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IN THE HIGH COURT OF ORISSA, CUTTACK

W.P.(C) No.16927 of 2016

Jyotsnarani Behera Petitioner

-Versus-

State of Odisha & Ors. Opposite Parties

**For Petitioner : Mr.S.Mishra
Advocate**

**For Opposite Parties : Mr.G.N.Rout,
ASC**

CORAM: JUSTICE SANJAY KUMAR MISHRA

Date of Hearing and Judgment: 26.06.2023

S.K. MISHRA,J.

1. The Petitioner, who is the legally married wife of late Arup Kumar Behera, who was working as a Junior Engineer in the Department of Water Resources, has approached this Court challenging the decision of the Authority concerned dated 12.07.2016 (Annexure-14), vide which her application for appointment under the Rehabilitation Assistance Rules, was rejected solely on the ground that she being the second wife of late A.K.Behera, there is no such provision for appointment of the second wife of the deceased under the Odisha Civil Service (Rehabilitation

Assistance) Rules, 1990, shortly, the Rules, 1990. The communication made by the Director, Personnel, to the Chief Construction Engineer, Anandapur Barrage Project, Salapada to the said effect, a copy of which was also marked to the Petitioner vide Memo dated 28.07.2016 (Annexure-15), is also under challenge.

2. The factual matrix, which lead to filing of the present Writ Petition is that the husband of the Petitioner, who was working as Junior Engineer in the Department of Water Resources, died on 04.10.2008 in a tragic road accident. After his death, the Petitioner being legally married wife of the deceased, applied for employment in the post of Junior Clerk to the Authority in terms of the Rules, 1990, in the year 2009 for survival of her two children, in-laws and herself. She applied in the prescribed form and submitted the same as required under the said Rules, 1990 appending thereto the required documents i.e. (i) death certificate of the Petitioner's Husband, (ii) Birth Certificate of the Petitioner, (iii) Petitioner's certificate of merit, (iv) No objection affidavits on behalf of the other legal heirs and (v) Legal heir certificate of the Petitioner's husband. She also moved before the Collector of the District in accordance with Part-IV of the application form for issuance of distress certificate. However, due to some misunderstanding, her mother-in-law, moved before the Administrative Tribunal for release of terminal benefits of late

A.K.Behera in favour of her. The same was registered as O.A. No. 1548 (C) of 2010. The Tribunal did not pass any interim order restraining the Authority concerned, to release the after death dues of late A.K.Behera in favour of the Petitioner. Hence, the mother-in-law of the Petitioner approached this Court in W.P.(C) No.13822 of 2010, which was ultimately disposed of on 09.04.2014 recording the terms of compromise made between the parties as to disbursement of the pension and other dues of late A.K.Behera.

3. Thereafter, the Petitioner took follow up action for issuance of the Distress Certificate by the Collector for effective consideration of her application for appointment under the Rules, 1990. Finally, with due approval of the Collector, the Deputy Collector (Estt.) Collectorate, Balasore, sent the Distress Certificate issued in favour of the distress family of late A.K.Behera to the Chief Construction Engineer, Anandpur Barrage Project, vide letter dated 20.08.2015 (Annexure-7) with copy to the Petitioner.

4. Pursuant to the same, the Chief Construction Engineer forwarded the said Distress Certificate along with the requisite documents, to the Engineer-in-Chief, Water Resources, Odisha, Bhubaneswar, for consideration of the case of the Petitioner under the Rules, 1990.

5. Since there was some discrepancy as to the age of the Petitioner, a clarification was sought for by the office of the Engineer-in-Chief vide letter dated 29.10.2015. That apart, she was asked to submit no objection certificate from Soumya Ranjan Behera, son of late A.K.Behera, as he was a minor at the time of issuance of legal heir certificate i.e. on 24.11.2008, and turned to be major in the year 2015.

6. In response to the said communication, the Executive Engineer, Salandi Canal Division, Bhadrak, issued a detailed clarificatory letter to the Chief Construction Engineer, Anandpur Barrage Project, Salapada, and copy of the same was marked to the Petitioner. On receipt of the said information from the Executive Engineer, the same was forwarded to the Engineer-in-Chief, Water Resources, vide letter dated 09.02.2016 for taking necessary action at his end.

