

Orissa High Court

Gitamani Soren @ Majhi vs State Of Odisha & Others on 31 October, 2023

IN THE HIGH COURT OF ORISSA, CUTTACK

W.P.(C) No.1665 of 2017

Gitamani Soren @ Majhi	Petitioner
-Versus-		
State of Odisha & others	Opp. Parties

For Petitioners	: Mr. B.K. Behera-1, Advocate
For Opp. Parties	: Mr. S.N. Pattanaik,AGA

P R E S E N T:

MR. JUSTICE SANJAY KUMAR MISHRA

----- Date of Hearing: 27.06.2023
Date of Judgment: 31.10.2023

----- S.K. Mishra, J. The Petitioner, who is daughter of Late Parameswar Majhi, has preferred the Writ Petition with a prayer to set aside the Order dated 18th January, 2017 as at Annexure-11 and Order dated 15th February, 2017 (Annexure-12), vide which her application for engagement under the Rehabilitation Assistance Scheme was rejected. A further prayer has been made to direct the Opposite Parties to engage her under the Rehabilitation Assistance Scheme as per her application under Annexure-3 series.

2. The brief background facts of the present case is that, the father of the Petitioner, who was working as Junior Stenographer-Cum-Typist under the Executive Engineer, Subarnarekha Irrigation Division No.2, Deuli, died in harness on 28th September, 2006 leaving behind his wife and the only daughter i.e. the present Petitioner. As the mother of the Petitioner is suffering from chronic diseases and physically and mentally unfit for any job, the Petitioner, after attaining the age of 18 years, applied for her appointment under the Rehabilitation Assistance Scheme on 06.07.2013 along with the affidavits sworn by her mother, so also physically unfit certificate dated 28th June, 2013 issued by the doctor in favour of her mother. As per the Government norms, since the heirs of the deceased Government employee has to apply to the Drawing and Disbursing Officer with all

relevant documents, the same was submitted before the Executive Engineer, Subarnarekha Irrigation Project (Opposite Party No.6). On receiving the said application, the Executive Engineer, vide letter dated 23rd July, 2013 submitted the proposal to the Superintending Engineer (Opposite Party No.5). Thereafter the Superintending Engineer submitted the said application of the Petitioner before the Chief Engineer (Opposite Party No.4) for approval, vide letter dated 1st August, 2013. After receiving the application of the Petitioner, the Chief Engineer (Opposite Party No.4) submitted the said proposal before the Collector (Opposite Party No.2) for issuance of Distress Certificate in favour of the family members of late Parameswar Majhi, vide letter dated 4th September, 2013.

3. After receiving the said letter and making a query into the matter, the Collector and District Magistrate, Mayurbhanj issued a District Certificate in favour of family members of Late Parameswar Majhi. The original application submitted by the Petitioner in the prescribed form along with the Distress Certificate issued by the Collector and District Magistrate, Mayurbhanj were forwarded to the Chief Engineer by the Deputy Collector, Collectorate, Baripada, vide letter dated 26th November, 2014. After getting the said communication from the Deputy Collector, the Chief Engineer (Opposite Party No.4) submitted the proposal for appointment of the Petitioner under the Rehabilitation Assistance Scheme to the Engineer-in-Chief, Water Resources (Opposite Party No.3), vide letter dated 26th February, 2015. After receiving the proposal from the Chief Engineer, the Engineer-in-Chief, Water Resources (Opposite Party No.3) submitted the said proposal for appointment of the Petitioner under the Rehabilitation Assistance Scheme to the Additional Secretary to Government, Department of Water Resources (Opposite Party No.1) vide office letter dated 13th March, 2015 with copy to the Petitioner. Despite completion of all the above formalities, the Opposite Parties did not appoint the Petitioner under the Rehabilitation Assistance Scheme. Therefore, the Petitioner was constrained to approach this Court in W.P.(C) No.21675 of 2016. This Court had been pleased to dispose of the said Writ Petition at the stage of admission directing the present Opposite Party No.5 (Opposite Party No.4 in W.P.(C) No.21675 of 2016) to pass appropriate order on the letter sent to him on 23.07.2023 by the Executive Engineer (Opposite Party No.2 in W.P.(C) No.21675 of 2016), strictly in accordance with law within a period of twenty one days from the date of filing of certified copy of the said order and dispose of the same by a reasoned order. After receiving order dated 15th December, 2016, passed by this Court in W.P.(C) No.21675 of 2016, the Superintending Engineer (Opposite Party No.5) vide letter dated 11th January, 2017 informed the Petitioner that the matter is in active consideration at Government in Department of Water Resources. Pursuant to the said communication, the Superintending Engineer (Opposite Party No.5) vide letter dated 18th January, 2017 informed the Petitioner that Government in Department of Water Resources has been pleased to reject her application for appointment under the Rehabilitation Assistance Scheme on the ground that "Rehabilitation Assistance proposal submitted by the Sons/Daughters when the Spouses of the deceased Government employees were available". Pursuant to the said communication, the Superintending Engineer, vide order dated 15th February, 2017 referring the order passed by this Court in W.P.(C) No.21675 of 2016 passed an order. The Relevant portions of which are reproduced below:

"Whereas, in view of the law settled by the Hon'ble apex Court's order in case of SAIL Ltd.-ver- Madhusudan Das & Others reported in AIR-2009-Sc 1153=(2008) 15 SCC 560 that the appointment on the compassionate ground cannot be claimed as a

matter of right and appointment on compassionate ground offered to the family member of the deceased employee is an exception to the rule and that is concession but not a right. The appointment under R.A. scheme cannot be offered to a family member as per their choice. Appointment under R.A. scheme in deserving case is considered in favour of the family of deceased Government servant in order of preference provided u/r 2(b) of OSC(RA) Rule 1990. No appointment should be given to the member of the family in violation of the order of preference so provided, unless a member appearing on the top of the order of preference is considered unsuitable for appointment. The applicant even if in a distress condition cannot ask for appointment in favour of any of the family member as per their choice.

