

A.F.R.



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.21882 of 2014

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

Subasini Kar and another* ... *Petitioners

-versus-

The Orissa Mining Corporation ... Opposite Parties Limited, Bhubaneswar and another

For Petitioners : Mr. A. Mishra, Advocate

For Opposite Parties : Mr. P.K. Muduli, Advocate

CORAM:

JUSTICE G. SATAPATHY

DATE OF HEARING :25.02.2025

DATE OF JUDGMENT:03.03.2025

G. Satapathy, J.

1. The petitioners by way of this writ petition have invoked the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India by praying to quash the impugned order under Annexure-7 and to direct the OPs to issue appropriate order of appointment in favour of the petitioner No.2 upon consideration of the application made by them under Orissa Civil Services (Rehabilitation Assistance) Rules, 1990 (in short, "the Rules").



By an order dated 22.03.2014 passed by the Chairman-cum-MD, Odisha Mining Corporation Limited (OMC) at Annexure-7 has refused to consider the representation of the petitioners for appointment under the Rehabilitation Assistance Scheme.

2. The facts in nutshell are that one Pramoda Kumar Bahinipati, who was the deceased son of petitioner No.1 and deceased brother of petitioner No.2 was working as a Light Motor Vehicle driver in Barbil Region under OMC having joined in the service on 19.05.1993 and while working as such, he died on 18.12.1997 in harness due to an accident arising out of and in course of his employment. Since late Pramod was then a bachelor and the petitioners were being dependent on him, the petitioner No.1 approached the OMC for engagement of petitioner No.2 when he attained majority on 15.09.1998, either in place of his deceased son or against any other job in the Corporation, but due to inaction of OP-OMC, the petitioners had filed OJC No.13439 of 2000 which was disposed of on 19.04.2004 with a direction to OPNo.2-MD, OMC to dispose of the application of the petitioners strictly in consonance with law and rules governing the



field. However, the application of the petitioners was rejected on three grounds; (i) for limitation, (ii) for petitioner No.2 not coming within the meaning of family in terms of Rules and (iii) lastly, for application not coming under the category of deserving case. This led the petitioner to once again approach this Court in W.P.(C) No.1903 of 2005, which was disposed of by this Court on 24.01.2014 with an observation that in case the petitioners files a fresh application along with all the relevant documents before OPNo.2, the same shall be considered sympathetically. Accordingly, the petitioners moved an application before the authority-OPNo.2, but OPNo.2 rejected the application of the petitioners on 22.03.2014 compelling the petitioners to approach this Court again in the present writ petition. It needs to be stated here that during pendency of the writ petition, the petitioner No.1 died and her name deleted.

3. In the course of hearing of the writ petition, Mr. Aditya Mishra, learned counsel for the petitioners by referring to the rules has submitted that although the petitioners were wholly dependent on the deceased, who died in the harness while working in the course of



his employment under the OMC, but OPNo.2 is avoiding to issue an order of appointment in favour of petitioner No.2 on one or different pretext despite direction from this Court, which led the petitioners to continue to litigate for a job even after 28 years of the death of the deceased. It is further submitted that the unmarried brother of the deceased Government Servant, who was wholly dependent on such Government Servant at the time of death is coming within the meaning of family members so as to get compassionate appointment, but the authority ignoring such fact has refused to give appointment to petitioner No.2. It is further submitted by Mr. Mishra that after refusal of the representation of the petitioners under Annexure-4, this Court has entertained writ petition and, thereby, subsequent entertainment of the representation of the petitioners itself justify the condonation of delay of limitation for applying for compassionate appointment after two years, but the authority concerned has whimsically passed the order refusing to issue appointment order on the ground of limitation. Further, Mr. Mishra has



submitted that OPNo.2 by misinterpreting the Rules has erroneously considered that the petitioners' case is not coming under the deserving case and accordingly refused to issue an appointment order and, therefore, the petitioner No.2 being illegally deprived of his legitimate claim is required to be compassionated by way of issuing an order of appointment to him. While praying to allow the writ petition by issuing an order of appointment to petitioner No.2, Mr. Mishra has relied upon the amended Rules.

