

AFR



ORISSA HIGH COURT : CUTTACK

WA No.130 of 2025

In the matter of an Appeal under Article 4 of
the Odisha High Court Order, 1948
read with
Clause 10 of the Letters Patent constituting
the High Court of Judicature at Patna
and
Rule 6 of Chapter-III and Rule 2 of Chapter-VIII
of the Rules of the High Court of Odisha, 1948

* * *

- 1.** State of Odisha.
Represented through its
Principal Secretary, Forest,
Environment & Climate Change Department,
At: Lok Seva Bhawan, Bhubaneswar
District: Khordha.
 - 2.** Principal Chief Conservator of Forests,
Odisha, Bhubaneswar
District: Khordha.
 - 3.** Regional Chief Conservator of Forests,
Berhampur Circle, Berhampur,
District: Ganjam.
 - 4.** Divisional Forest Officer,
Ghumsur North Division,
Bhanjanagar,
District: Ganjam.
- ... Appellants
(Opposite Party
Nos.1, 2, 3 & 4 in
the writ petition)



-VERSUS-

Saroj Kumar Pradhan,
Son of Late Biralaxman Pradhan,
At: Tinichhakia,
P.O./P.S.: Tarasingh,
District: Ganjam. ...

Respondent
(Petitioner in the
writ petition)

Counsel appeared for the parties:

For the Appellants : Mr. Saswat Das,
Additional Government Advocate
For the Respondent : Mr. Satyajit Behera,
Advocate

P R E S E N T:

**HONOURABLE CHIEF JUSTICE
MR. HARISH TANDON**

AND

**HONOURABLE JUSTICE
MR. MURAHARI SRI RAMAN**

Date of Hearing : 05.08.2025 :: Date of Judgment : 26.08.2025

JUDGMENT

MURAHARI SRI RAMAN, J.—

Aggrieved by Order dated 01.02.2024 passed in W.P.(C)
No.1887 of 2024 by a learned Single Bench of this Court
exercising extraordinary jurisdiction under Articles 226



and 227 of the Constitution of India, the writ appeal has been preferred by the State of Odisha and its functionaries.

Facts:

2. The record reveals that the father of the respondent while working as Forester under Divisional Forest Officer, Ghumsur North Division, Bhanjanagar-appellant No.4 died in harness on 25.03.2015, which led to making an application dated 08.02.2016 under Rule 8 of the Odisha Civil Services (Rehabilitation Assistance) Rules, 1990 (for short, “RA Rules, 1990”) before the competent authority and the respondent applied for the post of Forest Guard/Junior Clerk.

2.1. The appellant No.4 after lapse of four years, *vide* Letter dated 31.08.2018 taking shelter of Rule 8 of the RA Rules, 1990 as amended by virtue of the Odisha Civil Service (Rehabilitation Assistance) Rules, 2016 [General Administration Department Notification No.GAD-SC-RULES-0020-2015— 2335/Gen], dated 05.11.2016, prescribing new set of modalities directed the respondent to take test in Computer and English Skill test in the category of Group-C [Junior Clerk] for appointment under the RA Rules, 1990. As the Committee found him unsuitable for the said post, the



application of the respondent was not accepted, which was intimated *vide* Letter dated 22.09.2018.

2.2. The respondent again made application dated 19.02.2019 for the post of “Forest Guard” which was taken up for consideration *vide* Letter Memo No.1908, dated 22.04.2020. The Division Forest Officer, Ghumsar North Division, Bhanjanagar, appellant No.4, by Letter dated 31.12.2020 directed the respondent to make application afresh as provided under newly introduced Rules, *viz.*, the Odisha Civil Services (Rehabilitation Assistance) Rules, 2020, *vide* General Administration Department Notification No.5651-GAD-SC-RAS-0029-2014/Gen., dated 17th February, 2020 [for convenience referred to as “RA Rules, 2020”].

2.3. Questioning propriety of issue of such direction, the petitioner citing the ruling of the Hon’ble Supreme Court of India rendered in the case of *Malaya Nanda Sethy Vrs. State of Odisha, (2022) 4 SCR 707* the petitioner approached this Court in writ petition, registered as W.P.(C) No.1887 of 2024, which got disposed of by Order dated 01.02.2024, by a learned Single Bench with the following observation:

“***

6. *Having heard learned counsels appearing for the respective parties, on a careful examination of the*



factual backgrounds of the present case as well as materials on record, this Court is of the considered view that the case of the petitioner is covered by the judgments referred to hereinabove¹, accordingly, the same is required to be considered under the O.C.S. (RA) Rules, 1990. Therefore, the letter under Annexure-8 asking the petitioner to submit a fresh application pursuant to the GA & PG Department notification dated 17.02.2020 is without jurisdiction. In such view of the matter, this Court is of the considered view that the letter under Annexure-8 is unsustainable in law and accordingly the same is hereby quashed. Further, the opposite parties are directed to consider the case of the petitioner under the O.C.S. (RA) Rules, 1990 for giving appointment to the petitioner on compassionate ground against any of the available posts taking into consideration the eligibility and suitability of the petitioner within a period of two months from the date of communication of a certified copy of this order. Any decision taken by the opposite parties to be communicated to the petitioner within ten days from the date of taking such decision.

7. *With the aforesaid observation/direction, the writ petition is disposed of.”*

2.4. Dissatisfied thereby, the appellants-functionaries of the Government of Odisha have filed the instant writ appeal with delay.

¹ *Malaya Nanda Sethy Vrs. State of Orissa and others, 2022 (II) OLR (SC) 1 = (2022) 4 SCR 707 = 2022 INSC 617; State of West Bengal Vrs. Debabrata Tiwari, (2023) 3 SCALE 557 = (2023) 2 SCR 611 = 2023 INSC 202; Suchitra Bal Vrs. State of Odisha, in W.P.(C) No.2081 of 2021 & batch, disposed of on 27.06.2023 [2023 SCC OnLine Ori 7106] and State of Odisha and others Vrs. Bindusagar Samantaray, in W.A. No.810 of 2021, disposed of on 25.09.2023 [Orissa High Court].*



2.5. In this intra-Court appeal the appellants raised question of law as to whether the modalities prescribed in the RA Rules, 1990, for consideration of application for compassionate appointment are applicable in the present case on the ground that on the date of consideration of application for rehabilitation appointment, the petitioner applied afresh in term of the RA Rules, 2020.

Hearing:

3. This matter was on board on 05.08.2025 under the heading “For Orders” for consideration of condonation of delay. The respondent entered appearance through Mr. Satyajit Behera, learned Advocate.

3.1. Since the matter relates to compassionate appointment under the Rehabilitation Assistance Scheme for extending succour to the family of the respondent-son, whose father died in harness in the year 2015, while in Government service, on the concession of counsel for the respondent, delay in filing the writ appeal was condoned on 05.08.2025.

3.2. It is submitted at the Bar that since writ appeal is pending before this Court, the authority concerned is not in a position to take up the application as directed by the learned Single Bench for consideration. On the consent of counsel for both the sides the merit of the



writ appeal is taken up for hearing and disposal of the present matter at this stage in view of subsequent developments *qua* amendment being carried in Rule 6(9) of the Rules, 2020 by virtue of the Odisha Civil Services (Rehabilitation Assistance) Amendment Rules, 2025.

3.3. Accordingly, heard Sri Saswat Das, learned Additional Government Advocate for the appellants and Sri Satyajit Behera, learned Advocate representing the respondent.

Rival contentions and submissions:

4. Sri Saswat Das, learned Additional Government Advocate for the appellants submitted that the application for compassionate appointment of the respondent was taken up by the authority concerned in the year 2021, when the RA Rules, 2020 was in vogue.

4.1. The authority is empowered to consider application made as per Rule 6(9) of the Rules, 1990 as amended. Therefore, the Order dated 31.12.2020 being in consonance with the RA Rules, 2020 ought not to have been interfered with by this Court in exercise of powers under Article 226/227 of the Constitution of India.

4.2. Beseeching indulgence of this Court, Sri Saswat Das, learned Additional Government Advocate, insisted for setting aside the Order passed in writ petition by learned Single Bench and prayed to restore the Order of rejection



dated 31.12.2020 of the Divisional Forest Officer, Ghumsur North Division-appellant No.4.