In view of the aforesaid settled position, there is no scope to entertain the application of any member of the family of the deceased Government servant for appointment under the Scheme without regard to the order of preference laid down there under.

In the instant case Miss Gitamani Soren, D/o Late Parameswar Majhi, Ex-Junior Steno comes lower in order of preference as the spouse i.e. mother of the applicant who come higher in the order of preference as per rule 2(b) of OSC (RA) Rules, 1990 is alive. The medical certificate of unsuitability has also not been issued by a competent medical practitioner."

4. It is further case of the Petitioner is that as per the Rehabilitation Assistance Rules first preference is to be given to wife/husband of the deceased employee than son and unmarried daughter. It is nowhere been indicated in the said Rules that in case of family member in order of preference in the hierarchy is found unfit and a medical certificate to that effect is submitted by the wife/husband, such a claim shall not be considered for engagement of other eligible member despite the family members of the deceased employee are in distress condition. Hence, such an order passed by the Opposite Party No.5, as at Annexure-12, is otherwise bad, illegal, improper and liable to be set aside. It is further stated in the Writ Petition that if the Petitioner is not entitled to get appointment under the Rehabilitation Assistance Scheme, her application should have been rejected instantly in the year 2013. However, the Opposite Parties, after keeping the said application of the Petitioner pending for four years, sent the proposal for her appointment. Ultimately, in the year 2017, being directed by this Court in W.P.(C) No.21675 of 2016 to deal with her application, rejected the same on the ground as indicated in Annexures-11 & 12 in an illegal, improper and unjust manner. It is further case of the Petitioner that though the mother of the Petitioner is alive and available, but she is suffering from chronic diseases like Type-2 DM (Diabetes Mellitus), HTN (Hypertension) and IHD (Ischemic Heart Disease) and she is physically and mentally unfit to work as an employee under the Rehabilitation Assistance Scheme. To the said effect a medical certificate issued in favour of her mother, so also affidavit sworn by her mother were submitted by her, wherein her mother clearly stated on oath that she wants to engage her only daughter, i.e. the present Petitioner, in the department to maintain her family and the said affidavit were submitted along with her application form before the authority concerned. The authorities have also processed her application from time to time for her appointment under the said scheme. Therefore, the order of rejection on the ground as indicated in Annexures-11 & 12, are otherwise bad in law and against

the Orissa Civil Service (Rehabilitation Assistance) Rules, 1990, shortly hereinafter , the Rules, 1990. There is no such provision under the said Rules, 1990 where the spouse of the deceased Government employee is available no appointment under the said Rules can be given to son or daughter of the deceased Government employee.

5. The State-Opposite Parties have filed a common Counter Affidavit justifying the action taken by it in rejecting the application of the Petitioner for her appointment under the Rules, 1990. The sum and substance of the said Counter Affidavit is that, after expiry of Parameswar Majhi (father of the Petitioner) on 28th September, 2006, his wife Padamabati Majhi was available for immediate appointment under the said Rules, 1990 for fulfillment of the purpose to save the family of the said deceased employee from financial distress. However, it is apparent from the conduct of the mother of the Petitioner that with an intention to provide employment to her minor daughter, Gitamani Soren (present Petitioner) on attaining the age of 18, she did not apply for the said benefit. On the other hand Gitamani Sore @ Majhi is not the only legal heir. Hence, her case for appointment when attaining the age of 18 years does not arise, beside her date of birth being 12th June, 1994, she attained the age of 18 years by 11th June, 2012. Hence, as per sub-rule (7) in Rule 9 under the Rules, 1990, she had to apply for her appointment by 11th June, 2013 i.e. within one year of attaining the age of 18 years. But she applied for appointment under the Rehabilitation Assistance Rules, 1990 on 6th July, 2013, which is beyond permissible date, for which her application is not acceptable under the said Rules. It is further stand of the State that the Opposite Party No.1 is competent to consider the application of the Petitioner, she being daughter of the deceased Government servant. Hence, it was referred to the Government of Odisha, Department of Water Resources, Bhubaneswar (Opposite party No.1). The Committee constituted under the Chairmanship of the Principle Secretary to Government of Odisha, General Administration Department, Bhubaneswar, after detailed discussion with due deliberation on the matter, had been pleased to reject the application of the Petitioner on the ground that the spouse of the deceased Government employee is alive and available for appointment under the Rehabilitation Assistance Scheme. The Superintending Engineer (Opposite Party No.5) has only intimated the Petitioner as to the decision of the said Committee regarding rejection of her application. Similarly, the Chief Engineer also intimated the Petitioner vide letter dated 22nd April, 2016 regarding rejection of her application for appointment under the Rehabilitation Assistance Scheme by the Government vide communication dated 8th April, 2016 i.e. much before intimation given by the Superintending Engineer, Subarnarekha Irrigation Circle, Laxmiposi. Hence, the allegation that Opposite Party No.5 has rejected the application of the Petitioner is incorrect. The contents of the said communication dated 8th April, 2016 of the Deputy Secretary to Government, Government of Odisha, Department of Water Resources, addressed to the Engineer-in-Chief, Water Resources, Odisha, Bhubaneswar, are extracted below:

"Government of Odisha Department of Water Resources * * * *
No.FE-III-Policy-0001/2015/8553/WR, Bhubaneswar, dated 8/4/16 From Shri Lala
Manoj Kumar Roy, OAS(S), Deputy Secretary to Govt.

