

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.C.(OA) No. 3245 of 2010

Sujay Kumar Dey

....

Petitioner

Mr. A. Das, Advocate

-versus-

State of Odisha & Ors.

....

Opposite Parties

Mr. S.K. Samal, AGA

CORAM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

31.07.2023

Order No

05.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.

2. Heard Mr. A. Das, learned counsel for the Petitioner and Mr. S.K. Samal, learned Addl. Govt. Advocate appearing for the Opp. Parties.

3. The present writ petition has been filed challenging the rejection of the Petitioner's claim for his appointment under the provisions of Rehabilitation Assistance Scheme vide order dtd.14.05.2010 under Annexure-11.

4. Learned counsel for the Petitioner contended that the Petitioner's father while working as a Primary School Teacher, he died on 10.10.1997 as reflected in Annexure-1. On the death of his father, the Petitioner when made his application for appointment under the provisions of Rehabilitation Assistance Scheme, the same was entertained and after due consideration, Opp. Party No. 2 vide his letter dtd.18.11.1999 under Anenxure-4, requested the Opp. Party

No. 3 to provide appointment to the Petitioner in a Class III Non-teaching post.

4.1. It is contended that in spite of being directed by the Opp. Party No. 3, Opp. Party No. 4 kept the matter pending without providing appointment to the Petitioner. Only vide letter dtd.09.05.2007 when the Petitioner was directed to provide various documents for verification before issuance of appointment order, the Petitioner submitted all the said documents as desired on 15.05.2007 before Opp. Party No. 3 with due endorsement under Annexure-5. But instead of providing him appointment, basing on some complaints made by a private person under Annexure-6, a show-cause was issued to the Petitioner by Opp. Party No. 4 on 22.05.2007 under Annexure-7.

4.2. It is contended that even though the Petitioner furnished a detailed reply to the show-cause vide Annexure-8 series, but his claim was initially rejected vide office order dtd.15.01.2008 under Annexure-9. Petitioner challenging the same approached the Tribunal in O.A. No. 296(C) of 2008. The Tribunal vide order dtd.12.12.2008 under Annexure-10 while disposing the matter directed the Inspector of Schools, Balasore-Respondent No. 4 therein to consider the case of the Petitioner for his appointment without being influenced by the order passed on 15.01.2008 under Annexure-9.

4.3. It is contended that in spite of such order passed by the Tribunal, the claim of the Petitioner was rejected by Opp. Party No. 4 vide the impugned order dtd.14.05.2010. Opp. Party No. 4 relying on the provisions contained under Rule 2(a)(iii) of the OCS (R.A.) Rules, 1990 rejected the claim of the Petitioner. It is contended that

since Petitioner's father died on 10.10.1997 and he made his application on 01.01.1998 under Annexure-2 and the said application on being considered, Opp. Party No. 4 was directed vide letter dtd.18.11.1999 to provide appointment to the Petitioner, the ground on which the claim was rejected vide Annexure-11 is not sustainable in the eye of law. Learned counsel for the Petitioner also brought to the notice of this Court the provisions contained under Rule 2(a)(iii) of the OCS (R.A.) Rules, which reads as under:-

“(iii) that none of the family members of the employee who has died or has suffered from permanent disability while in the employment of Government/Public or Private Sector or engaged in independent business with an earning up to Rs.20,000/-.”

4.4. It is accordingly contended that since by the time the Petitioner made his application on 01.01.1998, nobody from the Petitioner's family was in service and his elder brother only got employment in the year 2001, the same cannot be taken as a bar to provide appointment to the Petitioner. It is also contended that the Tribunal taking into account the said fact, directed the Opp. Party No. 4- Inspector of School, Balasore to take a fresh decision without being influenced by the earlier rejection so made vide order dtd.15.01.2008 under Annexure-9.

Making all such submissions, learned counsel for the Petitioner prayed for interference of this Court in the impugned order at Annexure-11.