5. Sri Satyajit Behera, learned Advocate, *per contra*, strenuously argued that this Court in the case of *Biswajit Swain Vrs. State of Odisha and others*, W.P.(C) No.5214 of 2021 *vide Judgment dated 31.10.2023* declared Rule 6(9) of the RA Rules, 2020 *ultra vires*. The Hon'ble Supreme Court of India though issued notice in the matter and directed to tag with SLP(C) No.28521 of 2023, no stay of operation of the Judgment dated 31.10.2023 of this Court was granted. Hence, he would submit that no infirmity or illegality can be perceived in the direction to appellant No.4 to consider the application of the respondent for compassionate appointment under the Rules, 1990, since the same was furnished before the authority prior to the Rules, 2020 came into force.

5.1. Expanding his argument further, he urged that this Court in the case of *Suchitra Bal Vrs. State of Odisha*, in W.P.(C) No.2081 of 2021 & batch, disposed of on 27.06.2023 and *State of Odisha and others Vrs. Bindusagar Samantaray*, in W.A. No.810 of 2021, disposed of on 25.09.2023 having already interpreted the application of relevant Rules, the same question cannot fall for reconsideration. In the said cases it has been held that the application for compassionate appointment



under the Rehabilitation Assistance Scheme filed under the Rules, 1990 is to be considered as per the Rules prevailing on the date of application, but not in terms of the Rules, 2020. Such view of this Court finds support of the decision of the Hon'ble Supreme Court of India in the case of *Malaya Nanda Sethy Vrs. State of Odisha and others, 2022 (II) OLR (SC) 1 = (2022) 4 SCR 707 = 2022 INSC 617*.

5.2. It is submitted that since the father of the respondent died in harness on 25.03.2015 and the application for compassionate appointment was filed on 09.02.2016, the applicable Rules for consideration is the Odisha Civil Services (Rehabilitation Assistance) Rules, 1990. Because of delay in entertaining of application dated 08.02.2016 on the part of the authority concerned, the applicable Rules to present context cannot be said to be Rules, 2020. The approach of the Additional Chief Engineer as reflected in Order dated 31.12.2020 is palpably erroneous inasmuch as the subsequent Rules, *i.e.*, the Odisha Civil Services (Rehabilitation Assistance) Rules, 2020 has no impact on the fact-situation of the present case.

5.3. Therefore, he submitted that the writ appeal, being devoid of merit, warrants dismissal with cost.

Discussions and analysis:



6. Scrutiny of record reveals that there is no dispute with regard to fact that the father of the respondent died while he was working as Government employee on 25.03.2015 and application for consideration of compassionate appointment under the Rules, 1990 was submitted to the authority concerned on 09.02.2016, and the said application was rejected by the appellant No.4 *vide* Letter dated 31.12.2020 with direction to the respondent to file a fresh application in proper format.
7. The seminal question which arises for consideration is whether the learned Single Bench is justified in directing the authority to consider the application of the respondent for compassionate appointment in term of the Odisha Civil Services (Rehabilitation Assistance) Rules, 1990 in the light of *Malaya Nanda Sethy (supra)*; *Suchitra Bal (supra)* and *Bindusagar Samantaray (supra)*.
- 7.1. To answer this question this Court takes an excursion of certain judgments on the point.
- 7.2. In the case of *Malaya Nanda Sethy (supra)*, the Hon'ble Supreme Court of India has been pleased to observe as follows:
- “Thus, from the aforesaid, it can be seen that **there was no fault and/or delay and/or negligence on the part of the appellant at all.** He was fulfilling all the conditions for appointment on compassionate grounds under the 1990 Rules. **For no reason, his application***



was kept pending and/or no order was passed on one ground or the other. Therefore, when there was no fault and/or delay on the part of the appellant and all throughout there was a delay on the part of the department/authorities, the appellant should not be made to suffer. Not appointing the appellant under the 1990 Rules would be giving a premium to the delay and/or inaction on the part of the department/ authorities. There was an absolute callousness on the part of the department/authorities. The facts are conspicuous and manifest the grave delay in entertaining the application submitted by the appellant in seeking employment which is indisputably attributable to the department/authorities. ***In fact, the appellant has been deprived of seeking compassionate appointment, which he was otherwise entitled to under the 1990 Rules.*** The appellant has become a victim of the delay and/or inaction on the part of the department/authorities which may be deliberate or for reasons best known to the authorities concerned. Therefore, in the peculiar facts and circumstances of the case, keeping the larger question open and aside, as observed hereinabove, we are of the opinion that the appellant herein shall not be denied appointment under the 1990 Rules.”

7.3. In the case of *State of West Bengal Vrs. Debabrata Tiwari*, (2023) 2 SCR 611, laying emphasis on the observations made in *Malaya Nanda Sethy (supra)*, the Hon’ble Supreme Court of India observed thus:

“11. It may be apposite at this juncture to refer to the following observations of this Court in *Malaya Nanda Sethy Vrs. State of Orissa*, AIR 2022 SC 2836, as to the manner in which the authorities



must consider and decide applications for appointment on compassionate grounds:

- ‘9. *Before parting with the present order, we are constrained to observe that considering the object and purpose of appointment on compassionate grounds, i.e., a family of a deceased employee may be placed in a position of financial hardship upon the untimely death of the employee while in service and the basis or policy is immediacy in rendering of financial assistance to the family of the deceased consequent upon his untimely death, **the authorities must consider and decide such applications for appointment on compassionate grounds as per the policy prevalent, at the earliest,** but not beyond a period of six months from the date of submission of such completed applications.*

We are constrained to direct as above as we have found that in several cases, applications for appointment on compassionate grounds are not attended in time and are kept pending for years together. As a result, the applicants in several cases have to approach the concerned High Courts seeking a writ of Mandamus for the consideration of their applications. Even after such a direction is issued, frivolous or vexatious reasons are given for rejecting the applications. Once again, the applicants have to challenge the order of rejection before the High Court which leads to pendency of litigation and passage of time, leaving the family of the employee who died in harness in



the lurch and in financial difficulty. Further, for reasons best known to the authorities and on irrelevant considerations, applications made for compassionate appointment are rejected. After several years or are not considered at all as in the instant case.

*If the object and purpose of appointment on compassionate grounds as envisaged under the relevant policies or the rules have to be achieved then it is just and necessary that such applications are considered well in time and not in a tardy way. We have come across cases where for nearly two decades the controversy regarding the application made for compassionate appointment is not resolved. **This consequently leads to the frustration of the very policy of granting compassionate appointment on the death of the employee while in service.** We have, therefore, directed that such applications must be considered at an earliest point of time. The consideration must be fair, reasonable and based on relevant consideration. The application cannot be rejected on the basis of frivolous and for reasons extraneous to the facts of the case. Then and then only the object and purpose of appointment on compassionate grounds can be achieved.'*

In the said case, the claim of the appellant-applicant therein for compassionate appointment was directed by this Court to be considered by the competent authority. This Court noted that in the said case, there was no lapse on the part of the appellant-



applicant therein in diligently pursuing the matter. The delay in considering the application of the appellant therein was held to be solely attributable to the authorities of the State, and no part of it was occasioned by the appellant-applicant. Further, in the said case, the appellant-applicant was prejudiced not only because of the prolonged delay in considering his application but also by the fact that in the interim, the policy of the State governing compassionate appointment had changed to his detriment. Therefore, the facts of the said case were distinct from the facts involved herein. In the present case, the conduct of the Respondents-Writ Petitioners cannot be said to be blameless in that they did not pursue their matter with sufficient diligence. However, the observations made in the said case as to the manner in which applications for compassionate appointment are to be considered and disposed of are relevant to the present case.”