To The Engineer-in-Chief, W.R.

Odisha, Bhubaneswar.

Sub: Appointment under R.A. Scheme.

Sir,

I am directed to say that in order to ensure proper implementation of Rehabilitation Assistance Scheme and to review application of appointment which re pending for more than one year, a Committee has been constituted under the Chairmanship of Principal Secretary, G.A. Department. Accordingly, 170 Nos of Rehabilitation Assistance proposals of Major & Medium wings received from your end as per the statement enclosed were placed before the Committee for consideration and as per the proceedings of the meeting of the Committee held on 13.01.2016 the same have been rejected on different grounds as noted below.

1. R.A. proposals submitted by the Son/Daughters when the spouses of the deceased Govt. employees were available.
2. Cases in which medical certificates declaring the spouses medically unfit for Govt. job has been issued much after submission of application.
3. R.A. proposals pending prior to 2000.
4. Proposal pending for long period without complete information.

The applicants and all other concerned may be intimated accordingly.

Yours Faithfully, Sd/-

Deputy Secretary to Government Memo No.8554 Date: 8/4/216 Copy along with enclosures forwarded to all CEs/CCEs/SEs for information and necessary action.

Sd/-

Deputy Secretary to Government"

6. It has further been stated in the Counter Affidavit that the Government of Odisha, being the final authority for taking decision regarding extension of rehabilitation Assistance to the family members of the deceased Government employee and the said decision to reject her application being taken in terms of the Rules in vogue, the same is proper, legal and justified. It has further been stated in the Counter Affidavit that Padmabati Majhi, wife of the deceased Government servant and also his legal heirs was available in the year 2016 for appointment under the said scheme. Her appointment in terms of the said Rules, 1990, though is permissible, but the Petitioner produced the medical certificate issued by the Medical Officer, State Bank of India, issued in favour of her mother at a

later stage i.e. on 28th June, 2013, declaring her unfit for Government service.

7. In response to the said Counter Affidavit, the Petitioner has filed a Rejoinder Affidavit dealing with the points raised in the Counter Affidavit. The sum and substance of the said Rejoinder Affidavit is that the provision under the Rehabilitation Assistance Rules, 1990 has a direct relationship to economic condition of the family of the deceased Government servant. Therefore, the appointment of a deceased Government servant on compassionate ground under said scheme shall be governed under Rule-9 of the said Rules, 1990. Sub-Rule-7 of Rule 9 of the Rules, 1990 prescribes that if at the time of death of the employee there is a legal heir, who is a minor and who alone is available for employment, he/she shall apply for job under the said Rules as soon as she/he attains the age of 18 years and in no case beyond three years from such date but in the instant case, the Petitioner has applied for appointment under Rehabilitation Assistance Scheme as per the application under Annexure-3 series on 6th July, 2013, which is well within the permissible period as per the Sub-Rule-7 in Rule- 9 of Rules, 1990. To substantiate the said pleadings in the Rejoinder Affidavit that the period of limitation is not one year but three years, the said Rules, 1990 has as been appended as Annexure-13 to the Rejoinder Affidavit.

8. Since during hearing of the case, it came to the notice of this Court that, there is a discrepancy with regard to the relevant Rules in vogue at the relevant juncture regarding Rehabilitation Assistance Scheme, which has been annexed to the Rejoinder Affidavit as Annexure-13 vis-à-vis the same Rules annexed to the Counter Affidavit as Annexure-C/1, learned Counsel for the State prayed for time to seek instruction with regard to Rules which was in vogue as on the date of the death of the father of the Petitioner.

9. Pursuant to the order dated 29th August, 2022, instead of clarifying the said issue as to whether the period of limitation should be three years or one year, as has been indicated in Annexures-C/1, a further Affidavit was filed by the State-Opposite Parties on 24th September, 2022 reiterating therein as to its stand taken in the Counter Affidavit.

10. Learned Counsel for the petitioner relying on the averments made in the Writ Petition, so also Rejoinder Affidavit as well as documents on record, submitted that in view of the judgment passed by the coordinate Bench, vide which said Rules, 1990 was clarified, there is no restriction to provide appointment under the said Rules, 1990 to any of the family members requiring simply no objection from other legal heirs. Hence rejection of the request of the Petitioner solely on the premises that the spouse of the deceased employee was available at the time of death of her father and there is no scope for providing employment to her other than the spouse of the deceased employee is bad. Learned Counsel for the Petitioner further submitted that the application of the Petitioner ought to have been rejected on that score alone at the time when she submitted the said application in the prescribed form i.e. Annexure-A, along with relevant documents. Rather, the Authority concerned consciously and keeping their eyes open, processed the application of the Petitioner and forwarded the same to the Collector to issue Distress Certificate to make a query in terms of Clause (b) under Rule 8(1) in Rules, 1990 to the Collector of the District for report as to whether the family of late Parameswar Majhi is in financial distress. On receiving such requisition from the appointing authority, the Collector of the district also issued Distress Certificate in favour of the family

members of the deceased Government employee-Parameswar Majhi. Learned Counsel for the Petitioner drew attention of this Court to forwarding letter dated 26th November, 2014 of the Deputy Collector, Gen. & Misc. Collectorate, Baripada, addressed to the Chief Engineer so also the certificate issued by the Collector appended thereto and submitted that after due enquiry, the Collector and District Magistrate, Mayurbhanj issued the Distress Certificate which was promptly forwarded by the Deputy Collector, Mayurbhanj, to the Chief Engineer with a request to condone the delay at his level as per the G.A. Department Notification dated 25th August, 2010.

