

ORISSA HIGH COURT: CUTTACK**O.J.C. No.8238 OF 2000**

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Satyaranjan Kar

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Petitioner

-Versus-

Chairman-cum-Managing Director,
Grid Corporation of Orissa Ltd.,
Bhubaneswar & others

...

Opp. Parties

For Petitioner

: M/s. Santanu Kumar Sarangi
K.Dash, R.D.Tikayat

For Opp. Parties

: M/s. B.K.Patnaik, P.Sinha,
P.Choudhury

P R E S E N T :

**THE HONOURABLE MR. JUSTICE A.S.NAIDU
AND
THE HONOURABLE MR. JUSTICE B.N. MAHAPATRA**

Date of hearing -14.12.2009 : Date of Judgment - 24.12.2009

B.N.Mahapatra, J.

This writ petition has been filed with a prayer to issue writ of mandamus directing the opposite parties to appoint the petitioner on regular basis under the Rehabilitation Assistance Scheme and/or pass any other order(s)/ direction(s), as this Court may deem fit and proper.

2. Petitioner's case in a nutshell is that his father late Basanta Kumar Kar was working as Jr. Art. B at Joda E & M R-Sub-division under the control of the Executive Engineer, G.E & M.R. Division, Rourkela. While working as such, he died in harness on

30.12.1996 leaving behind his widow, one daughter and two sons. After death of father of the petitioner, the family had no other source of income to maintain themselves. Therefore, the widowed mother of the petitioner made a representation (Annexure-4) to the opposite parties to appoint her son. On 1.4.1997, the petitioner himself also made a representation (Annexure-5) for his appointment. Since the petitioner did not get any reply from the opposite parties, he made another representation on 14.12.1998 to the opposite parties making similar prayer under Annexure-6. Since these representations did not yield any result, this writ petition has been filed.

3. Mr K.C. Das, learned counsel appearing on behalf of the petitioner vehemently argued that after the death of the petitioner's father in harness the family was under utter poverty and distress. As there was no earning member in the family, the opp. parties should have given appointment to the petitioner on compassionate ground. It is further submitted that in view of the decision of this Court in ***Prakash Debata v. Executive Engineer, 1997 CLT (87) 573*** (O.J.C. No.1117/97 disposed of on 3.2.1999), wherein the opposite parties were directed to give appointment to the legal heir of the deceased, the petitioner has filed the present writ petition. Subsequently, the said decision was reviewed by this Court in Review Petition No.31/99. Therefore, to avoid further complication in the matter, the petitioner, who is in distress, does not want to proceed further with the claim for appointment. But as per Grid Corporation of Orissa Ltd. Rehabilitation Assistance Scheme Regulations, 1997, the petitioner should be paid the financial assistance of

Rs.1,00,000/- with interest at the rate of 6% per annum from 1996 till the date of payment.

4. Mr. B.K. Patnaik, learned counsel appearing on behalf of the Corporation, submitted that the Grid Corporation of Orissa Ltd. (Rehabilitation Assistance) Regulations, 1997 provide only financial assistance. There is no provision under the said Regulations for appointment of any legal heir of an employee dying in harness. The Board of Directors of the Corporation in their 3rd meeting approved the Rehabilitation Assistance Scheme providing financial assistance to the eligible family members of the deceased employee in lieu of employment and imposed total ban on appointment, as the Corporation is overburdened with the personnel. Accordingly, the Corporation framed the aforesaid Regulations of 1997 for its employees to provide financial assistance to the tune of Rs.1,00,000/- in lieu of employment. The Rehabilitation Assistance Regulations of the erstwhile O.S.E.B. and the Orissa Civil Services Rehabilitation Assistance Rules have no application to the case of the petitioner.

5. The undisputed facts are that on 30.12.1996 father of the petitioner died in harness. Thereafter, the widow of the deceased employee and the petitioner made representations to the opp. parties praying for appointment of the petitioner. On such representations no action was taken by the opposite parties. Only in the counter affidavit, the opposite parties have taken a stand that as per the Grid Corporation of Orissa Ltd. (Rehabilitation Assistance) Regulations, 1997, the petitioner is entitled to

financial assistance of Rs.1,00,000/- instead of any appointment under the Corporation.

6. At this juncture, it is relevant to refer to paragraphs-4 and 8 of the counter, which are quoted below:-

“Paragraph-4 : That in order to get financial assistance under the Regulation, the eligible family members of the deceased employee are required to apply in the prescribed manner and to prove that no other members of family is in employment and the family has no adequate means of livelihood. The above factors are required to be scrutinized before extending the benefits. The petitioner has not applied in the prescribed manner as per the Regulation of the Opp. Parties for getting financial assistance even though he has been advised to do so.”