7. On being satisfied with fulfillment of all the conditions and submission of all requisite documents, the Director, Personnel, wrote on 22.02.2016 to the Deputy Secretary to the Government, Department of Water Resources, Bhubaneswar with respect to the proposal for appointment of the Petitioner in the post of “Junior Clerk” under the Rules, 1990. It was indicated therein that the Collector has also issued the Distress Certificate, as required under Part- IV of the Application and that the Petitioner has also submitted all requisite documents for consideration

of her candidature, as per the checklist for taking further necessary action at Government level. However, when the Petitioner was legitimately expecting an order of appointment to be passed by the authority in favour of her under the Rules, 1990, vide letter dated 28.07.2016 the Director, Personnel (Opposite Party No.5), intimated to the Chief Construction Engineer that the proposal for appointment of the Petitioner was placed before the Committee constituted under the Chairmanship of Principal Secretary, G.A. Department for consideration. Subsequently, the Committee, after due consideration, rejected the case of the Petitioner for appointment under the Rules, 1990, with the remarks that after death of the Government employee on 04.10.2008, his second wife has applied on 05.06.2009 for appointment under Rules, 1990, since the son of the first wife was minor at the time of death of the employee and there is no such provision for appointment of the second wife in the Rules, 1990 and a copy of the said communication was marked to the Petitioner.

8. The State-Opposite Parties have filed a Counter Affidavit taking a stand therein that the Petitioner had applied to the Executive Engineer, Salandi Canal Division, Bhadrak for her appointment under the Rules, 1990, which was processed through the Chief Construction Engineer, Anandpur Barrage Project, Salapada. After death of her husband, the Petitioner submitted application before the Executive Engineer, Salandi

Canal Division, Bhadrak (under whom Petitioner's late husband Mr.A.K.Behera was working) for appointment under the R.A Scheme. After routing through the Chief Construction Engineer, Anandpur Barrage Project, Salapada, it was finally submitted to the Deputy Secretary to Govt., Department of Water Resources vide letter dated 22.02.2016 of the office of the Engineer-in-Chief, Water Resources. The said proposal was placed before a Committee constituted under the Chairmanship of the Principal Secretary to Government, GA Department, for consideration. The same was rejected on the ground that the Petitioner is the second wife of the deceased employee, who applied for appointment under the R.A. Scheme, when minor son of first wife is available and there is no provision under the Rules, 1990 for appointment of second wife. The said decision of the Committee was communicated vide letter dated 12.07.2016. It has further been stated in the Counter Affidavit that the said decision was not arbitrary as alleged by the Petitioner. Rather, it is in consonance with the Rehabilitation Assistance Rules, 1990.

9. Learned Counsel for the Petitioner submits, Smt. Ranjita Behera, wife of late A.K.Behera, died on 12.06.1999. After her death, A.K.Behera married to the Petitioner on 13.06.2002 and she became the legally wedded wife of A.K.Behera and rejection of the application of the

Petitioner on the ground that she is the “second wife” is misconceived. Learned Counsel for the Petitioner further submits, it is not a case of bigamy. Rather, after death of Ranjita Behera, who was the first wife, late A.K.Behera, decided to go for second marriage during his life time.

10. Learned Counsel for the Petitioner, relying on the pre amended conditions stipulated under Rule-2 (b) of the OSC (RA) Rule, 1990, submits, the Petitioner being legally married wife of late A.K.Behera, is entitled for consideration of her case for compassionate appointment under the said Rules, 1990. The Authority concerned misread the said provisions under the 1990 Rules and illegally rejected her application for compassionate appointment alleging herself to be the second wife of late A.K.Behera and such action of the Authority concerned, being contrary to the legal provisions under the 1990 Rules, deserves interference.

11. Mr.Rout, learned Additional Standing Counsel for the State- Opposite Parties, reiterating the stand taken in the Counter Affidavit, submits that the Rule-2 of the Rules, 1990 has been omitted vide notification dated 05.11.2016. He further submits, in the meantime the Odisha Civil Services (Rehabilitation Assistance) Rules, 2020 has come into force with effect from 27.02.2020. In terms of sub rule (d) under Rule-2 of the said Rules, 2020, “Family Members” shall mean and include the following members –

- “(i) Spouse of the deceased Government servant.*
- (ii) Sons or step sons or sons legally adopted through a registered deed executed before the death of the government servant.*
- (iii) Un-married daughters and Un-married step daughter.*
- (iv) Widow daughters or daughters-in-law residing permanently with the family of the deceased Government employee.*
- (v) Legally divorced daughter.”*

12. Mr. Rout further submits that there is no infirmity in the impugned order.

13. Admittedly, as revealed from pleadings made by the parties, so also the documents available on record, the Petitioner got married to Arup Kumar Behera on 13.06.2002, only after the death of his first wife Ranjita Behera on 12.06.1999 and became the legally married wife of late A.K.Behera, who died on 04.10.2008 in a tragic road accident.