7.4. In the cases of *Suchitra Bal Vrs. State of Odisha*, in W.P.(C) No.2081 of 2021 & batch, disposed of on 27.06.2023 this Court held as follows:

“71. In *State Bank of India Vrs. Sheo Shankar Tewari*, (2019) 5 SCC 600, a two-Judges Bench of the apex court noticed that the view in *State Bank of India Vrs. Raj Kumar*, (2010) 11 SCC 661 and *MGB Gramin Bank Vrs. Chakrawarti Singh*, (2014) 13 SCC 583 is on one side and the contrary view as expressed in *Canara Bank vs. M. Mahesh Kumar*: (2015) 7 SCC 412 is on the other side. In *State Bank of India Vrs. Sheo Shankar Tewari* (2019) 5 SCC 600, the necessity of resolution of the conflicting



views was emphasized. The matter was referred for consideration by a Larger Bench so these conflicting views can be reconciled.

72. *Having considered all these decisions, it has been held in N.C. Santhosh Vrs. State of Karnataka: (2020) 7 SCC 617 that the norms, prevailing on the date of consideration of the applications should be the basis for consideration of the claim for the rehabilitation appointment or the compassionate appointment. **The dependants of a Government employee in absence of any vested right accruing on the date of death of the Government employee can only demand consideration on his/her application. They are disentitled to seek consideration in accordance with the norms as applicable on the day of death of the Government employee. For that reason, N.C. Santosh (supra) is a departure.***
73. *Having considered N.C. Santhosh (supra) and the law as decided by the apex court in various other judgments including the case of the Secretary to the Government, Department of Education (Primary) and others Vrs. Bheemesh @ Bheemappa, 2021 SCC Online SC 1264, the observation in Malaya Nanda Sethy (supra) was framed. In Bheemesh @ Bheemappa (supra), it has been held that the relevant scheme and/or the Rules prevalent at the time of death of the employee who died in harness is required to be considered and not under the amended rules prevalent at the time of consideration of the application.*
74. *In Malaya Nanda Sethy (supra), the decision has been rendered on the issue whether the Odisha Civil*



Service (Rehabilitation Assistance) Rules, 1990 which we have referred as the old Rules would apply in respect of all the applications which were submitted prior to 17.02.2020 on which day, the Odisha Civil Services (Rehabilitation Assistance) Rules, 2020 was brought in force in total suppression of the Odisha Civil Service (Rehabilitation Assistance) Rules, 1990.

75. ***In Rule 6(9), all the pending cases were saved for consideration under the new Rules, 2020. We have reproduced the provisions of Rule 6(9) of the Odisha Civil Services (Rehabilitation Assistance) Rules, 2020.***
76. *The petitioner has challenged Rule-6(9) of the new Rules asserting that it takes away their right to be considered under the old Rules i.e. the Odisha Civil Service (Rehabilitation Assistance) Rules, 1990. They are entitled to be considered under the old Rules for two reasons:*
- (1) Death of the deceased employee/worker had taken place prior to 17.02.2020 and the application for rehabilitation assistance in all the cases had been filed prior to 17.02.2020.*
 - (2) It is for the delay caused by the opposite parties, the petitioner's case was not considered under the old Rules i.e. the Odisha Civil Service (Rehabilitation Assistance) Rules, 1990.*
77. *In all the cases, the opposite parties asked for resubmission of the application for rehabilitation assistance in the prescribed format under the new*



rules. One of the petitioners, as noted by us, had filed such petition for consideration under the new Rules, i.e. Odisha Civil Services (Rehabilitation Assistance) Rules, 2020.

78. As discussed already, in *Malaya Nanda Sethy* (supra), a two Judges Bench, having considered *N.C. Santosh* (supra) and *Bheemesh @ Bheemappa* (supra) has observed as follows:

“***”

80. Accordingly, the authorities were directed for appointing the petitioner on compassionate grounds under the 1990 Rules in terms of the original application. It has been also observed in *Malaya Nanda Sethy* (supra) that if the object and the purpose of appointment on compassionate grounds as envisaged under the relevant policy or the Rules is to be achieved, then it is necessary that the applications are considered in time and not otherwise.

81. We have come across the cases where for nearly about two decades, the applications made for compassionate appointment have not been considered. **Such apathetic inaction frustrates the very object of granting compassionate appointment² on the death of an employee in service.**

² The Odisha Civil Services (Rehabilitation Assistance) Rules, 1990, in Rule 4 has specified the object as follows:

“4. Objective of the Scheme.—

The rehabilitation assistance is conceived as a compassionate measure of saving the family of a Government servant from immediate distress when the Government servant suddenly dies while in service. The concept is based on the premises that in case of sudden death his family would not face starvation. The scheme has a direct relationship with the economic



82. *In Malaya Nanda Sethy (supra), the apex court did not make any comment on the correctness of the decision of N.C. Santosh (supra), but it has been clearly laid down that the delay in making the decision on the rehabilitation assistance/appointment shall not give any premium to the authorities. As such, if the delay is attributable to the opposite parties, the application of the petitioners for rehabilitation assistance/appointment should not be frustrated by bringing them under the new Rehabilitation Assistance Rules, 2020. Such application shall be considered, if filed before the Odisha Civil Services (Rehabilitation Assistance) Rules, 2020 came into force under the provisions of the Odisha Civil Services (Rehabilitation Assistance) Rules, 1990.*
83. ***The apex court thus in effect, read down the Rule 9(6) of the Odisha Civil Services (Rehabilitation Assistance) Rules, 2020.***
84. *In view of the above decision, we are of the view that the application for the petitioners shall be considered under the Odisha Civil Services (Rehabilitation Assistance) Rules, 1990 in as much as on scrutiny, it is found that all the applications were filed before 17.02.2020 and the delay in considering the applications in time is entirely attributable to the opposite parties. Such exercise shall be completed within a period of three months from the day when a copy of the judgment/order*

condition of the family of the Government servant. Appointment of the family member of the Government servant under these rules shall be subject to the provisions contained in Rule 9 and can not be claimed as a matter of right."



shall be placed before the opposite parties by the petitioners.

85. *That apart, while dealing with the applications in which the petitioners have sought the rehabilitation assistance/appointment against a direct payment/Grant-in-Aid Rules at the Government aided educational institution, the applicability of the rehabilitation scheme in those institutions shall be separately determined by the opposite parties on the basis of the policy of the Government as discussed by us. If it is found that the Odisha Civil Services (Rehabilitation Assistance) Rules, 1990 was applicable on the date of death of the deceased employee, the petitioner shall be considered for rehabilitation assistance/appointment. So far as the retrospective operation of the rehabilitation assistance/appointment is concerned, this Court cannot direct the opposite parties to give the appointment retrospectively under the Rehabilitation Assistance/Appointment Scheme inasmuch as it is no more res integra, the petitioner does not have any vested right of appointment under such rehabilitation assistance/appointment scheme. They are only entitled to be considered under the scheme for that purpose.*
86. *Consequently, the opposite parties shall consider the applications of the petitioners under the Odisha Civil Services (Rehabilitation Assistance) Rules, 1990 read with the relevant policy extending such scheme to the Government aided educational institutions at the relevant time of the death of the deceased employee for the purpose of the rehabilitation*



assistance/appointment within the time as prescribed above.”

7.5. In *State of Odisha Vrs. Bindusagar Samantaray, W.A. No.810 of 2021*, the following observations are made by this Court in the intra-Court appeal *vide Judgment dated 25.09.2023*:

“7. At this juncture, this Court would like to add that in Malaya Nanda Sethy Vrs. State of Odisha, 2022 SCC OnLine SC 684, the Hon’ble apex Court in no uncertain terms has observed that when such delay is clearly attributable to the State or the State instrumentalities, that cannot be used against the person who is seeking rehabilitation assistance from the State. In a recent judgment of a Division Bench of this Court, the aspects of developing law including difference of opinion in certain points have been dealt with. In the said case being W.P.(C) No. 2081 of 2021 [Suchitra Bal Vrs. State of Odisha & others] and batch, decided on 27.06.2023 it has been observed as follows:

*‘***’*

9. *It has been stated by the learned counsel for writ petitioners-respondents that in one case, since the mother is alive; the son’s prayer for rehabilitation assistance appointment was denied on that ground that when mother is alive, no other person can be given benefit from the family. Mr. P.K. Mishra, learned counsel has pointed out that this Court has already decided the said issue in Ajit Kumar Barik Vrs. State of Odisha and others reported in 2018 (II) OLR 10. The State had challenged the said decision*



in Ajit Kumar Barik (supra), but the apex Court declined to interfere in the decision of Ajit Kumar Barik (supra), where this Court had an occasion to hold that under Rule 9(7) of the Orissa Civil Service (Rehabilitation Assistance) Rules, 1990 'ward' who is minor at the time of death of a Government servant will not be covered under the said provision, we are presently dealing with, due to delay and latches on the part of the Collector in issuing the distress certificate, after 13 years from the date when the Registrar, Orissa Administrative Tribunal vide his letter dated 26.12.2002 forwarded the application for enquiry into the distress condition of the family as required under Rule 8(1) (b) of the Rules, the appointment letter was issued in favour of widow of the deceased employee in the year 2016. However, she was not fit to discharge the duties and which fact has not been disputed by the appellants.

