

(2016) 11 OHC CK 0008

In the Orissa High Court

Case No : Writ Petition (C) No. 16454 of 2012

Susama Rath @ Panda

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 10-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226, Article 227

Citation : (2017) AIRCC 1471 : (2017) 123 CutLT 708

Hon'ble Judges : Kumari Sanju Panda and Shri Sujit Narayan Prasad, JJ.

Bench : Division Bench

Advocate : M/s. Srikanta Ku. Nath, Advocate, for the Petitioner; Mr. S. Mishra, Addl. Government Advocate, for the Opposite Party; M/s. Niranjana Panda(I), M.K. Panda, Miss S. Mazumdar, Advocates, for the Opposite Party No. 4

Final Decision : Dismissed

Judgement

S.N. Prasad, J.—This writ petition has been filed for the following reliefs :

"(i) direct/order the opp. parties to consider the case of the petitioner for appointment/engagement under the opposite parties company as pr the Rehabilitation Assistance Scheme formulated by the opposite parties company as a land oustee member;

(ii) pass such other order(s) or issue direction(s) as may be deemed fit and proper in the bona fide interest of justice.xx"

2. The factual aspect of the case is that landed property of the petitioner's family was about Ac.0.49 decimal under Khata No. 1073, plot No. 4365 of mouza-Kangula recorded in the name of Braja Mohan Rath, has been acquired for NALCO vide L.A.Case No. 1/89 for I.A.P.L. Notice under section 4(1) of the Land Acquisition Act, 1894 was issued by the Industries Department of the Government of Orissa vide letter no.10944 dated 24.4.1991 to provide rehabilitation assistance to one person from each family whose land has been acquired, husband of the petitioner was the nominee by the family members/

awardee for employment under the Scheme, but due to non-possession of minimum matric qualification he is disqualified for job under the said scheme, at that point of time as per the scheme whereas other similarly situated persons who had passed the minimum qualification, they were engaged.

It is further case of the petitioner that at the time of acquisition of land, opposite parties have agreed to provide a job to one of the family members but the same has not been followed and as such the writ petition was filed being O.J.C. No. 10706 of 1999 and the matter was disposed of on 16.8.2010, in the said writ petition the scheme was challenged but the writ petition was dismissed with direction that if the petitioner has not received financial assistance offered in lieu of employment, the same may be considered. Accordingly, the authorities are taking steps to give financial assistance but the petitioner's family refused to accept the same, in the light of this order this writ petition has been filed.

3. Counter affidavit has been filed on behalf of the opposite parties wherein, inter alia, it has been stated that the petitioner is not coming under the purview of consideration for appointment being not coming under the definition of "family" rather she is coming under the definition of "nominee" as per the definition made in the scheme and the scheme contains a condition that the offer of appointment would only be given to the family which contains the definition the awardee, his/her spouse and dependent unmarried son/daughter. Since petitioner is the nominee of Chaturbhuj Rath, daughter-in-law of the original awardee and as such she cannot be given benefit of appointment.

It has been submitted that the opposite parties are taking all efforts to extend benefit of financial assistance as has been directed by this Court in O.J.C. No. 10706 of 1999 and other analogous cases, she is not accepting it. It has been submitted that appointment under the Rehabilitation Assistance Scheme can only be given to such person who is entitled to get as per the scheme.

4. We have heard learned counsel for the parties and perused the documents available on record.

5. Undisputed fact in this case is that land of father of one Chaturbhuj Rath was acquired on 24.4.1991 since on that date notification under section 4(1) of the Land Acquisition Act, 1894 was issued. Husband of the petitioner, who was son of the original awardee, was minor during the relevant time and as such he has not been given benefit of engagement being not eligible as per the qualification prescribed under the Scheme, hence the writ petition had been filed challenging the eligibility condition before this Court being O.J.C. No. 10706 of 1999. Husband of the petitioner was one of the petitioners being petitioner no.6 and the said writ petition was disposed of with the observation that petitioner in those writ petition may be considered for financial benefit in lieu of employment. After disposal of the said writ petition on 16.8.2010, this writ petition has been filed on 4.9.2012 by the wife of Chaturbhuj Rath, petitioner no.6 in O.J.C. No. 10706 of 1999, praying to provide her benefit of appointment under the scheme.

6. We have examined the scheme as well as the definition of "family" which includes awardee, his/her spouse and dependent unmarried son/daughter. Nominee has been defined as the member of the family nominated by the awardee for the purpose of receiving benefits under this scheme. Awardee has been defined as a person to whom compensation was awarded for the land acquired for IAPL. Petitioner herein is the wife of Chaturbhuj Rath and daughter-in-law of Chaturbhuj Rath, hence being daughter-in-law of the original awardee, she will not come under the definition of "family". The scheme provides that offer of appointment can only be given to the member of the family i.e. awardee, his/her spouse and dependent unmarried son/daughter and not daughter-in-law.

It is settled that offer of appointment can be given under the scheme and for that purpose the scheme has been prepared in the shape of Rehabilitation Assistance Scheme. It is further settled that offer of appointment can only be given as per the provision of the scheme otherwise not. We have found that the petitioner is the daughter-in-law of the original awardee who is not coming under the definition of "family", hence she cannot be said to be entitled to get appointment under the scheme.

Taking into consideration the facts stated herein above, we find that the petitioner has failed to make out a case and accordingly, we decline to interfere with the same.

7. In the result, the writ petition is dismissed being devoid of merit.

Sanju Panda, J.—I agree.