14. Further, it is revealed from record that the Petitioner, being the legally married wife, promptly applied on 05.06.2009 in terms of Rule- 8 (1) (a) of the OCS (RA) Rules, 1990 in the prescribed form for her appointment under the said Rules, 1990 enclosing thereto the documents required for the said purpose. Being further asked by the Authority concerned, she also furnished affidavit regarding the family maintenance,

her marital status, so also affidavit regarding her actual age proof, vide communication dated 18.01.2016 made to the Executive Engineer, Salandi Canal Division, Bhadrak along with other documents. The said application with documents were duly forwarded by the Chief Construction Engineer, Anandapur Barrage Project, Salapada to the Engineer-in-Chief, Water Resources, Odisha, Bhubaneswar.

15. As per the definition of family members in terms of sub rule (b) in Rule 2 of the Rules, 1990 “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) 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”

(Emphasis Supplied)

16. Since the Petitioner got married to A.K.Behera only after death of his first wife namely, Ranjita Behera and after the death of Late A.K.Behera, his son Soumya Ranjan Behera was only 12 years old,

similarly Trailokya Behera, son of the present Petitioner, was only 2 years old, this Court is of the view that the Petitioner, being the only person eligible then for applying under the Rules, 1990, and even preference wise, being the wife of deceased employee, rightly applied in terms of the said Rules, 1990 and supplied all the information and documents, as required and asked for.

17. This Court is of further view that the Authority concerned was not justified in rejecting the Petitioner's application for appointment under Rules, 1990 on the sole ground that she is the alleged second wife of late A.K.Behera and there is no such provision for appointment of the second wife under the Rehabilitation Assistance Scheme in Rules, 1990. In term of Section- 5 (i) of the Hindu Marriage Act, 1955, a marriage may be solemnized between two Hindus, if neither party has a spouse living at the time of the marriage. Hence, second marriage of Arup Kumar Behera after death of his first wife, which is legal, in no case can be and should be the basis to hold that the Petitioner is the second wife of the deceased employee.

18. As may be seen from letter dated 20.08.2015 as at Annexure-7, the Deputy Collector (Estt.) Collectorate, Balasore, sent to the Chief Construction Engineer, the Distress Certificate issued in favour of the deceased family of late Arup Kumar Behera in response to his letter dated

22.07.2009. Though the Petitioner, being the legally married wife of late A.K.Behera, promptly applied for her appointment under the 1990, Rules in the year 2009, the same was finally processed after receiving the Distress Certificate in the year 2015, i.e. after six years, though a request was made to the said effect to the Collector, Balasore by the Authority in the year 2009. Ultimately, the application of the Petitioner for compassionate appointment was rejected after about 17 years i.e. on 12.07.2016, on a flimsy ground that she is the second wife of the deceased employee.

19. The apex Court in *Malaya Nanda Sethy v. State of Odisha & Others*, reported in AIR 2022 (SC) 2836 vide paragraph-9 observed 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)

20. In paragraph-7 of the said judgment of *Malaya Nanda Sethy* (supra), it was also observed as follows:

“7. XXXX 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.”

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(Emphasis Supplied)

21. In view of the observations made above and the settled position of law, the impugned decision of the Deputy Secretary to Government, Government of Odisha, Department of Water Resources dated 12.07.2016, as at Annexure-14 and the Memo dated 28.07.2016, as at Annexure-15 are hereby set aside. The Opposite Party No.1 is directed to take a decision afresh on the application of the Petitioner dated 05.06.2009 and to consider her appointment on compassionate ground

under the Rules, 1990, which was in vogue during the relevant period and to appoint the Petitioner in the post of Junior Clerk, if she is otherwise found suitable.

22. It is further directed that the aforesaid exercise shall be completed within a period of four weeks from the date of communication of the certified copy of this judgment.

23. Accordingly, the Writ Petition stands disposed of. No Order as to cost.

Orissa High Court
Dated, 26th June, 2023/ Banita