10. *For reference, paragraph 7 of Ajit Kumar Barik (supra) is reproduced below :*

'7. Of course the first preference is to be given wife/husband of the deceased employee then son and unmarried daughter. However nowhere it was stated that in the case a family member in order of preference in the hierarchy is unfit and a medical certificate furnished to that effect, claim shall not be considered for engagement of the other eligible members in case of distress condition of the family. Therefore, the finding given by the Tribunal in the impugned order that since she is not prepared to accept Group-D post and offered it



to her son in ignoring the material on records is not sustainable.'

The crux of the said observation is that if there is no conflicting claim, if the family can choose whom they would like to get the benefit under the scheme.

In our considered opinion the impugned order is erroneous, in view of Ajit Kumar Barik (supra). Accordingly, we set aside the impugned order dated 17.11.2017 passed by the Odisha Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 375(C) of 2016 and direct the opposite party No.2 to issue the appointment order in favour of the petitioner within a period of two months.

- 11. Having appreciated the submissions of the learned counsel for the parties, we find that all these writ appeals can be disposed of in terms of the direction as issued in Suchitra Bal (supra), but with some explanations in respect of certain aspects which are not categorically dealt in Suchitra Bal (supra).*

We direct the appellants to consider the case of the petitioner-respondent under the old scheme called Orissa Civil Services Rehabilitation Assistance Rules 1990. We make it abundantly clear that those applications which do come within the parameters of that scheme, will be considered for rehabilitation appointments. However, notwithstanding the above observation, on humane consideration and on consideration of the distress condition, the State Government may provide rehabilitation appointment to the distressed families of the employees, who died in harness but this is left in the absolute discretion of the State Government.



So far as question relating to the aided Government institutions or the block grant institutions is concerned it appears that the cases of rehabilitation will be covered by the Government policy as framed by the General Administration & Public Grievance Department vide their circular dated 14.10.1998, as referred above.

So far as the objection as raised by the learned counsel for the appellants that some of the applications have been filed after the new Rule came into force, in this regard, nothing more is required to be explained. The scheme under the old Rules itself contains the rule of limitation and hence, all applications are to be filed within a period of one year from the date of death. If any application is filed even after new Rules came into force, that was not barred by limitation if filed within one year.

*But those applications are to be considered under the old Rules. Applications filed within one year from the date of death, have to be considered as valid. We lay emphasis that consideration for rehabilitation assistance has to be made on the date of death, not on the date of consideration. In this regard, we are governed by the law, as laid down in *Malaya Nanda Sethy Vrs. State of Odisha*, 2022 SCC OnLine SC 684.*

We direct the appellants to consider the cases of the petitioner-respondents within the period of four months from today. For that, the State shall form a Special Committee for consideration of the cases of the writ petitioners-respondents in order to assist the authorities to issue the rehabilitation appointments. We make it further clear that this



Court will not extend the stipulated time. Keeping that in view, State Government shall expedite the process of the formation of Committee. The cases of rehabilitation appointments are to be considered with empathy and hence the rigid technicalities are not germane. Before parting with the records, we direct the respondent-petitioners to extend all out cooperation to the State Government so that their appointments can be considered at earliest.”

7.6. In *Biswajit Swain Vrs. State of Odisha*, W.P.(C) No.5214 of 2021 and batch, disposed of by a learned Single Bench of this Court *vide Judgment* dated 31.10.2023, it has been observed as follows:

“1. *** The above noted batch of writ applications involve an identical issue/question as to which Rules i.e. Odisha Civil Service (Rehabilitation Assistance) Rules, 1990, which was in force at the time of death of the deceased Government employee, or the new Rules i.e. Odisha Civil Services (Rehabilitation Assistance) Rules, 2020 would apply to the facts of their cases as the common factual background in all above noted cases is that the deceased Government employees had died prior to the new Rules, 2020 came into force and the applications were also made by the petitioners-legal heirs much prior to the new Rules, 2020 were notified in the Gazette by the Government of Odisha.

40. On scrutiny of the facts of that case, it is revealed that under the Circular dated 29.09.2014 the dependent family member was paid a sum on



compassionate ground of Rs.1,00,000/- . Although the said grant of Rs.1,00,000/- was subsequently enhanced to Rs.2,00,000/- by another Circular dated 31.08.2016. However, finally the Supreme Court in exercise of their power under Article 142 of the Constitution of India and to do complete justice between the parties enhanced the amount of compensation from Rs.1,00,000/- to Rs.2,00,000/- . On a plain reading of the judgment in State of M.P. Vrs. Amit Shrivastava reported in (2020) 10 SCC 496, it appears that the three Judge Bench has affirmed the ratio laid down in Indian Bank's Case supra.

41. *In State of Madhya Pradesh Vrs. Ashish Awasthi reported in (2022) 2 SCC 157, the Hon'ble Supreme Court of India was dealing with a case of compassionate appointment, wherein the father of the applicant died on 08.10.2015 while he was working as a work-charged employee. The question arose as to whether the applicant, who is not entitled to employment, would get compensation under the circular of the year 2014 or 2016 i.e. a subsequent circular enhancing the compensation amount. The Hon'ble Supreme Court referring to the judgment in Indian Bank and Ors. Vrs. Promila and Another reported in 2020 (2 SCC 729) (supra) and State of M.P. Vrs. Amit Shrivastava reported in (2020) 10 SCC 496 finally held that the policy/circular prevalent at the time of the death of the Government employee shall apply and accordingly benefits under such scheme/policy/ circular be given to the applicant. Although the Hon'ble Supreme Court did not disturb the appointment of the applicant under the subsequent circular pursuant to the direction of the High Court.*



42. *In the case of The Secretary to Govt., Department of Education (primary) & others Vs. Bheemesh alias Bheemappa reported in AIR 2022 SC 402, it has once again been reiterated that the relevant Scheme and/or the Rules prevalent at the time of time of the death of the Government employee, who died in harness, and/or at the time of submitting the application is required to be considered and not the amended Rules prevalent at the time of consideration of the application.*
43. *While the above-discussed legal position was holding the field, the learned counsel for the petitioner cited a judgment of the Hon'ble Supreme Court in Malaya Nanda Sethy Vrs. State of Odisha and others reported in AIR 2022 SC 2836 : 2022 (II) OLR (SC) 1 in support of his contention that the rule prevalent at the time of death of the deceased employee shall be applicable to the claim made by the dependents/family members of the deceased Government Employee who died in harness. On a perusal of the judgment delivered by the Hon'ble Supreme Court in Malaya Nanda Sethy's case (supra), this court observed that the issue involved in the said case was pertaining to a claim by a dependent-claimant under the compassionate appointment Orissa Rules, 1990. Further, the said judgment, rendered by a two-Judge Bench, has taken note of several other judgments rendered by the Hon'ble Supreme Court on the issue of compassionate appointment.*
44. *In Malaya Nanda Sethy's case (supra), Hon'ble Apex Court took note of the judgment in N.C. Santhosh Vrs. State of Karnataka and others reported in*



(2020) 7 SCC 617 which has been heavily relied upon by the learned counsel for the State to impress upon this Court that the Rules, 2020 is the only Rule now in force and the same is required to be followed in the case of the petitioner and similarly placed other persons. Further, in Malaya Nanda Sethy's case (supra) the applicability of Odisha Civil Service (Rehabilitation Assistance) Rules, 1990 as well as Odisha Civil Service (Rehabilitation Assistance) Rules, 2020 was directly involved. On a careful scrutiny of the facts of the aforesaid case, it appears that the deceased Government employee, who is the father of the appellant-claimant, while working as an Assistant Sub-Inspector of Police in the Government Department died in harness on 02.01.2010. Thereafter, the appellant submitted his application for appointment as a Junior Clerk on compassionate grounds under the OCS (R.A) Rules, 1990 in July 2010.