11. Learned Counsel for the Petitioner further drew attention of this Court to the Notification dated 25th August, 2010 appended to the Notes of Submission and submitted that the said Rules, 1990 was amended by the Odisha Civil Service (Rehabilitation Assistance) Amendment Rules, 2010. In terms of the said amendment Rules, 2010, in Rule-9 sub- Rule (11) was substituted by the following sub-rules:

"(11) Notwithstanding the period of limitation prescribed in sub-rule (6), the delay in submission of application for appointment under these rules may be condoned by Government in concerned Administrative Department in deserving cases by an order to the effect that the application had sufficient cause for not submitting the application within such period."

12. Learned Counsel for the Petitioner, referring to the Rules, 1990, as at Annexure-13 to the Rejoinder Affidavit submitted, as provided under Sub-Rule-7 in Rule-9 of Rules, 1990, the period of limitation is three years from the date of attaining the age of 18 years. But in case the applicant is minor, who also is available in the family of the deceased Government servant for employment, can apply for job under the said Rules on attaining the age of 18 years and in no case beyond three years from date of attaining the age of 18 years and not one year, as has been wrongly indicated in the Counter Affidavit filed by the State. Rule-9 of Rules, 1990 is extracted below:

"9. (1) Appointment under these rules can be made only against the posts required to be filled up by direct recruitment and not against promotional posts.

(2) [Subject to the provisions contained in sub- rule (3) the applicant for appointment to a particular post, under the rehabilitation assistance scheme, must have the requisite qualifications as prescribed in the relevant recruitment Rules (1) Resolutions or Instructions regulating the recruitment to the said post.] (3) [Where a widow of the deceased Government servant is appointed on compassionate ground against a Group D post, she is not required to satisfy the educational qualification prescribed for the said post, provided the duties attached to the post can be satisfactorily performed without having the requisite educational qualification.] (4) [Family of a Government servant who dies while on re-employment or extension of service, shall not be eligible for any benefit under these rules.] (5) 5 [**] (6) [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.] (7) [If at the time of death of the Government servant, there is ward who is minor and who alone is

available in the family of the deceased Government servant for employment, he/she shall apply for job under these rules on attaining the age of eighteen years and in no case beyond three years from the date of attaining the age of eighteen years.] (8) The assistance shall not be available to the families of Government servants who died1 [**] before issue of Labour & Employment Department Resolution No. 17188, dated the 9th September 1976, in respect of posts which are filled up by reference to the Employment Exchange and before issue of G. A. Department Resolution No. 21684-Gen., dated the 9th September 1982, in respect of posts filled up in pursuance of provisions in the relevant service rules.

(9) In exceptional cases, the maximum age limit may be relaxed by the competent authority in accordance with provisions of the Orissa Service Code.

(10) Before issue of appointment order the appointing authority shall ensure the production of the following documents :-

(i) Submission of Medical Certificate of Health,

(ii) Verification of Character and antecedents in respect of appointments in Departments of Government and Heads of Departments.

(iii) 2 [Character Certificates from two officers of Government not below the rank of Group B Government servant.]

(iv) Submission of undertaking that he/she has only one spouse living, if he/she is married.

[(v) Submission of undertaking through affidavit to the effect that he/she shall maintain the family members of the deceased Government servant excepting the member who is self-sufficient as an earner and who is otherwise separate from the family after partition through a registered deed or after marriage.] (11) ["Notwithstanding the period of limitation prescribed in sub-rule (6) delay not exceeding twelve months in submission of application for appointment under these rules may be condoned by the Administrative Department and delay exceeding 12 months may be condoned by the Chief Minister.]

10. Suppression of correct information or furnishing of false information in the application shall render the applicant liable for removal from service in addition to other legal action to which he/she may be liable under the existing laws and this will also debar other members of his family from getting appointment under these rules.

[10. A. If any person after execution of an undertaking under clause (v) of sub-rule (10) of the said Rule 9 violates the terms as specified therein the same act would amount to gross misconduct for imposition of major penalty by the appointing

authority.]

11. [**]

12. All instructions corresponding to these rules and in force immediately before the commencement of these rules are hereby repealed.

Notwithstanding such repeal any order passed or action taken under the instructions so repealed shall be deemed to have been made or taken under the corresponding provision of these rules."

(Emphasis supplied)

13. He further submitted that the authority concerned, while forwarding the Distress Certificate to the Officer concerned, referring to the Odisha Civil Service (Rehabilitation Assistance) Amendment Rules, 2010, vide communication dated 26th November, 2014, as at Annexure-7, has rightly indicates that delay in submission of the application may be condoned at his level as per G.A. Department notification dated 25th August, 2010 i.e. the concerned administrative department.

14. To substantiate his submission and the case of the present Petitioner, Mr. Behera relied on judgments of this Court reported in 2018 (II) OLR 10 (Ajit Kumar Barik vs. State of Orissa and others), reported in 2018 (II) OLR 795 (Biswaranjan Barik vs. State of Orissa and others), reported in 2018 (Supp.-II) OLR 918 (Bibhuti Bhusan Patnaik vs. State of Odisha and others), reported in 2021 (I) OLR 756 (Prakash Chandra Nayak vs. State of Odisha and others), reported in (2019) 3 SCC 653 (State of Himachal Pradesh and another vs. Shashi Kumar) and reported in AIR 2022 (SC) 2836 (Malaya Nanda Sethy vs. State of Orissa and others).

