

(2022) 10 OHC CK 0126

In the Orissa High Court

Case No : Writ Petition Civil (OAC) No.671 Of 2017

Sunita Barik & Anr

APPELLANT

Vs

State Of Odisha & Ors

RESPONDENT

Date of Decision : 21-10-2022

Acts Referred:

Administrative Tribunals? Act, 1985 — Section 19
Orissa Civil Service (Rehabilitation Assistance) Rules, 1990 — Rule 2(b)

Citation : (2022) 10 OHC CK 0126

Hon'ble Judges : Biraja Prasanna Satapathy, J

Bench : Single Bench

Advocate : L.P. Dwivedy, A.P. Das

Final Decision : Disposed Of

Judgement

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Heard Mr. L.P. Dwivedy, learned counsel for the Petitioners and Mr. A.P. Das, learned ASC appearing for the Opp. Parties.
3. The present writ Petition has been filed with the following prayer:-
"In view of the above facts mentioned in Para-6 above the applicant prays for the following reliefs:-
(i) Quash the order dated 08.04.2016 passed by the High Power Committee under Annexure-6 as far as it relates to the applicants by concurrently holding the same as bad in law and thereby direct the State Respondents to appoint the applicant No. 1 in a suitable post within a stipulated period as may be prescribed by this Hon'ble Tribunal;
(ii) And pass such any other order/orders, direction/directions as may be deemed fit and proper in the bona fide interest of justice."

4. It is submitted that on the death of the Petitioner's father on 01.06.2011, who was working as Survey Khalasi (W/C) in Rengali Irrigation Department, the Petitioner made her application for appointment under the provision of Rehabilitation Assistance Scheme, being the unmarried daughter of the deceased employee.

5. Learned counsel for the Petitioner submitted that the Chief Engineer sent the proposal to the Engineer-in-Chief, Water Resources Department for consideration of her appointment after receipt of the distress certificate. Subsequently, vide Annexure-5 the proposal was recommended to the Govt.-O.P. No. 2 for taking further action in the matter.

6. It is submitted that though everything was complied with, but O.P. No. 3 basing on the impugned order dtd.08.04.2016 under Annexure-7 rejected the claim of the Petitioner vide Annexure-6 on the ground that the spouse of the deceased employee since was alive at the time of his death, the Petitioner's claim cannot be considered for appointment under Rehabilitation Assistance Scheme.

7. It is also submitted that the grounds on which the claim of the Petitioner was rejected 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).

8. It is submitted that in the said 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 the Petitioner complied with all the requirements and wife of the deceased employee had already crossed the age of 55 years, the claim of the Petitioner should not have been rejected on the ground indicated in the impugned communication at Annexure-7.

9. Mr. A.P. Das, learned ASC on the other hand submitted that since the wife of the deceased employee was very much available, the claim of the Petitioner No. 1 being the 6th legal heir of the deceased employee is not entertainable and accordingly no illegality has been committed by the O.P. No. 1 in rejecting the same.

10. 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 was not only entertained, but also was duly processed and recommended to the O.P. No. 1 for appropriate action.

11. In view of such steps taken in the matter, the claim of the Petitioner should not have been rejected. In any view of the matter, this Court finds that the Petitioner's claim has been illegally rejected and accordingly this Court is pleased

to quash the said rejection available at Annexure-7 so far as it relates to the Petitioner and consequential order at Annexure-6. While quashing the same, this Court directs the O.P. No. 1 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 in view of the decision of the Hon'ble Apex Court in the case of Malayananda Sethi Vs. State of Odisha. Such a fresh decision shall be taken within a period of two (2) months from the date of receipt of this order. If on such recommendation, the Petitioner is found eligible, necessary order of appointment be issued within the above said time period.

12. The writ Petition is disposed of with the aforesaid observation and direction.

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