45. *However, the said application was not considered by the Competent Authority for a considerable period of time. The Competent Authority, from time to time, deferred the consideration of the appellant's application for want of compliance with some of the requirements under the rules and as a result, final adjudication of the matter was delayed. Thereafter, the OCS (RA) Rules, 1990 was replaced by a new set of Rules namely, OCS (RA) Rules, 2020 vide Notification dated 17.02.2020, which provides that the family member of a deceased Government servant could be appointed on compassionate grounds against Group-D level post.*



46. Thereafter, the application of the appellant was remanded to the authority for fresh consideration under the 2020 Rules. The appellant preferred a writ petition before this court by taking a specific stand that the rule prevalent at the time when the application for compassionate appointment was made shall be applicable and not the subsequent rules that were in force at the time of consideration of the application for compassionate appointment. This court after considering the contentions raised by the parties and by relying upon the judgment of the Hon'ble Supreme Court in N.C. Santhosh's case (supra) dismissed the writ petition by holding that the claim should be considered under the new Rules that is the Rules, 2020.
47. Finally, feeling aggrieved and dissatisfied with the judgment of this Court, the appellant approached the Hon'ble Supreme Court of India by filing Civil Appeal No.4103 of 2022 arising out of SLP (Civil) No. 936/2020. **On a careful perusal of the judgment delivered by the Supreme Court in Malaya Nanda Sethy's Case, this court observed that the issue involved in the present case was directly and substantially in issue before the Hon'ble Supreme Court in Malaya Nanda Sethy's Case. Furthermore, in Paragraph 3 of the judgment the issue has been crystallized by the Supreme Court, and in Paragraph 3.1 several judgments of the Hon'ble Supreme Court have been referred to including the judgment in N.C. Santhos's case (supra) in Paragraph 5 of the judgment.**



53. Now, let us examine the issue(s) involved in the present writ applications as well as a batch of other similar writ applications from a legal and Constitutional validity point of view. Both, the OCS (Rehabilitation Assistance) Rules, 1990 as well as the OCS (Rehabilitation Assistance) Rules, 2020 are Rules made under the proviso to Article 309 of the Constitution of India by the State of Odisha for compassionate appointment of the family members of a deceased Government employee died in harness. The Rules of the year 1990 came into force w.e.f. 24.09.1990 and the Rules of the year 2020, which superseded 1990 Rules, came into force w.e.f. 17.02.2020³. Therefore, there is no doubt that the family members of the Government employee who died in harness after 17.02.2020 are to be governed by the 2020 Rules for compassionate appointment. Rule 6 Sub-rule (9) of the 2020 Rules provides that all applications for compassionate appointment pending as of the date on which the new set of rules came into force shall be governed by the Rules, 2020.

54. On a comparison of the two Rules as demonstrated by the learned counsel for the petitioners, it appears that the Rules, 1990 is less cumbersome and more beneficial to the family members of the deceased

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Rule 1 of the OCS (RA) Rules, 2020, reads thus:

“1. Short Title and Commencement.—

(1) These rules may be called the Odisha Civil Services (Rehabilitation Assistance) Rules, 2020.

(2) **They shall come into force on the date of their publication in the Odisha Gazette.**”

Said OCS (RA) Rules, 2020 promulgated under the proviso to Article 309 of the Constitution of India [vide General Administration and Public Grievance Department Notification No.5651-GAD-SC-RAS-0029-2014/Gen], dated 17.02.2020 was published in the Extraordinary issue No.395 of the Odisha Gazette on 27.02.2020.



Government employee. However, it is seen from the record that many applications filed prior to 17.02.2020 were kept pending for reasons best known to the authorities. In some cases, the applications for appointment on compassionate ground were kept pending for more than a decade. Furthermore, the applications received were scrutinized and a list of applicants was prepared by the appointing authority/ agencies. Out of the list so prepared, appointments were being made from time to time by various competent authorities. In some cases, it was found that some of the persons named on the list were given appointments, however, some were not so lucky. **As has been stated here in above, some applications were kept pending for years together although those candidates were eligible for appointment under the scheme/Rules. Their applications were not rejected. When the new Rule, 2020 came into force, the authorities asked such applicants, whose applications are pending as on that date, to apply afresh under the provisions of the new Rules.**

55. As has been already stated, both Rules were framed in exercise of power conferred under the proviso to Article 309 of the Constitution of India by the State of Odisha. It is too well known that the recruitment, and service conditions of a person under the State/Union to the public service/post are regulated by the appropriate Legislature/ Parliament. The power to regulate by bringing appropriate legislation is left to the appropriate Legislature under List II Entry 41 for the State and List I Entry 70 for the Union under the Constitution of India. The power of



appointment belonging to the Executive shall be governed and guided by the appropriate legislation in that regard. The power conferred by Article 309 of the Constitution of India is subject to other provisions of the Constitution of India as has been reflected in the opening words of Article 309. Therefore, it is needless to state here that the law/rules framed under Article 309 if contravenes any of the provisions of the Constitution of India including the provisions of Part III i.e. Fundamental Rights guaranteed under Articles 14, 16, 19, 21, such law/rules shall be void.

56. *In the case of Rules of 1990 and 2020, the same were framed under the proviso to Article 309 of the Constitution by the Governor of Odisha. Although laying down the conditions of service is primarily a duty bestowed upon the Legislatures/Parliament, the proviso to Article 309 carves out an exception where the President of India or the Governor of the State, as the case may be, may notify an appropriate rule to regulate the recruitment/ service conditions of Government servants. Such a provision is a transitional provision conferring power upon the executive to frame rules having the force of law and the same shall remain in force till the legislatures legislate on the subject matter as has been decided by the Hon'ble Supreme Court of India in A.K. Krishna Vs. State of Karnataka reported in AIR 1998 SC 1050.*

57. ***Furthermore, a benefit that has accrued under the existing rules cannot be taken away by an amendment with retrospective effect and no statutory rule or administrative order can***



whittle down or destroy any right, which has become crystallized and no rule can be framed under this proviso, which affects or impairs the vested rights as has been held in the case of *R.S. Ajara Vrs. State of Gujarat* reported in (1997) 3 SCC 641 and in *Chairman Railway Board Vrs. C.R. Rangadhamaiah* reported in (1997) 6 SCC 623. It has also been held by the Hon'ble Supreme Court of India in *State of Karnataka Vrs. Ameerbi* reported in (2007) 11 SCC 681 that the Rules framed under the proviso to Article 309 of the Constitution of India are not attracted in the case of appointees under a scheme which is not of a permanent nature, although the employees might have continued for a long time.

57.A.Rule-6 of the OCS (RA) Rules, 2020 provides for the mode of appointment under the new Rules. Sub-rule (1) deals with the form of the application. Sub-rule (2) deals with marks to be awarded on evaluation. Similarly, sub-rule (3) provides for appointment against any vacant Group-'D' post. Sub-rule (5) provides that in the event the applicant does not join, he/she shall forfeit his/ her claim under the said Rules and what he/she shall not be provided with any choice. Sub-rule (6) provides that the applications are to be considered in order of date of death of the deceased employee. Sub-rules (7) & (8) deals with process of evaluation. In the present batch of writ petitions, we are concerned with sub-rule (9) of Rule 6, which is quoted herein below:

‘6. Mode of Appointment.—



- (9) All pending cases as on the date of publication of these rules in the Odisha Gazette shall be dealt in accordance with the provision of these rules.'