15. Mr. S.N. Pattnaik, learned Additional Government Advocate, while not disputing that the Petitioner, after attaining the age of 18 years applied for rehabilitation assistance for appointment on 6th July, 2013, contended that for the rejection of the claim of the Petitioner on the premises of availability of the spouse of the deceased, there appears, there is no wrong on the part of the competent authority in passing the impugned order and as such the Writ Petition should be dismissed for having no merit/ground.

16. To substantiate his argument, so also the stand taken by the State-Opposite Parties in its Counter Affidavit, Mr. Pattanaik, relied on judgments of the apex Court reported in (1994) 4 SCC 138 (Umesh Kumar Nagpal vs. State of Haryana and others), (2000)7 SCC 192 (Sanjay Kumar vs. The State of Bihar and others), (1996)1 SCC 301 (Jagdish Prasad vs. State of Bihar and others) and Judgment reported in 2017 (I) ILR CUT 57 (State of Orissa and others vs. Rabindranath Samal and others) and submitted that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread earner who had left the family in penury and without any means of livelihood. Whereas, in the present case, the mother of the Petitioner remained silent without making any communication to the authority concerned

reserving her right seeking for appointment of her daughter (present Petitioner) in terms of the said Rules, 1990 on the ground of her illness and her physical unfitness to seek appointment under the said Rules, 1990. The said action of the mother of the Petitioner is a product of afterthought and she intentionally waited for the majority of her only daughter i.e. the present Petitioner, for her appointment under the said Rules, 1990. Hence, the authority concerned was justified to reject the said application of the present Petitioner for appointment under the Rehabilitation Assistance Rules, 1990.

17. Though in the impugned rejection order, no such stand has been taken as to income of the mother of the Petitioner to be more than the income in term of Rules, 1990, drawing attention of the Court to the income certificate enclosed to the Writ Petition dated 3rd July, 2013, Mr. Pattanaik argued that the said rejection of the application of the Petitioner is also justified as the annual income of the mother of the Petitioner, as indicated in the Income Certificate, was more than Rs.72,000/- per annum.

18. Considering the rival contentions of the parties, this Court finds that admittedly the father of the Petitioner died on 28th September, 2006. Pursuant to the same, the legal heir certificate was issued in favour of the legal heirs of Late Parameswar Majhi on 20th November, 2006 followed by residence certificate as well as income certificate were issued on 2nd July, 2013 and 3rd July, 2013 respectively. Apart from the same, the mother of the Petitioner had sworn an affidavit to be produced before the competent authority requesting to appoint her only daughter, the present Petitioner under the Rehabilitation Assistance Rules, 1990 on 3rd July, 2013 as at Annexure-2. On 4th July, 2013, Caste Certificate was issued for the purpose of appointment under the Rehabilitation Assistance Rules, 1990 by the competent authority. Finally, on 6th July, 2013, the Petitioner filed an application before the Executive Engineer (Opposite Party No.6) for engagement in the post of Peon under the Rules, 1990 along with all necessary documents. Pursuant to the same, the Executive Engineer (Opposite Party No.6) submitted proposal before the Superintending Engineer (Opposite Party No.5) for appointment of the Petitioner under the Rehabilitation Assistance Scheme and the Chief Engineer submitted the said proposal before the Collector (Opposite Party No.2) for issuance of Distress Certificate in favour of the family members of the late father of the Petitioner on 4th September, 2013. Ultimately, the Distress Certificate was issued by the Collector-Cum-District Magistrate, Mayurbhanj, as at Annexure-7. The contents of the said certificate are extracted below:

"PART-IV (Certificate by Collector of the District) Certified that the information furnished by the applicant Geetamani Soren, D/o Late Parameswar Majhi in this application form have been enquired into and found correct/incorrect. The Family of the deceased Govt. employee Parameswar Majhi is in distress/not in distress.

The annual income of the family from all sources excluding pension and T.I. is Rs.46,000/- (Rupees forty six thousand) only for the year, 2014. Forwarded to the Chief Engineer & Basin Manager, Baitarani Subarnarekha & Budhabalanga Basin, Laxmiposi, Mayurbhanj.

(Appointing Authority) Sd/-

Collector & District Magistrate, Mayurbhanj"

(Emphasis supplied)

19. The original application i.e. application in Form-A, in respect of present Petitioner, duly certified by the Collector and District Magistrate, Baripada was returned in paragraph-

10 of Annexure-A for taking necessary action. The Deputy Collector, vide his forwarding letter dated 26th November, 2014, not only returned the said original application to the Chief Engineer (Opposite Party No.4) indicating therein to take necessary action at his end but also intimated him that delay in submission of the application may be condoned at his level as per the General Administration Department Notification dated 25th August, 2010. The contents of the forwarding letter dated 26th November, 2014 is extracted below:

" OFFICE OF THE COLLECTOR & DISTRICT MAGISTRATE ,
MAYURBHANJ, BARIPADA No.4150/Gen. & Misc. dt. 26.11.14 To The Chief
Engineer & Basin Manager, Baitarani Subarnarekha & Budhabalanga Basin, At/PO:
Laxmiposi, Dist:- Mayurbhanj Sub: Return of Annexure-A Form in respect of Kumar
Geetamani Soren, D/o late Parameswar Majhi, Ex-Jr. Stenographer for her
appointment under RAS.