(emphasis supplied)

Paragraph-8 : That further by virtue of the operation of the Orissa Electricity Reform Act, 1995, the OSEB ceased to function w.e.f. 1.4.96. The State Government in exercise of its power conferred upon it under the Reform Act, 1995 took over the assets and business of Transmission and Distribution of Electricity of the erstwhile OSEB and the subsequently transferred the same to the Grid Corporation of Orissa Ltd., on some specified liabilities. As per the express terms of the Reform Act, 1995, the Grid Corporation has only liability to take over the personnel with their existing service condition as on 1.4.96. There was no Rehabilitation Assistance Regulation or Scheme under the erstwhile OSEB as on 1.4.96 thereby, the same has no application to the GRIDCO.”

The plea of the opp. parties in paragraph-4 that the petitioner had not applied in the prescribed manner as per the Regulations of the Corporation for financial assistance, even though he was advised to do so, has not been substantiated by the opposite parties. No document has also been produced before the Court by the opp. parties to show that after receiving the representations under Annexures- 4 & 5 they have intimated the petitioner about the prescribed manner under the Scheme

for getting the financial assistance. It is the bounden duty of a model employer to act benevolently with all sincerity for the welfare of the legal heirs of an employee who died in harness. A model employer should not only intimate the legal heirs of the deceased employee regarding the procedure for getting the financial assistance but also send copy of the pro forma of the application to enable the bereaved family members to avail the financial assistance. This attitude of the employer, no doubt, creates ample hope and confidence in the minds of the employees for achieving excellence in service. A model employer should not take advantage of the ignorance of the prescribed manner of making application for financial assistance by any employee or his legal heirs. An employer should neither exploit its employees nor take advantage of any helplessness and misery of the employees (*See State of Haryana Vs. Piara Singh, (1992) 4 SCC 118*).

The apex Court in ***Balbir Kaur & Anr. Vs. Steel Authority of India Ltd. & Ors., JT 2000 (6) SC 281***, while dealing with a matter relating to family benefit scheme and compassionate appointment in case of an employee of Steel Authority of India died in harness observed as under:-

“The employer being Steel Authority of India, admittedly an authority within the meaning of Article 12 has thus an obligation to act in terms of the avowed objective of social and economic justice as enshrined in the Constitution but has the authority in the facts of the matters under consideration acted like a model and an ideal employer – It is in this factual backdrop, the issue needs an answer as to whether we have been able to obtain the benefit of constitutional philosophy of social and economic justice or not. Have the lofty ideals

which the founding fathers placed before us any effect in our daily life- the answer cannot however but be in the negative – what happens to the constitutional philosophy as is available in the Constitution itself, which we ourselves have no fondly conferred on to ourselves. The socialistic pattern of society as envisaged in the Constitution has to be attributed its full meaning: A person dies while taking the wife to a hospital and the cry of the lady for bare subsistence would go unheeded on certain technicality. The bread earner is no longer available and prayer for compassionate appointment would be denied, as “it is likely to open a Pandora’s Box” – This is the resultant effect of our entry into the new millennium. Can the law courts be a mute spectator in the matter of denial of such a relief to the horrendous sufferings of an employee’s family by reason of the death of the bread-earner.”

In the present case, it appears that the petitioner and his widowed mother made representations for compassionate appointment in the years 1996 & 1997. Had little sincerity been shown in taking steps on the said representations by the opposite parties by informing the petitioner about the provisions under the Regulations of the Corporation for such financial assistance, the petitioner would have been able to receive the financial assistance of Rs.1,00,000/- long back, in 1997-1998. Such financial assistance of Rs.1,00,000/- at that time would have been a great help to the bereaved family members of the deceased. Since the date of death of the deceased employee on 30.12.1996, the amount of Rs.1,00,000/- is lying with the opp. parties, who are getting benefit of the same for more than eleven years. On the other hand, it is needless to say that day-by-day the value of money is going down.

7. Taking the peculiar facts and circumstances of the case into consideration, we dispose of the writ petition with the following directions:-

- (a) Within three weeks from today the petitioner shall submit an application before the opp. parties for financial assistance in the prescribed manner as provided in Rehabilitation Assistance Scheme Regulations, 1997 of the Corporation;
- (b) On receipt of the petitioner's application, the Corporation shall scrutinize the same within two weeks thereafter;
- (c) On scrutiny, if the Corporation finds that the petitioner is eligible to get the financial assistance during the relevant time, the Corporation shall pay an amount of Rs.1,25,000/- (One lakh twenty five thousand only) to the petitioner within a period of one month from the date of receipt of the application.

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B.N.Mahapatra, J.

A.S.Naidu,J.

I agree.

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A.S.Naidu,J.