The Secretary to Govt., Department of Education (Primary) & Ors. vs. Bheemesh Alias Bheemappa (Civil Appeal No.7722 of 2021)*** as well as in the case of ***State of Madhya Pradesh vs. Ashish Awasthi***, reported in **2021(II) OLR (SC) 1072**,

Malaya Nanda Sethi vrs. State of Odisha and others wherein the Apex Court in a clear and categorical term observed that the policy prevalent at the time of death of the deceased employee is only to be considered and not the subsequent policy and pass a speaking and reasoned order by giving appointment to the Petitioner under the Rehabilitation Assistance Scheme, subject to availability of vacancies, within a period of two months from the date of production of certified copy of this order. Decision so taken be communicated to the Petitioner within a period of two weeks thereafter.

11. With the above direction, the writ petition stands disposed of.

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

Jagabandhu