Ref: Your letter No.12284 Dt. 04.09.2013 Sir, With reference to the letter on the
subject cited above, I am to return herewith the original application (Annexure- A
Form) in respect Kumar Geetamani Soren, D./o late Parameswar Majhi,
Ex-Jr. Stenographer duly certified by the Collector & District Magistrate, Mayurbhanj
in Part-IV of Annexure - A Form for taking necessary action at your end.

Further, I am to inform you that the delay in submission of application may be
condoned at your level as per the G.A. Department Notification No.16668 / Gen
dt.25.08.2010 i.e., concerned Administrative Department.

Encl: - Annexure-A Form duly certified.

Yours faithfully, Sd/-

Deputy Collector, Gen. & Misc.

Collectorate, Baripada"

(Emphasis supplied)

20. Despite such request, as the authority concerned did not take any action on the
said application of the Petitioner, she was constrained to approach this Court in

W.P.(C) No.21675 of 2016, which was disposed of on 15th December, 2016 directing the present Opposite Party No.5 to pass appropriate order on the said application of the Petitioner within a period of twenty one days. Being so directed, the Petitioner was communicated vide letter dated 11th January, 2017 that her case is under active consideration at Government level in Department of Water Resources. But ultimately, the same was rejected on the ground that her application for appointment under the Rehabilitation Assistance proposal cannot be considered when spouse of the deceased Government employee was available.

21. From the pleadings of the parties, so also submissions and admitted facts as detailed above, this Court finds that the application of the Petitioner has been rejected on the premises that since her mother was available to be considered in terms of Rules, 1990 at the time of death of her father, her case cannot be considered for appointment under the Rehabilitation Assistance Scheme. In view of such decision of the authority, at this juncture, it is apt to deal with the relevant Rules under the Rules, 1990, which are extracted below:

"2. In these rules, unless the context otherwise requires -

(a) ['Deserving Case' means a case where the appointing authority is satisfied, after making such enquiry as may be necessary :-

(i) that the death of the employee has adversely affected his family FINANCIALLY because the family has no other alternative mode of livelihood;

(ii) that there is existence of distress condition in the family after death of the employee;

(iii) that none of the family members of the employee who has died while in service is already in the employment of Government/Public or Private Sector or engaged in independent business with an earning above Rs. 20,000 (Rupees twenty thousand) a year;

and
As per OCS (Rehabilitation Assistance)
amendment rules, 2008 vide G.A. Deptt.

Notification No.31537, dt. 29.12.2008 amended in clause (iii), for the words "above Rs.20,000 (Rupees twenty thousand) a year, "the following words shall be substituted namely:- "capable to tide over the distress condition of the family arising out of the sudden death of the employee"

(iv) that the family does not have adequate income from the immovable properties to earn its livelihood.] Explanation - The income of any earning member will be taken into account for the purpose of assessing the annual gross income of the family if his separation from the family has not been established by registered partition deed

made prior to the death of the Government employee.

As per OCS (Rehabilitation Assistance) Amendment Rules, 2008 vide G.A. Deptt. Notification No.31537, dt. 29.12.2008 amended - in exercising explanation shall be renumbered as "explanation - 1 thereof and after "Explanation-1" as so renumbered, the following shall be inserted namely, "Explanation- II"

The Total family income from all sources excluding family pension and temporary increase must not exceed Rs.72,000/- (Rupees seventy two thousand) only for a family to be in a "distress condition".

(b) 'Family Members' shall mean and include the following members in order of preference -

(i) Wife/Husband;

(ii) Sons or step sons or sons legally adopted through a registered deed;

(iii) Unmarried daughters and unmarried step daughter;

(iv) 2 [Widowed daughter or daughter-in-law residing permanently with the affected family.]

(v) Unmarried or widowed sister permanently residing with the affected family;

[(vi) Brother of unmarried Government servant who was wholly dependent on such Government servant at the time of death] 3. [The assistance shall be applicable to a member of the family of the Government servant who dies while in service.]

5. [In deserving cases, a member of the family of the Government servant who dies while in service. may be appointed to any Group C or Group D posts only by the appointing authority of that Deceased Government servant provided he/she possesses requisite qualification prescribed for the post in the relevant recruitment rules or instructions of the Government without following the procedure prescribed for recruitment to the post either by statutory rules or otherwise irrespective of the fact that recruitment is made by notification of vacancies to the Employment Exchange or through recruitment examination under relevant recruitment rules. At the time of notifying such vacancies to the Employment Exchange or the examining authority, the employer shall clearly mention that the vacancy is proposed to be filled up under rehabilitation assistance scheme and so, sponsoring of candidates by Employment Exchange or the examining authority is not necessary.]

8. (1) (a) [Application for an appointment shall be made in Form A to these rules to the appointing authority under whom the deceased Government servant last worked,

by registered post with A. D.]

(b) On receipt of the application the appointing authority shall send a requisition to the Collector of the district in which the family ordinarily resides calling for a report as to whether the family is in FINANCIAL distress.

(c) On receipt of a requisition from the appointing authority under Rule 8 (b). the Collector of the district concerned shall cause an enquiry into the matter and furnish his report to the appointing authority within one month from the date of receipt of the requisition.