3.1. On the other hand, Mr. P.K. Muduli, learned counsel appearing for OPs has submitted that the claim of the petitioners has to be considered in terms of the Rule prevailing as on the date of death of the deceased and at the time of death of the deceased on 18.12.1997, the petitioner No.2 was not coming within the meaning of family members and, therefore, the claim of the petitioner No.2 may be negated on that ground since the amended Rules came w.e.f. 1st October, 1999. Further, Mr. Muduli by relying upon the decision in ***State of Madhya Pradesh and others Vrs. Ashish Awasthi***



and others; (2022) 2 SCC 157 has submitted that the Apex Court has clearly held that the claim for compassionate appointment must be decided only on the basis of relevant scheme prevalent on the date of demise of the employee and subsequent scheme cannot be looked into. It is also submitted by Mr. Muduli that the claim for compassionate appointment may not be entertained after a lapse of considerable period of time of the death of the Government employee and to buttress his submission, he has relied upon the judgment passed by the Apex Court in ***State of West Bengal Vrs. Debabrata Tiwari and others Etc. Etc.; 2023 LiveLaw (SC) 175.***

4. A casual look to the rival claims of the parties, it appears that the dispute with regard to providing a compassionate appointment to petitioner No.2 is to be considered on the relevant Rules and Scheme. Hence, this Court considers it apposite to refer to the principle under which the claim for a compassionate appointment can be considered. In this regard, the law laid down by the Apex Court in ***Ashish***



Awasthi (supra) is quite clear and therein after quoting the observation of ***Indian Bank and others Vrs. Promila and another; (2020) 2 SCC 729*** with approval, which is stated to be reiterated in ***State of Madhya Pradesh and others Vrs. Amit Shrivastava; (2020) 10 SCC 496***, the Apex Court at paragraph-5 of the judgment has observed that the Respondent shall not be entitled for appointment on compassionate grounds on the basis of the subsequent circular/policy dated 31.08.2016.

5. In ***Promila (supra)***, the Apex Court has observed that claim for compassionate appointment must be decided only on the basis of relevant scheme prevalent on date of demise of the employee and subsequent scheme cannot be looked into. In ***Debabrata Tiwari (supra)***, the Apex Court after survey of a number of judgment governing field has observed in paragraph-7.5 as under:-

7.5. *Considering the second question referred to above, in the first instance, regarding whether applications for compassionate appointment could be considered after a delay of several years, we*



are of the view that, in a case where, for reasons of prolonged delay, either on the part of the applicant in claiming compassionate appointment or the authorities in deciding such claim, the sense of immediacy is diluted and lost. Further, the financial circumstances of the family of the deceased, may have changed, for the better, since the time of the death of the government employee. In such circumstances, Courts or other relevant authorities are to be guided by the fact that for such prolonged period of delay, the family of the deceased was able to sustain themselves, most probably by availing gainful employment from some other source. Granting compassionate appointment in such a case, as noted by this Court in **Hakim Singh (Haryana State Electricity Board Vrs. Hakim Singh; (1997) 8 SCC 85)** would amount to treating a claim for compassionate appointment as though it were a matter of inheritance based on a line of succession which is contrary to the Constitution. Since compassionate appointment is not a vested right and the same is relative to the financial condition and hardship faced by the dependents of the deceased government employee as a consequence of his death, a claim for compassionate appointment may not be entertained after lapse of a considerable period of time since the death of the government employee.”

6. In the present circumstance, when the facts of the case are exposted, it undeniably appears that the deceased brother of the petitioner No.2 had died on 18.12.1997, but the Rules as existed as on that



date do not include the brother within the meaning of "family members" so as to provide compassionate appointment to him. True it is that the brother has been included within the meaning of "family members" in the amended Rules which came into force w.e.f 1st October 1999. On the contrary, it appears from Annexure-4 that the petitioner No.2 had applied for appointment under the Rehabilitation Assistance Scheme on 23.12.1999, which was more than two years after the death of his brother as on 18.12.1997, but Rule 9(b) of the un-amended Rules prescribe a period of one year for making application for appointment under compassionate appointment. It is also not in dispute that the petitioner No.2 is admittedly the brother of the deceased and his date of birth in terms of his application is 14.07.1974 and the petitioner has already attained the age of 50 years. Further, the claim of the petitioner No.2 was also refused by the authority on the ground that he is not coming under the deserving case on the ground of his father's employment in OMC, which is also not disputed



