

(2016) 05 OHC CK 0039
In the Orissa High Court
Case No : O.J.C. No. 1301 of 1996

Banshidhar Behuria

APPELLANT

Vs

Grid Corporation of Orissa Ltd.

RESPONDENT

Date of Decision : 11-05-2016

Acts Referred:

Constitution of India, 1950 — Article 14
Orissa State Electricity Board Service (Rehabilitation Assistance) Regulations, 1992 — Clause 9(5)

Citation : (2016) 2 ILRCuttack 135

Hon'ble Judges : Dr. A.K. Rath, J.

Bench : Single Bench

Advocate : Ms. Madhumita Panda, Advocate, for the Petitioner; Mr. Tapas Ranjan Mohanty, Advocate, for the Opposite Parties

Final Decision : Dismissed

Judgement

Dr. A.K. Rath, J.—By this writ petition, challenge is made to the letter dated 17.8.1994 issued by the Additional District Magistrate, Bhadrak to

the Executive Engineer, Jajpur Road Electrical Division, Jajpur Road, opposite party no.4, vide Annexure-3 and the letter dated 24.7.1995 of the

Deputy Secretary-III, Orissa State Electricity Board, Bhubaneswar, vide Annexure-4 series, to the Executive Engineer, Jajpur Road Electrical

Division, Jajpur Road rejecting the claim of the petitioner for appointment under the Rehabilitation Assistance Scheme. An ancillary prayer has

been made to appoint the petitioner under Rehabilitation Assistance Scheme.

2. Bereft of unnecessary details the short facts of the case of the petitioner are that Gopal Chandra Behuria, father of the petitioner, was serving as

a Peon in the office of the opposite party no.4. Since he was invalidated, he made an application for voluntary retirement on 2.1.1992. His case

was referred to the C.D.M.O., Cuttack for medical examination. On 13.10.1993, the C.D.M.O. intimated his opinion. He had six years of service

to his credit at the time of application. His application was forwarded by the opposite party no.4 on 16.11.1992. While the matter stood thus, he

retired from services on 1.11.1993. It is further stated that the income of the petitioner was enquired into by the Additional District Magistrate. By

order dated 17.8.1994 vide Annexure-3, the Additional District Magistrate erroneously referred back the matter indicating that the application was

barred by limitation. Thereafter on 24.7.1995 vide Annexure-4, his case was rejected.

3. Pursuant to issuance of notice, counter affidavit has been filed by the opposite parties. The sum and substance of the case of the opposite parties

is that in exercise of power conferred by Section 79(c) of the Electricity (Supply) Act, the Orissa State Electricity Board has framed a Regulation

called Orissa State Electricity Board Service (Rehabilitation Assistance) Regulation, 1992. Clause (3) of the said Regulation provides that the

assistance shall be extended to a member of the family of Board's employee who dies while in service or retires under the provisions of the Orissa

Pension Rules, 1977 on the ground of permanent incapacitation. Further the Regulation 4 specifically states that the rehabilitation assistance is

conceived as a compassionate measure of saving the family of the Board's employee from immediate distress when Board's employee suddenly

dies or is permanently incapacitated. But such benefit cannot be claimed as matter of right. It is further stated that Sri Gopal Ch. Behuria, father of

the present petitioner, filed the application for declaring him as permanently incapacitated on 26.6.1992. His date of retirement was 30.4.1998. By

the time the petitioner's father filed the application to declare him as permanently incapacitated, he had 5 years, 10 months, 4 days of service. He

filed an application without furnishing the detailed particulars. Therefore, he was directed to produce the invalidation certificate. Vide letter No.

14336 dated 13.10.93, the C.D.M.O., Cuttack declared that the petitioner's father had been permanently incapacitated. Therefore, the

application which was filed on 26.6.92 was only acceptable on 13.10.93 when it was complete in all respects. The application filed for

rehabilitation assistance was grossly barred by limitation as contained in the Regulation 9(5). Thus, the petitioner is not entitled to get a

rehabilitation assistance appointment. It is further stated that during the pendency of the writ application the Orissa Electricity Reforms Act has

come into existence; thereby the erstwhile Electricity Board has been ceased to exist and the Grid Corporation of Orissa has come into existence

with effect from the said appointed date. With the commencement of the Grid Corporation of Orissa, by virtue of Notification published and issued

on 29.3.96 the erstwhile Orissa State Electricity Board Service (Rehabilitation Assistance) Regulation, 1992 has been repealed by virtue of Orissa

State Electricity Board Service (Rehabilitation Assistance) (Repealing) Regulation, 1996 has come into existence. By virtue of such operation of

law now the benefits under the Rehabilitation Assistance Regulation cannot be extended to any person by such repealing provision and further the

Board of Directors has taken a decision not to give any appointment to any of the employees under the Grid Corporation of Orissa Limited.

4. Heard Ms. M. Panda, learned counsel for the petitioner and Mr. T.R. Mohanty, learned counsel for the opposite party no. 4.

5. Clause 9(5) of the Orissa State Electricity Board Service (Rehabilitation Assistance) Regulation, 1992 (hereinafter referred as ""Regulation"")

provides thus:-

The family of a Board's employee who has sought for retirement on the ground of in validness within the last 5 years of his service proceeding the

date of his normal superannuation shall in no case be eligible for rehabilitation employment under these Regulations"".

6. The date of retirement of the father of the petitioner was 30.4.1998, but he retired from services on 1.11.93. In view of the Clause 9(5) of the

Regulation that since the father of the petitioner retired from services within five years of his service proceeding the date of his normal

superannuation, the petitioner is not eligible to appoint under Rehabilitation Assistance Scheme.

7. This matter may be examined from another angle. At the time of filing of the writ petition in the year 1996, the petitioner was 22 years. After

lapse of so many years, whether appointment can be made under the Rehabilitation Assistance Scheme.

8. An identical matter came for consideration before the apex Court in the case of State of J. & K. and others v. Sajad Ahmed Mir, AIR

2006 SC 2743. In paragraph 11 of the report held thus:

xxx xxx xxx

Normally, an employment in Government or other public sectors should be open to all eligible candidates who can come forward to apply and

compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be

made to public office. This general rule should not be departed except where compelling circumstances demand, such as, death of sole bread

earner and likelihood of the family suffering because of the setback. Once it is proved that in spite of death of bread earner, the family survived and

substantial period is over, there is no necessity to say "goodbye" to normal rule of appointment and to show favour to one at the cost of interests of

several others ignoring the mandate of Article 14 of the Constitution.

(emphasis laid)

9. In view of the discussions made in the preceding paragraphs, this Court is of the considered opinion that the writ petition, sans merit, deserves

dismissal. Accordingly, the same is dismissed.