(d) The appointing authority, upon receipt of the report, shall consider the same and in case of favourable report, appoint the applicant in a suitable available vacancy under his control. If a vacancy does not exist under his administrative control, the appointing authority may forward the application to the Head of the Department with suitable recommendations. The Head of the Department shall locate vacancies in other offices under his administrative control and direct Head of the Office where there is a vacancy to appoint the applicant. If no vacancy is immediately available the application shall be considered for the immediate subsequent vacancy. In cases arising in offices of Heads of Departments, the Head of the Department shall appoint the candidate in his office or in the offices subordinate thereto.

9. (7) [If at the time of death of the Government servant, there is ward who is minor and who alone is available in the family of the deceased Government servant for employment, he/she shall apply for job under these rules on attaining the age of eighteen years and in no case beyond three years from the date of attaining the age of eighteen years."

(Emphasis supplied)

22. From the discussions made above , it is well evident that the application of the Petitioner was processed by the authority concerned and it was duly certified by the Collector after detailed enquiry and Distress Certificate was issued in favour of the legal heirs of Late Parameswar Majhi.

Mother of the Petitioner filed an affidavit relinquishing her first preference for consideration of her case in terms of the Rules, 1990 and also produced the medical certificate to the said effect. Without disbelieving as to the genuineness of the said certificate or competency of the Doctor to issue such certificate or making further query to the said effect, application of the Petitioner was rejected summarily on the ground that the spouse of the deceased employee being available for consideration under the said Rules, 1990, Petitioner's application stands rejected.

23. It is pertinent to mention here that this Court in Ajit Kumar Barik (supra), in paragraphs 7 & 8 held as follows:

"7. Of course the first preference is to be given wife/husband of the deceased employee then son and unmarried daughter. However no where it was stated that in the case a family member in order to 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 she is not prepared to accept Group-'D' post and offered it to her son in ignoring the material on records is not sustainable.

8. Rule, 9(7) of the Orissa Civil Service (Rehabilitation Assistance) Rules, 1990 referred to a ward who is minor at the time of death of a Government servant. The case of the applicant is not covered under the said provision. In the present case due to delay and laches on the part of the Collector to issue distress certificate after 13 years from the date of 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 which was not disputed by the parties. As such the impugned order is an error apparent on the record. 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 appointment order in favour of the petitioner within a period of two months from today. No cost."

(Emphasis supplied)

24. In Bibhuti Bhusan Patnaik (supra), the coordinate Bench in paragraphs-11 & 12 held as follows:

"11. In the instant case, the husband having been died, his wife to be given preference for compassionate appointment. Since she relinquished her claim because of her illness, recourse should have taken by the authority to Clause (ii) of Sub-Clause-(b) of Rule-2, i.e., second preference category to which the petitioner, who is the son of the deceased and his case should have been considered for such appointment. For that, all endeavours had been made by the State Government, particularly, the very same authority by calling upon the petitioner to produce the relevant documents and also no objection certificate from other legal heirs of the deceased employee. The same having been furnished, on subsequent stage instead of considering for giving appointment to the petitioner, the very same authority passed the order impugned in Annexure-15 stating that the claim of the petitioner cannot be considered in view of the provisions contained in Rule-2(b) of the OCS (RA) Rules, 1990.

12. On perusal of the provisions contained in Rule 2(b) of the OCS (RA) Rules, it appears that the son is the second priority for consideration of compassionate

appointment. If the widow has relinquished her claim, the case of the petitioner has to be taken into consideration. As such, the authority has accepted the request and required certain documents in that regard. The petitioner filed the required documents. At a belated stage, the authority could not have rejected the application of the petitioner for compassionate appointment stating that it is hit by Rule-2(b) of the OCS (RA) Rules, 1990."

(Emphasis supplied)

25. In Biswaranjan Barik (*supra*), the coordinate Bench in paragraph-9 held as follows:

"9. The application was rejected solely on the ground that the petitioner is the third legal heir. It is too late in the day to contend that the application was not made within one year from the death of the employee as per 9(6) of the Rules, 1990. The order of rejection cannot be justified by taking another ground. In the case of Commissioner of Police, Bombay v. Gordhandas Bhanji, AIR 1952 SC 16, Justice Vivian Bose proclaimed that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

26. In P.C. Nayak (*supra*), the coordinate Bench vide paragraphs-6 observed as follows:

"6. XXXXX Reading all these Rules, this Court finds, the 1990 Rules never restricted rehabilitation assistance employment only in favour of the spouse when family members consist of so many persons. In the circumstance, there is no question of ignoring other members as family members. Son also comes under the definition of family member. In the case at hand, admittedly mother is sick, for which her remaining unfit was claimed through medical certificate issued by the competent authority. Legal Heir Certificate at Page-20, vide Annexure-2 also contains names of only two persons; one being the spouse and the other one is a son, the present Petitioner. Admittedly, mother remaining sick did not apply for appointment and not only that, mother had even given an affidavit in favour of the son available at Page-22 of the Brief .XXXX"

(Emphasis supplied)

27. In State of Himachal Pradesh (*supra*), the apex Court vide paragraphs 18 observed as follows:

"18. While considering the rival submissions, it is necessary to bear in mind that compassionate appointment is an exception to the general rule that appointment to any public post in the service of the State has to be made on the basis of principles which accord with Articles 14 and 16 of the Constitution. Dependants of a deceased employee of the State are made eligible by virtue of the Policy on compassionate appointment. The basis of the policy is that it recognizes that 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. It is the immediacy of the need which furnishes the basis for the State to allow the benefit of compassionate appointment. Where the authority finds that the financial and other circumstances of the family are such that in the absence of immediate assistance, it would be reduced to being indigent, an application from a dependant member of the family could be considered. The terms on which such applications would be considered are subject to the policy which is framed by the State and must fulfill the terms of the Policy. In that sense, it is a well-settled principle of law that there is no right to compassionate appointment. But, where there is a policy, a dependant member of the family of a deceased employee is entitled to apply for compassionate appointment and to seek consideration of the application in accordance with the terms and conditions which are prescribed by the State."