The above quoted sub-rule (9) of Rule 6 of the 2020 Rules mandates that all pending applications for compassionate appointment for whatever reasons shall now be considered under the Rules, 2020 w.e.f. 17.02.2020. All applications involved in the present batch of writ petitions having been considered under the new Rules, 2020 and the same having been rejected under the 2020 Rules, although the Government employees in these writ petitions having died much prior to the date 17.02.2020, the petitioners have approached this Court by filing the present batch of writ petitions. **This Court observes that the validity of Rule 6(9) is required to be tested with the parameters prescribed in Article 14 and 16 of the Constitution of India to effectively adjudicate all the pending writ petitions.**

58. The Rules framed under Article 309 of the Constitution of India may be struck down only on the grounds that may invalidate a legislative measure. That is when the rules so framed infringes upon the provisions contained in Articles 14 and 16 of the Constitution of India and not because the Court considers the same to be unreasonable or that it has been enacted with an improper motive. Needless to say here that the constitutional mandate in Article 14 includes non-arbitrariness. **Therefore, this Court can only interfere and declare the provisions contained in Rule 6, Sub-Rule (9) of**



the 2020 Rules as void, only if the provision violates Article 14 of the Constitution of India.

59. *Even assuming that the Rules in question are policy decisions of the Government or a scheme by the State to provide benefit to the distressed family members of the Government employees who have died in harness, this Court would not get jurisdiction to interfere with the same unless this Court holds that the same is violative of Article 14 of the Constitution of India. The Govt. has full freedom to change any policy decision and the Court shall not interfere with the same unless such administrative policy/ scheme violates some of the provisions of the Constitution like Article 14, which requires that, even the administrative authority must act fairly and treat its employees equally as has been laid down by the Hon'ble Supreme Court of India in the case of Distt. Registrar Vrs. M.B. Koyakutty reported in AIR 1979 SC 1060 and S.L. Sachdev Vrs. Union of India, reported in AIR 1981 SC 411.*
60. *Thus, where the Rules/Policy/Scheme violates the provisions of Article 14 of the Constitution, the Court would be perfectly justified in interfering with the Rules/Policy/Scheme and may pass suitable directions as to how fairness or equality of treatment could be achieved. Further, a change of policy is also controlled by the doctrine of promissory estoppel, however, in the context of the present case this Court would not like to go into that aspect of the matter and shall confine itself to violation of Article 14 of the Constitution of India.*
61. *Now, reverting back to the issue of violation of Article 14 of the Constitution of India, this court need not*



reiterate the guiding principles under Article 14 of the Constitution of India. So far appointments on compassionate grounds in the State of Odisha are concerned, in a large number of cases that have reached this Court it was observed that the authorities have slept over the matter for a long time. In some of the cases it was also observed that the applications have been pending for more than a decade. In some cases, it was found that while giving appointment under the scheme to a selected few, other applications were not even attended to for years together and finally they were asked to submit a fresh application under the new rules of the year 2020. The new rules, as discussed above, is a cumbersome one and less beneficial to the family members of the deceased Government employee. Under the old Rules of the year 1990, the authorities used to prepare a year-wise list of applicants and appointments were being made out of the said list. In many cases it was observed that appointments were being made by adopting the pick-and-choose method, thereby compelling this Court to intervene in the matter repeatedly. Although the mandate of the amendment Rules, 2016 was to consider the applications in the order of date of death of the deceased Government employee, however, the same was not followed scrupulously and diligently. Thus, the aforesaid conduct of the authorities definitely indicates that the families of the deceased Government employees were not treated equally and the competent authorities have acted in an arbitrary manner.

62. *It is now a well-settled principle of law that Article 14 applies to cases of appointment, by whatever*



mode, to public employment and Government jobs. Therefore, the conduct of the authorities in compelling the family members of the deceased Government employees to apply afresh after an inordinate delay, solely attributable to the appointing authorities, that too under the new Rules of 2020, while already giving appointments to family members of some of the deceased Government employees irrespective of the date of death of such employee, in the considered view of this Court, is in violation of Article 14 of the Constitution of India. Furthermore, any rule compelling them to do so would not stand the scrutiny of law under Article 14 of the Constitution of India. **Therefore, Rule 6, sub-rule (9) of the 2020 Rules would not pass the test of judicial scrutiny upon the same being tested with the touchstone of Article 14 in the factual background of the present cases and similar other cases pending for adjudication before this Court. The discrimination in the present case i.e. the family members of some of the employees who have been given appointment under the old Rules, 1990 in comparison to the ones who have been asked to apply afresh under the new Rules, 2020, although their predecessors have died prior to 2020 Rules came into force, is an actual one and not abstract or theoretical.**

63. No doubt the appointment means an actual appointment by posting the person concerned to a particular post lying vacant, whereas, recruitment means the process preceding such appointment. This Court also observed that in certain cases the recruitment year is the same, however, out of the



*common list appointments were given to some and in some cases the authorities slept over the matters for years. Therefore, the principle of equality demands that both sets of employees should have been treated similarly. However, the authorities by asking some of the leftover candidates to apply again under the new rules and by compelling them to undergo the recruitment process again as provided under the 2020 Rules, have created two different classes of employees under the same category without having any specific object or purpose to achieve thereby. This is clearly hit by Article 14 of the Constitution of India and any rule in that regard is ultra-vires the principles enshrined in Article of the Constitution of India. **Therefore, the Rule 6, sub-rule (9) of the Rules, 2020 is unconstitutional being hit by Article 14 and 16 of the Constitution of India and as such the same is unsustainable in law. In the factual background of the present batch of writ applications, the incorporation of Rule 6, sub-rule (9) of the Rules, 2020 may not withstand the test of judicial scrutiny under Article 226 of the Constitution of India.***

64. *It was also contended by the learned counsel for the Petitioners that the Rules, 1990 was amended by 2016 amendment rules which was notified on 5.11.2016. By virtue of Rule 4 of the amending Rules, 2016, the existing Rule 5 of the 1990 Rules was amended to the extent that a quota of 10% was fixed for the first time. It says “Provided that a maximum of 10% of the total vacancies in a year shall be earmarked to be filled up by applicants under Rehabilitation Assistance Scheme.” However, the aforesaid quota of up to 10% of the total*



vacancies arising in a year was never adhered to by the authorities thereby violating the provisions of the Rules itself. No data whatsoever was produced before this Court with regard to the utilization of the aforesaid quota. Upon a careful consideration of the said plea, this Court is of the considered view that such contention raised by the learned counsel has force in it.

65. *Finally, this Court would like to test the State action or a policy decision of the State Authorities with the touchstone of Article 14 of the Constitution of India. In National Highway Authority of India Vrs. Madhukar Kumar (Civil Appeal No.11141 of 2018 decided on 23.09.2021 [(2021) 13 SCR 299 = 2021 INSC 532], the Hon'ble Supreme Court of India has held that in India, every State action must be fair, failing which, it will fall foul of the mandate of Article 14 of the Constitution of India. Similarly, in Ajay Hasia Vrs. Khalid Mujib Sehravardi reported in AIR 1981 SC 487, the Hon'ble Supreme Court of India has held that Article 14 of the Constitution of India strikes at arbitrariness because an action that is arbitrary, must necessarily involve negation of equality. Whenever, therefore, there is arbitrariness in State action, whether it be legislature or of the executive, Article 14 immediately springs into action and strikes down such action. Similar view has also been taken in E.P.Royappa Vrs. State of T.N. reported in AIR 1974 SC 555 and Maneka Gandhi Vrs. Union of India reported in AIR 1978 SC 597.*
66. *The word "arbitrariness" has been defined in a judgment of the Hon'ble Apex Court in Sharma Transport Vs. Government of Andhra Pradesh*



reported in (2002) 2 SCC 188. The Hon'ble Supreme Court has defined arbitrariness by observing that a party has to satisfy that action was not reasonable and was manifestly arbitrary. The expression "arbitrarily" means, act done in an unreasonable manner, as fixed or done capriciously or at pleasure without adequately determining the principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone. In Bombay Dyeing & Manufacturing Co. Ltd Vrs. Bombay Environmental Action Group reported in (2006) 3 SCC 434, the Hon'ble Supreme Court, in para 205 of the judgment, has held that arbitrariness on the part of the legislature so as to make the legislation violative of Article 14 of the Constitution should ordinarily be manifest arbitrariness.

