IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.26610 of 2021

Samar Bilas Padhi

.... ***Petitioner***

Mr. S.K. Mahanty, Advocate

-versus-

State of Odisha & Others

.... ***Opposite Parties***

Mr.S.K. Jee, AGA

CORAM:
JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER
09.12.2024

Order No.

03. **1.** This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.

2. Heard Mr. S.K. Mahanty, learned counsel for the Petitioner and Mr. S.K. Jee, learned Addl. Government Advocate for the State-Opposite Parties.

3. Petitioner has filed the present Writ Petition *inter alia* with the following prayer:-

> ***"a.*** *Admit the case, issue a notice to the Opp. Parties and call for records; And*
>
> ***b.*** *Quash L. No.33774 dt.21.8.2021 of the Director, Higher Education, Govt. of Odisha thereby declaring the same being illogical, arbitrary, unsustainable and bad in the eye of law and non-application of judicious mind;*
>
> ***c.*** *Further, be pleased to Issue a writ of mandamus to the opposite parties to appoint the petitioner in any post commensurate to his qualification under O.C.S. (R.A), Rules, 1990 w.e.f. the due date within a*

stipulated period of time that this Hon'ble Court may deem fit and proper in the ends of justice, And

d. *Pass any other order(s) direction/ directions(s) as deemed appropriate in the interest of justice".*

4. It is submitted that on the death of the Petitioner's father on 27.09.2009, who was working as Govt. employee (Reader in Sanskrit) in Bhadrak Women's College, Bhadrak, Odisha, Petitioner being the son of the deceased employee made his application for appointment under the provision of Rehabilitation Assistance Scheme during the month of September, 2010.

4.1. It is contended that after receipt of the application and on receipt of the distress certificate from Collector on 17.11.2016 vide Annexure-5, Opposite Party No.3 vide letter dtd.21.11.2017 under Annexure-6 forwarded the application of the Petitioner to Opposite Party No.2 for necessary action.

4.2. It is contended that in spite of being forwarded with the application vide Annexure-6, when Opposite Party No.2 did not take any action, Petitioner approached this Court in W.P.(C) No.16280 of 2020 and this Court vide order dtd.25.08.2020 directed Opposite Party No.2 to take a final decision on the claim of the Petitioner to get the benefit of appointment under Rehabilitation Assistance Scheme.

4.3. But it is contended that Opposite Party No.2 without proper appreciation of the provision contained under Rule-2(b) of OCS (RA) Rules, 1990 rejected the claim vide the impugned order dated 21.08.2021 under Annexure-12. It is contended that the grounds on which the claim of the Petitioner has been

rejected and reflected in Annexure-12, is no more *res integra* in view of the decision of this Court reported in the case of ***Ajit Kumar Barik vs. State of Odisha & Ors. (2018 (II) OLR P-10).***

4.4. It is submitted that in the aforesaid reported decision it has been held that "Family Members" as defined under Rules 2(b) of the OCS (R.A.) Rules, 1990 are eligible to make their application and there is no hard and first rule that only wife/husband of the deceased Govt. employee is eligible to make such application. It is also submitted that since Petitioner complied with all the requirements and the distress certificate was issued in his favour, the claim of the Petitioner should not have been rejected on the ground indicated in the impugned communication at Annexure-12. It is accordingly contended that rejection of the Petitioner's claim is not sustainable in the eye of law.

5. Mr. S.K. Jee, learned A.G.A on the other hand submitted that since the wife of the deceased employee was very much available, claim of the Petitioner being the 2nd legal heir of the deceased employee is not entertainable and accordingly no illegality has been committed by the O.P. No. 3 in rejecting the same.

6. Heard learned counsel appearing for the Parties. Perused the materials available on record. This Court after going through the same finds that the grounds on which the claim of the Petitioner has been rejected is not sustainable in view of the reported decision of this Court as cited (supra). This Court also finds that the application submitted by the Petitioner is

within the prescribed time period and it was unnecessarily kept pending at the level of Opposite Party No.2 after the same was forwarded vide letter under Annexure-6.

7. In any view of the matter, this Court finds that the Petitioner's claim has been illegally rejected without following the law laid down by this Court in the case of ***Ajit Kumar Barik***. Accordingly, this Court is inclined to quash order dated 21.08.2021, available under Annexure-12. While quashing the same, this Court directs the O.P. No. 2 to take appropriate step in the matter and take a fresh decision in accordance with the Rule prevalent at the time of death of the deceased employee and by following the ratio laid down by the Hon'ble Apex Court in the case of ***Malaya Nanda Sethy vs. State of Odisha & Others***. Such a fresh decision shall be taken within a period of two (2) months from the date of receipt of this order.

8. The Writ Petition is disposed of with the aforesaid observation and directions.

(Biraja Prasanna Satapathy)
Judge

Subrat

Signature Not Verified
Digitally Signed
Signed by: SUBRAT KUMAR BARIK
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 13-Dec-2024 11:28:13