(Emphasis supplied)

28. Similarly, in *Malaya Nanda Sethy* (supra), vide paragraph-9, the apex Court held as follows:

"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."

(Emphasis supplied)

29. So far as the controversy as to period of limitation in terms of Sub-Rule (7) in Rule 9 of the Rules, 1990 as at Annexure-13 vis-à-vis the said Rules appended to the Counter Affidavit filed by the State, as at Annexure-C/1, it is apt to refer to the judgment of this Court in Ashok Kuma Sen vs. OLIC and others, reported in 2018(I) OLR - 461, wherein vide paragraph-5 it was observed as follows.

"5. This Court has thought it proper to look into the provision of law governing the field before entering into the factual aspect raised by the parties. The State Government of Odisha has formulated a Rule in exercise of power conferred by the proviso to Article 309 of the Constitution of India known as O.C.S. (Rehabilitation Assistance) Rules, 1990 to achieve the objectives to provide rehabilitation assistance as a compassionate measure of saving the family of the 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 provision has been made to appoint on the basis of the evaluation report of the committee.

Further provision has been made under the provision of Rule 9(7) providing therein the limitation for the period of making application i.e. if at the time of death of the Government servant, there is a word who is minor and who alone is available in the family of the deceased Government for employment, he/she shall apply for job under these rules on attaining the age of eighteen years and in no case beyond three years from the date of attaining the age of eighteen years.

Under the provision of Rule 9(6) provide that 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."

(Emphasis supplied)

30. In terms of Rules, 1990, as quoted above, if there is a ward who is a minor and who alone is available in the family of the deceased Government employee for employment, he/she shall apply for job under the said rules on attaining the age of eighteen years and in no case beyond three years from the date of attaining the age of eighteen years.

Admittedly, as per the certificate issued by the Doctor, the mother of the Petitioner is suffering from chronic diseases like Type-2 DM (Diabetes Mellitus), HTN (Hypertension) and IHD (Ischemic Heart Disease) and she is physically and mentally unfit to work as an employee under the Rehabilitation Assistance Scheme. Hence, the Petitioner applied for consideration of her application in terms of the said Rules, 1990 on 6th July, 2013 i.e. after she attained the age of 18 years, and that was well within three years from the period of limitation prescribed in the Rules, 1990. Her application, in view of the stand taken in the Counter and argument advanced by the learned State Counsel; could have been rejected on the ground of delay or on the ground of availability of the spouse of the deceased Government employee. Further, authenticity of the said Medical Certificate was never disbelieved or competency of the doctor to issue such a certificate was never questioned by the authority concerned. Rather, Petitioner's application dated 06.07.2013 was processed. Even if for the sake of argument, it is accepted that the period of limitation, as submitted by the learned counsel for the State as one year, there being a provision under the amended Rules, 2010 for condonation of delay, the application of the Petitioner being certified by the Collector along with all formalities, was reported to the concerned authority with a recommendation to condone the delay, if any, in terms of the said amended Rules, 2010. Thereafter the said application was forwarded by the concerned authority to the Government, to be placed before Committee for consideration of the case of the Petitioner under the Rules, 1990. Being directed by this Court in W.P.(C) No.21675 of 2016, the Opposite Party No.5 (Superintending Engineer of the concerned department) intimated the Petitioner that her case is under active consideration. Immediately thereafter i.e. on 18.01.2017 the impugned order was passed after about three and half years on the ground as stated above.

31. So far as the Judgments cited by Mr. Pattnaik, learned Counsel for the State, this Court is of the view that the facts and circumstances of the said cases are different from the present case and are not applicable to the case of the Petitioner to debar her to seek for an appointment under the Rules, 1990 on the sole ground that her mother was eligible for appointment under the said Rules, 1990 after the death of her father Parameswar Majhi. Hence, this Court is of the view that the said rejection order is per se illegal, without reasonable ground and justification and is violative of basic objectives of the Rules, 1990 and was passed mechanically and the impugned orders, as at Annexures-11 and 12, deserve interference. Accordingly, the order dated 18th January, 2017 (Annexure-11) and Order dated 15th February, 2017 (Annexure-12) are set aside. There is already sufficient delay in processing application of the Petitioner for providing employment to the

Petitioner under the said Rules, 1990, as has been detailed above. Hence, taking into consideration the recommendation of the competent authority as at Annexure-5 and the principles decided by the apex Court in Malaya Nanda Sethy (Supra), the Opposite Parties are directed to immediately act upon the recommendation made by the Superintending Engineer (Opposite Party No.5) in favour of the Petitioner for giving her appointment under the Rehabilitation Assistance Scheme in terms of the said Rules, 1990, without any further delay. As the documentation part is over since long, the remaining process shall be completed within a period of four weeks from the date of receipt of the certified copy of this Judgment.

32. Accordingly, the Writ Petition succeeds. However, there shall be no order as to cost.

33. Urgent certified copy of the Judgment be granted on proper application.

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S.K. MISHRA, J.

Orissa High Court, Cuttack The 31st October, 2023 /Prasant Signature Not Verified Digitally Signed
Signed by: PRASANT KUMAR PRADHAN Designation: Secretary Reason: Authentication Location:
High Court of Orissa, Cuttack.

Date: 02-Nov-2023 16:50:26