67. *In Bidhannagar (Salt Lake) Welfare Assn. Vs. Central Valuation Board reported in AIR 2007 SC 2276 and in Grand Kakatiya Sheraton Hotel and Towers Employees and workers union Vs. Srinivasa Resorts Ltd. reported in (2009) 5 SCC 342, the Apex Court has observed that a law cannot be declared ultra vires on the ground of hardship but can be done so on the ground of total unreasonableness. The legislation can be questioned as arbitrary and ultra vires under Article 14. However, to declare an Act ultra vires under Article 14, the Court must be satisfied in respect of substantive unreasonableness in the statute itself.*

68. *In A.P. Dairy Development Corpn. Federation Vs. B. Narasimha Reddy reported in (2011) 9 SCC 286, the Hon'ble Supreme Court has held that it is a settled*



legal proposition that Article 14 of the Constitution of India strikes at the arbitrariness because an action that is arbitrary, must necessarily involve negation of equality. This doctrine of arbitrariness is not restricted only to executive action, but also applies to the legislature. Thus a party has to satisfy that the action was reasonable, not done in unreasonably or capriciously or at the pleasure without adequate determining principle, rational and has been done according to reason or judgment, and certainly doesn't depend on the will alone. However, the action of the legislature, violative of Article 14 of the Constitution, should ordinarily be manifestly arbitrary. There must be case of substantive unreasonableness in the Statute itself for declaring the Act ultra vires Article 14 of the Constitution of India.

69. *In E.P. Royappa's case (supra), which is a Constitution Bench judgment of the Supreme Court of India, Justice Bhagawati in a concurring judgment observed as follows:*

'The basic principle which, therefore, informs both Article 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalizing principle? It is a founding faith, to use the words of Bose, J., "a way of life", and it must not be subjected to a narrow and pedantic and lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be 'cribbed', cabined and confined



within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the Rule of Law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Article 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment.'

70. *Let us now proceed to analyze the validity of a policy decision, the unreasonableness/ arbitrariness of such decision and to what extent the same can be reviewed by this Court in exercise of its writ jurisdiction under Article 226 and 227 of the Constitution of India. In Krishnan Kakkanth Vrs. Government of Kerala reported in (1997) 9 SCC 495, the Hon'ble Supreme Court of India in para 36 of the judgment has observed as follows:*

'36. To ascertain unreasonableness and arbitrariness in the context of Article 14 of the Constitution, it is not necessary to enter upon any exercise for finding out the wisdom in [sic. the policy decision of the State Government. It is immaterial whether a better or more comprehensive policy decision could have] been taken. It is equally immaterial if it can be demonstrated policy decision of the State Govt. It is immaterial whether a better or more comprehensive policy decision could have been



taken. It is equally material if it can be demonstrated that the policy decision is unwise and is likely to defeat the purpose for which such decision has been taken. Unless the policy decision is demonstrably capricious or arbitrary and not informed by any reason whatsoever or it suffers from the vice of discrimination or infringes any statute or provisions of the Constitution, the policy decision cannot be struck down. It should be borne in mind that except for the limited purpose of testing a public policy in the context of illegality and unconstitutionality, courts should avoid “embarking on uncharted ocean of public policy”.’

In the context of public policy in public employment two more judgments are relevant for the purpose are (i) S.Nagaraj Vrs. State of Karnataka reported in (1993) Supp. 4 SCC 595 and (ii) Shrilekha Vidyarthi (Kumari) Vs. State of U.P. reported in (1991) 1 SCC 212.

71. *In the present batch of writ applications, the predecessor in interest of the applicants die in harness much prior to the new Rule, 2020 came into force. Although they had submitted their respective applications in time, however, the authorities have failed to consider their cases for appointment under OCS (RA) Rules, 1990 (as amended in the year 2016 wherever, the same is applicable). This court further observed that it is a matter of record that while not considering the case of the Petitioners, the authorities have considered and appointed persons who had applied along with the petitioner or*



subsequent to the petitioner. No reasonable explanation is coming forth from the side of Government-Opp. Parties as to why some persons were shown favour by appointing them and the petitioners and many others were not appointed. **Moreover, it has also not been satisfactorily explained as to why the petitioners have been asked to apply under the Rules, 2020 which is unfavourable to them except the provision contained in Rule 6, sub-rule (9) of the Rules, 2020.** The opposite parties have thus failed to come up with an intelligible differentia so far the class of the present petitioners are concerned in contrast to the persons who have been appointed under a more favourable Rule, 1990. Such conduct on the part of the opposite parties either rejecting the petitioners application or asking some of them to apply afresh under the new Rule, 2020, which is admittedly less favourable, is definitely discriminatory and arbitrary.

72. It would be profitable to refer to the words of S.R. Das, J, in *State of W.B. Vs. Anwar Ali Sarkar* reported in 1952 SCR 284, which speaks that a classification is reasonable when the same satisfies the twin test of:

- (i) the classification must be based on an intelligible differentia which distinguishes persons or things that are grouped, from others left out of the group; and
- (ii) The differentia must have a rational relationship to the object sought to be achieved by the statute.



*Das, J. further observed that there must be some yardstick to differentiate the class included and the others excluded from the group. The differentia used for the classification in the scheme is the total extent of landholding by every individual. Therefore, there is a yardstick used for constituting the class for the purpose of the scheme. **By applying the aforesaid test to the facts of the present batch of cases, this court found that there exists no intelligible differentia between the two groups i.e. the ones who have been appointed under the old Rules, 1990 and the ones (the petitioners) whose cases were kept pending and by operation of Rule 6(9) of the New Rules, 2020, their cases have been taken out of the purview of the old Rules, 1990 which was more favourable and there was a certainty of getting the job on compassionate ground.** The background facts in both classes of persons remains the same i.e. they are children or dependents of deceased Government employee who dies in harness. Since the petitioners stand in a similar footing with the persons who have been given appointment giving them preference over and above the petitioner, their cases deserve to be considered under the old Rules, 1990 i.e. the Rule that was in force at the time of the death of the Government employee.”*

7.7. The aforesaid matter in *Biswajit Swain* has been carried to Hon’ble Supreme Court in Special Leave Petition (Civil) Diary No(s). 9245 of 2024. On 15.03.2024, the following Order was passed:

“Permission to file Special Leave Petition(s) is granted.



Delay condoned.

Issue notice.

Tag with SLP (C) No. 28521 of 2023.”

7.8. Coming back to the instant case, it is apparent from the order of the learned Single Bench that on death of the Government employee on 25.03.2015, though the application was submitted on 09.02.2016 (within the period stipulated under Rule 9(6)⁴ of the Rules, 1990), the Order refusing employment on compassionate ground came to be passed. Thus, there appears delay in taking up the application for consideration of the case of the respondent. Due to delay in consideration by the appellant No.4, in view of ratio of *Malaya Nanda Sethy (supra)*, the benefit of the RA Rules, 1990 cannot be denied to the respondent. During pendency of consideration of application furnished under the Rules, 1990, another set of rules, i.e., the RA Rules, 2020 came into force. In the said Rules, sub-rule (9) of Rule 6 was the bone of contention, wherein it has been laid down that all pending applications were to be considered under said new Rules. However, in *Biswajit Swain (supra)*, such provision has been declared as *ultra vires*.

⁴ Sub-rule (6) of Rule 9 of Odisha Civil Services (Rehabilitation Assistance) Rules, 1990 stood thus:
“Application for appointment under these rules shall be considered if it is received within one year from the date of death of the Government servant.”



This apart, in *Suchitra Bal (supra)* said provision has been read down. Be that be.

