
(1999) 07 OHC CK 0056
In the Orissa High Court
Case No : O.J.C. No. 2700 of 1999

Miss Supriya Lenka

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 28-07-1999

Acts Referred:

Orissa Civil Services (Rehabilitation Assistance) Rules, 1990 — Rule 5, 8D, 9

Citation : (2000) 89 CLT 326

Hon'ble Judges : A. Pasayat, Acting C.J.; P.K. Misra, J

Bench : Division Bench

Advocate : Ullash Chandra Mohanty, for the Appellant;

Final Decision : Allowed

Judgement

A. Pasayat, A.C.J.

1. Though the factual controversy lies within a very narrow compass, an interesting question of law arises for consideration.

2. Factual position is almost undisputed and is as follows:

Petitioner's sister was a health worker C.A.N.M.) and while on duty on 25-1-1992 she was murdered. Petitioner is a graduate and also knows typewriting. She applied for a Class III post under the Rehabilitation Assistance Scheme (hereinafter referred to as the "Scheme") on 16-4-1992. The Collector, Cuttack gave a certificate that she was the only legal heir of her deceased sister and also stated that the family of the Petitioner was In distress. After receipt of the certificate from the Collector, the Director of Family Welfare, Orissa enquired about the vacancy position from the Chief District Medical Officers of Dhenkanal, Balasore, Cuttack in his letter Nos. 12876, 12582 and 12574 dated 25-4-1994, By letter dated 6-1-1996 the Directorate of Family Welfare, Orissa forwarded all the documents in connection with the appointment of the Petitioner as Junior Assistant. According to the Directorate, there was no scope for providing appointment in any other equivalent post under the administrative control of the

Directorate of Family Welfare. The letter was sent by the Director of Family Welfare, Orissa. On 1-3-1996 the Tahasildar, Niali in reply to the letter of the Director of Family Welfare, Orissa wrote that the Petitioner was married. This was in response to the query-as to whether the Petitioner was married.

3. Making a grievance that those who were placed below the Petitioner in the panel list of eligible persons for appointment under the Rehabilitation Assistance Scheme have been given appointment, Petitioner moved the authorities ventilating her grievances. But since there was no positive response, Petitioner moved the Orissa Administrative Tribunal (in short, the "Tribunal"). By order dated 6-3-1998 in O.A. No. 146(C) of 1998 the Tribunal disposed of the original application with a direction to the concerned authorities to dispose of Petitioner's representation. It was made clear in the said order that if no appointment was to be given, reason therefore was to be indicated to the applicant. Making grievance that the direction given was not complied with. 1. P. No. 234(C) of 1998 was filed which was disposed of by order dated 9-2-1998. It was held by the Tribunal that there was no positive detection for appointment. However, the direction regarding intubation of reason was to be complied with within one week.

4. Petitioner makes a grievance that with a view to deny her appointment, she was asked to appear at the typing test, Same was a show of test because persons to be appointed had been pre-determined. Seven persons were appointed whose cases for consideration were to be taken up subsequently because of the corresponding dates of death which are the determinative factor. Illegally that was overlooked and the Petitioner was denied the opportunity of getting a job. The appointments are purported to have been made under Rule 5 read with Rule 9 of the Orissa Civil Services (Rehabilitation Assistance) Rules, 1990 (in short the "Rules").

5. In the counter affidavit filed by opposite party No. 2 it has been stated that on receipt of Petitioner's application from the Directorate of Family Welfare, Orissa on 8-1-1996 her name was included" in the panel of rehabilitation assistance cases maintained by the Director of Health Services, Orissa, and her serial number was 151. Subsequently a list of valid applications for appointment under rehabilitation assistance scheme was prepared in which name of Petitioner was at serial No. 4. Same was the provision in the panel maintained by the Director of Health Services, Orissa for the period from 8-1.1996 to 12-5.1997. She was called for the typing test on 19.5.1997 along with ten Others, who possessed typewriting certificates. But she did not qualify, "It is stated that the Petitioner was appointed as a Peon in the office of LEU, Khurda by order dated 15-3-1999, i.e. after filing of the writ application. Petitioner made a representation to the Director of Health Services" Orissa on 26.4.1997 and the same was sent to the Director of Family Welfare on 20-6-1997 for consideration of appointment under the rehabilitation assistance scheme as per the decision taken in the meeting of all Directors held on 12-5-1997. With reference to Rule 8D of the Rules, it is submitted that in cases arising in offices of Heads of Department the Head of

Department shall appoint the candidate in his office or in the office subordinate thereto. Accordingly three candidates who are the family members of deceased/invalid employees of the Directorate of Health Services were appointed as Junior Assistants. Application of the Petitioner was received from the Director of Family Welfare on 8-1-1996 and the same was returned to the Director of Family Welfare, Orissa on 20-6-1997 for consideration of application of the Petitioner as per decision taken in the meeting" of all Directors held on 12-5-1997. During the period the application of the Petitioner was retained in the office of the Director of Health Services, Petitioner was called upon for typing test, but she could not come out successful as indicated above. As the application of the Petitioner was transmitted to the Director of Family Welfare, Orissa, her name was not in the revised panel prepared on 12-5-1997 as per decision taken in the meeting of all Directors of the combined Health Directorate held on 12-5-1997, and therefore, the question of the Director of Health Services considering the application of Petitioner did not arise. In any event on direction being given by the Tribunal Petitioner has been offered Class IV post. After receipt of the Tribunal order the Director of Family Welfare moved the Government for clearance of the High Power Committee for appointment of the Petitioner against a Class IV post as ban order was imposed by the State Government for filling up base level posts. It is stated that Smt. Tanuja Rath was appointed as a Junior" Assistant under the rehabilitation assistance scheme in the Directorate of Health Services, Orissa in pursuance of the instruction of Government vide orders dated 22-3-1995, 15-1-1998 and 18-3-1998.

6. - Somewhat confusing scenario emerges if the factual position as highlighted above is considered. It is not clear as to why the Petitioner's application was not considered for appointment as a Junior Assistant. Plea that she was directed to appear in the typing test for the post of Junior Grade Typist is really not the answer to the dispute raised. Annexure- 6 and 9 to which Petitioner has referred to in order to substantiate her plea of mala fides relate to Junior Assistants. Though reference has been made in the counter affidavit by the Director of Health Services about some decision having been taken by all the Directors of combined Health Directorate on 12-5-1997, details thereof have not been brought on record. A clear stand has been taken by the Petitioner that one Tanuja Rath took the advantage of the rehabilitation assistance scheme twice for being appointed as a Junior Assistant in the Directorate of Health Services, Orissa, Only explanation offered is about the order of the Government. But the background in which the order was passed has not been indicated. Petitioner seems to have some genuine grievance that the persons whose cases came up for consideration in 1994 or 1995 have received priority over her case.

7. In the circumstances, we direct that the Petitioner's case for appointment as a Junior Assistant be considered by taking into account all relevant aspects including the date of her application and the date of the recommendation. It is open to the Petitioner to join in the Class IV post offered to her by order dated 15-3.1999. This shall not however, stand on the way of considering the

Petitioner's application for the post of Junior Assistant or any Class HI post. In view of this direction, we have not considered it necessary to decide the question, interesting though it is, whether under the Scheme a person can be considered for appointment to a post higher to that held by the person in whose place the applicant is to be considered.

The writ application is allowed to the extent indicated above. No costs.

P.K. Misra, J.

I agree.

Writ application allowed.