by the petitioners inasmuch as Annexure-4 clearly discloses that the father of the petitioner No.2 was in service under OMC till his superannuation on 30th June 2003 and was drawing a salary exceeding Rs.20,000/- in a year since Rule 2(iii) of the Rules prescribes that none of the family members of the employee who has died or has suffered from permanent disability 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. The claim of the petitioner No.2 suffers not only from limitation, but also for not coming within the meaning of family members in terms of the Rule as on the date of death of the deceased on 18.12.1997.

7. In response to negate in the claim of the petitioner No.2 on the ground of not coming under deserving case, the petitioners in the writ petition have only stated the following averments in paragraph-16:-

***"16.** Xxx Xxx Xxx Evidently, an exception has been taken to the service of Shri Brundaban Kar, the father of the deceased*



under the Corporation and drawing a salary exceeding Rs.20,000/- in a year. In such respect, it is humbly submitted that if a deceased son could be employed by the Corporation, while his father is serving the said Corporation and could maintain his mother and his younger brother being wholly dependent on the said deceased, the 1990 Rules fully apply to such a case for giving Rehabilitation Assistance to the concerned family member, who is none else than the petitioner no. 2 as the dependant brother of the deceased. The opp. party no.2 apparently has gone astray in finding out some irrelevant grounds to deny the relief to the petitioners than to give them the expeditious and effectual relief as intended in the Orders dated 19.04.2004 and 24.01.2014 of this Hon'ble Court. As such, the said ground is also not available to be sustained in the eye of law."

The aforesaid averments do not satisfy the criteria prescribed in Rule 2(iii) of the Rules.

8. The underlined object for the Rehabilitation Assistance Scheme is to protect the family members of the deceased from distress and crisis arising out of the sudden loss of the bread earner and the hardship likely to be faced by the family members on account of the sudden stoppage of inflow of income to the family. The word "Rehabilitation Assistance" used in the scheme is in the context that the Assistance required to be provided under



the Rules to the family members of a Government Servant, who dies or suffers any permanent disability while in service and the very application of the scheme for appointment to be made against Class-IV and Class-III posts itself reveals beyond doubt that this is a social measure for preventing the family members of the deceased employee from suffering further financially and that's why, Rule 8(b) of the Rules prescribes that immediate after receipt of the application in prescribed format, 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". It cannot be disputed that the object underlying the provision for grant of compassionate employment is to enable the family members of the deceased to overcome the sudden crisis due to the death of the bread earner, which has left the family in penury and without any means of livelihood and such scheme is benevolent in nature and to be considered purely on humanitarian consideration and, therefore, compassionate appointment is not a source of recruitment nor a vested right conferred on the family



members of the deceased, rather it is a social measure to prevent the family members of the deceased from destitution and vagrancy and, therefore, the application for compassionate appointment should be decided promptly. In the present case already, much water has been flown in the meanwhile after death of the deceased and in the meanwhile, around 27 years have elapsed, but the petitioner No.2 is able to prosecute his litigation before this Court and different authorities for time and again, which itself shows that the petitioner No.2 is not financially distressed or the family members are in penury.

9. In the result, this Court on a conspectus of materials placed on record together with the relevant Rules finds the claim of the petitioner No.2 in negative since as on the date of death of the employee he was not coming within the meaning of family members nor was he coming under the category of deserving case and, thereby, the authority concerned has decided rightly against the petitioner No.2 for granting any compassionate appointment.



In the result, the writ petition merits no consideration and is, accordingly, dismissed on contest, but in the circumstance, there is no order as to costs.

(G. Satapathy)
Judge

*Orissa High Court, Cuttack,
Dated the 3rd day of March, 2025/Subhasmita*

Signature Not Verified

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