7.9. Since no stay of operation of the Judgment in *Biswajit Swain (supra)* has been granted, the effect of judgment cannot be stated to have been ceased. The principle decided in *Biswajit Swain (supra)*, *Bindusagar Samantaray (supra)* and *Suchitra Bal (supra)* therein is applicable to the case at hand by extending deference to the decision rendered in the context of the Odisha Civil Service (Rehabilitation Assistance) Rules, 1990 *vis-à-vis* the Odisha Civil Service (Rehabilitation Assistance) Rules, 2020 with particular reference to *Malaya Nanda Sethy (supra)*. It may be worthwhile to take note of the following enunciation of this Court in the case of *Indera Motors Vrs. The Commissioner of Commercial Taxes, CT and GST, Odisha, W.P.(C) No.6382 of 2025, vide Judgment dated 08.04.2025* (rendered by one of us, Hon'ble the Chief Justice Shri Harish Tandon):

*“Whether the High Court was within its competence to direct the compensatory interest to be levied on the assessee for the interregnum period between the date of filing of the return and the judgment of the Apex Court, is a matter to be decided by the Apex Court. **Since there is no express order of stay of operation of the said order and the petitioner being not an applicant in any of the special leave petitions pending before the Supreme Court, we do not find any justification in extending the benefit of the interim order at this***



stage. Furthermore, in order to bring equilibrium between the rights of the parties, any deposit as demanded would subserve the justice as the same would be subject to an outcome of the decision taken by the apex Court provided it inure to the benefit of all the assesseees whether they approached the apex Court or not. We are conscious that because of the confusion having created in the mind of the several assesseees on the applicability of the interim order, we feel that an opportunity should be given to the petitioner to deposit the said demand within two months from today. Such deposit shall be without prejudice to the rights and contentions of the parties.”

7.10. Considering the present matter in the aforesaid light, it is quite clear, therefore, that the law declared by the highest Court in the State is binding on authorities or Tribunals under its superintendence, and that they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding. [See, *East India Commercial Co. Ltd.*, AIR 1962 SC 1893; *Chowhan Machinery Mart Vrs. State of Orissa*, (2009) 19 VST 178 (Ori)].

7.11. As it transpires from close perusal of the record, the appellant No.4-Divisional Forest Officer, Ghumsur North Division, Bhanjanagar has delayed the matter in considering application dated 09.02.2016. Taking cue from the principle laid down by the Hon’ble Supreme Court in *Malaya Nanda Sethy (supra)*, it can safely be said that the learned Single Bench was correct in its



approach to direct the authority to consider the case of the respondent in terms of *Suchitra Bal (supra)* and *Bindusagar Samantaray (supra)*.

7.12. This Court is of the considered view that the Order dated 01.02.2024 of the learned Single Bench suffers no illegality nor infirmity in law in view of principles stated in *Suchitra Bal (Supra)* and *Bindusagar Samantaray (Supra)*.

8. This Court is taken to have a look at another angle.

8.1. At the stage of the hearing of the present matter, learned counsel for the respondent brought to the notice of this Court subsequent event. Though the matter relating to rendering sub-rule (9) of Rule 6 of the Odisha Civil Services (Rehabilitation Assistance) Rules, 2020 *ultra vires* has been pending before the Hon'ble Supreme Court of India, the Government of Odisha in General Administration and Public Grievance Department *vide* Notification dated 4th April, 2025 (published in Odisha Gazette Extraordinary No.818, Cuttack, dated 04.04.2025) promulgated the Odisha Civil Services (Rehabilitation Assistance) Amendment Rules, 2025, relevant portion of which is reproduced hereunder:

“No.11771-GAD-SC-RAS-0033/2024/Gen.—

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor



of Odisha is pleased to make the following rules further to amend the Odisha Civil Services (Rehabilitation Assistance) Rules, 2020, namely;

- 1. Short title and commencement.—*
 - (1) These rules may be called the Odisha Civil Services (Rehabilitation Assistance) Amendment Rules, 2025.*
 - (2) They shall come into force on the date of their publication in the Odisha Gazette.*
- 2. In the Odisha Civil Services (Rehabilitation Assistance) Rules, 2020 (hereinafter referred to as the “said Rules”), in Rule 6,—*
 - (i) for sub-rule (9), the following sub-rule shall be substituted, namely:*
 - “(9) (a) All pending applications, relating to death of Government employee prior to the date of commencement of the Odisha Civil Services (Rehabilitation Assistance) Rules, 2020 shall be dealt in accordance with the rules **prevailing on the date of death of Government employee** for appointment under Rehabilitation Assistance Scheme:*

Provided that in case the death of Government employee occurred on or after commencement of the Odisha Civil Service (Rehabilitation Assistance) Amendment Rules, 2016 and before commencement



of the Odisha Civil Services (Rehabilitation Assistance) Rules, 2020, shall be governed by the provisions of the Odisha Civil Service (Rehabilitation Assistance) Rules, 1990.

- (b) *In case the death of Government employee occurred prior to commencement of the Odisha Civil Service (Rehabilitation Assistance) Amendment Rules, 2016, shall be dealt on the basis of distress certificate available in the existing or original application as per the Odisha Civil Service (Rehabilitation Assistance) Rules, 1990.*
- (c) *In case the death of Government employee occurred on or after commencement of the Odisha Civil Service (Rehabilitation Assistance) Amendment Rules, 2016 and before commencement of the Odisha Civil Services (Rehabilitation Assistance) Rules, 2020, the appointing authority shall ascertain the present financial distress of the family by calling for a report from Collector of the district in which the family ordinarily resides, as to whether the family is in financial distress as per the provisions of rule 8 of the Odisha Civil Service (Rehabilitation Assistance) Rules, 1990.*



Explanation for the distress certificate prescribed under clause (c).—

The total annual family income from all sources excluding Family pension and temporary increase must not exceed Rs.1,91,000/- (Rupees One Lakh and Ninety-One Thousand) for a family to be in a ‘distress condition’.”

(ii) The sub-rule (10) shall be omitted.”

8.2. In the instant case, as the date of death of the Government employee was on 25.03.2015, i.e., on or before commencement of the Odisha Civil Service (Rehabilitation Assistance) Amendment Rules, 2016, in terms of proviso to clause (a) of sub-rule (9) of Rule 6 as substituted by virtue of the Odisha Civil Services (Rehabilitation Assistance) Amendment Rules, 2025, it admits of no doubt that the application dated 09.02.2016 submitted by the respondent shall be governed by the provisions of the Odisha Civil Service (Rehabilitation Assistance) Rules, 1990.

Conclusion:

9. In the wake of exposition of legal position as put forth in *Malaya Nanda Sethy Vrs. State of Orissa and others, 2022 (II) OLR (SC) 1 = (2022) 4 SCR 707 = 2022 INSC 617; State of West Bengal Vrs. Debabrata Tiwari, (2023)*



3 SCALE 557 = (2023) 2 SCR 611 = 2023 INSC 202; and *Suchitra Bal Vrs. State of Odisha*, W.P.(C) No.2081 of 2021 & batch, disposed of on 27.06.2023 and *State of Odisha and others Vrs. Bindusagar Samantaray*, W.A. No.810 of 2021, disposed of on 25.09.2023, and in view of the amendment of Rule 6(9) of the Odisha Civil Services (Rehabilitation Assistance) Rules, 2020 by virtue of the Odisha Civil Services (Rehabilitation Assistance) Amendment Rules, 2025, this Court, therefore, does not feel it expedient to disturb of the Order dated 01.02.2024 of the learned Single Bench passed in W.P.(C) No.1887 of 2024.

- 9.1. With the Government of Odisha having taken pragmatic approach, it needs no clarification, but to say that while considering the application for appointment under the Rehabilitation Assistance Scheme as directed by the learned Single Bench *vide* Order dated 01.02.2024 of the passed in W.P.(C) No.1887 of 2024, the authority, appellant No.4-Divisional Forest Officer, Ghumsur North Division shall take into consideration the Odisha Civil Services (Rehabilitation Assistance) Rules, 2020 as amended by the Odisha Civil Services (Rehabilitation Assistance) Amendment Rules, 2025 and take a decision by adherence to the Odisha Civil Services (Rehabilitation Assistance) Rules, 1990.



- 10.** With the aforesaid observation and direction, the writ appeal stands disposed of with no order as to costs.
- 11.** As a result of disposal of the writ appeal, all pending interlocutory applications, if any, shall stand disposed of.

I agree.

(HARISH TANDON)
CHIEF JUSTICE

(MURAHARI SRI RAMAN)
JUDGE