5. Mr. S.K. Samal, learned AGA on the other hand made his submission basing on the stand taken in the counter affidavit so

filed by the Opp. Party No. 4. It is contended that even though the Petitioner on the death of his father made his application on 01.01.1998 and his claim was forwarded by the Opp. Party No. 2 vide letter dtd.18.11.1999 under Annexure-4, but by the time the claim was taken up for consideration by the Opp. Party No. 4, since it was found that Petitioner's brother is already in employment w.e.f.2001, the claim was initially rejected by the Opp. Party No. 4 vide order dtd.15.01.2008 under Annexure-9.

5.1. The matter when was challenged before the Tribunal in O.A. No. 296(C) of 2008, the Tribunal remitted the matter to Opp. Party No. 4 to take a decision without being influenced by the rejection so made on 15.01.2008 under Annexure-9. On such reconsideration since it is found that the Petitioner's elder brother has been employed in Govt. service since 2001, in view of the provisions contained under Rule 2(a)(iii) of OCS (R.A.) Rules, 1990, the Petitioner was held not eligible and entitled to get the benefit and accordingly his claim was rejected. It is accordingly contended that no illegality & irregularity has been committed by the Opp. Party No. 4 while rejecting the claim of the Petitioner.

6. Having heard learned counsel appearing for the Parties and after going through the materials available on record, it is found that the Petitioner's father in the instant case died on 10.10.1997. On the death of his father Petitioner made the application for his appointment under the provisions of Rehabilitation Assistance Scheme on 01.01.1998 under Annexure-2. In consideration of his claim Opp. Party No. 3 vide letter dtd.18.11.1999 under Annexure-4 requested the Opp. Party No. 4 to provide appointment to the Petitioner. It is found that on the face of Annexure-4, Opp. Party

No. 4 did not take any further action and only vide letter dtd.09.05.2007 he requested the Petitioner to provide all the documents for verification before issuance of such order of appointment.

6.1. As reflected in Annexure-5, Petitioner also produced the original documents which was duly endorsed by the Opp. Party No. 4 on 15.05.2007. It is found from the record that basing on some private complaints made under Annexure-6 Petitioner though was issued with a show-cause under Annexure-7, but without considering his reply to the said show-cause, the claim of the Petitioner was initially rejected by the Opp. Party No. 4 vide order dtd.15.01.2008 under Annexure-9.

6.2. The Petitioner when challenged the said order before the Tribunal in O.A. No. 296(C) of 2008, the Tribunal after hearing the learned counsel appearing for both the sides and on being pleased directed Opp. Party No. 4 take a fresh decision without being influenced by the earlier rejection made by him on 15.01.2008 under Annexure-9. On the face of such order passed by the Tribunal, Opp. Party No. 1 vide the impugned order dtd.14.05.2010 under Annexure-11 rejected the claim by relying on the provisions contained under Rule 2(a)(iii) of the OCS (R.A.) Rules, 1990. Rule 2(a)(iii) of the OCS (R.A.) Rules clearly provides that by the time application is made for appointment under the provisions of Rehabilitation Assistance Scheme, none of the family members of the employee who has died or has suffered from permanent disability is in employment in Government/Public or Private Sector or engaged in independent business with an earning up to Rs.20,000/-.

6.3. Since by the time the Petitioner made his application on 01.01.1998, nobody from the Petitioners' family was in service and it is also not a disputed one as the Petitioner's brother got the employment only in the year 2001, it is the view of this Court that the rejection of the Petitioner's claim relying on the provisions contained under Rule 2(a)(iii) of the Rules is not sustainable in the eye of law. Therefore, this Court is inclined to interfere with the order dtd.14.05.2010 under Annexure-11. While interfering with the same, this Court is inclined to quash the order dtd.14.05.2010. While quashing the order at Annexure-11, this Court directs Opp. Party No. 1 to provide appointment to the Petitioner as against any available Class IV post within a period of two (2) months from the date of receipt of this order.

7. The writ petition is accordingly disposed of with the aforesaid observation and direction.

(Biraja Prasanna Satapathy)
Judge

Sneha

Signature Not Verified

Digitally Signed
Signed by: SNEHANJALI PARIDA
Designation: Jr. Stenographer
Reason: Authentication
Location: High Court of Orissa, Cuttack
Date: 02-Aug-2023 13:48:41

