

(2007) 08 OHC CK 0017
In the Orissa High Court
Case No : Writ Petition (C) No. 9089 of 2005

Mudgar Pradhan

APPELLANT

Vs

Mahanadi Coal Fields

RESPONDENT

Date of Decision : 22-08-2007

Acts Referred:

Orissa Civil Services (Rehabilitation Assistance) Rules, 1990 — Rule 2

Citation : (2007) 2 OLR 1095 Supp

Hon'ble Judges : S. Panda, J;B.P. Das, J

Bench : Division Bench

Judgement

B.P. Das, J.—Heard learned Counsel for the Petitioner.

2. The Petitioner has filed this writ application for a direction to the opposite parties to give an employment to his son-in-law under the provisions of the National Coal Wage Agreement-VI.

3. The case of the Petitioner is that he was the holder of R.O.R. in respect of the land measuring Ac. 4.015 dec. in Khata No. 59(P) situated in mouza-Dalipali in the district of Jharsuguda. "The said land was acquired by the opposite parties and in return, his son Raj Kumar Pradhan was given an appointment under Land Oustee Scheme as general mazdoor. A copy of the letter giving appointment to said Raj Kumar Pradhan has been annexed to the writ petition as Annexure-1. While working as such, unfortunately Raj Kumar Pradhan, the son of the Petitioner, died on 18.3.1998. Though he was unmarried, he left behind an unmarried sister and the Petitioner and now the Petitioner, after the marriage of her daughter, is depending upon his daughter and her husband. Hence, a prayer has been made by the Petitioner for appointment of his son-in-law in place of his son, who had got an appointment and died in harness.

4. A counter-affidavit has been filed by the opposite parties and it is submitted by Mrs. Sikdar, the learned Counsel for the opposite parties, that the person, who seeks an appointment under the opp.parties for which this writ application has

been filed, being the brother-in-law of the deceased, is not entitled to get the benefit since there is no such provision.

5. In this regard, our attention was drawn to the decision of this Court in the case of Chakradhar Das and Another Vs. Orissa Bridge and Construction Corporation Limited and Another, , wherein, while interpreting Rule 2(b) of the Orissa Civil Services (Rehabilitation Assistance) Rules, 1990, it has been held that a brother-in-law does not come within the definition of "family members" but while considering the issue, the expression "deserving case" in Rule 2(a) cannot be lost sight of and as per the definition, a deserving case is one where the death or incapacitation of the employee has adversely affected his family financially because the family has no alternative mode of livelihood or there is existence of indigent conditions in the family after death or invalid retirement of the employee.

6. Mrs. Sikdar, learned Counsel for the opposite parties, submitted, that this decision is no way applicable to the Petitioner because the opposite parties are governed by the National Coal Wage Agreement-VI and there is no expression like "deserving case" in it.

7. Be that as it may, appointment under the Rehabilitation Scheme is given to a person who is adversely affected. Here, the Petitioner has been adversely affected when his land was acquired by the opposite parties for which an employment was given to his son. Had his son completed the entire tenure of his service, the Petitioner would not have any grievance. But unfortunately, the son of the Petitioner, while working under the opposite parties, died untimely leaving behind the Petitioner again in distress. The land is gone; so also the son and the livelihood. This should be the prime consideration of the opposite parties who are the Government of India Company and its authorities. The family, as it appears from the writ application, has no alternative mode of livelihood and there is existence of indigent condition in the family.

8. Considering the facts and circumstances of the case and particularly the circumstance that the Petitioner's son was employed and died untimely, we are of the view that the authorities should have taken a lenient view in this case and provided an employment to the son-in-law of the Petitioner on whom he is dependent now.

9. Therefore, we dispose of this writ application directing the opposite parties to re-consider sympathetically the case of the Petitioner for appointment of his son-in-law taking into account the distressed and indigent condition of the Petitioner and take necessary decision on the same as early as possible by giving an appointment to the Petitioner's son-in-law suitable to his qualification and experience. The entire exercise shall, however, be completed within a period of three months from the date of production of a certified copy of this order.