

**N THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C). No. 29161 of 2023**

(An application under Article 226 & 227 of the Constitution of India)

**AFR** Dayasagar Nayak ..... Petitioner

-Versus-

State of Odisha and another .... Opposite Parties

Advocate(s) appeared in this case:-

**For Petitioner** : M/S. G.Sahu,  
P.Sahu, Advocates.  
**For Opp. Parties** : Mr. S.Das  
Additional Government Advocate  
for the State.

**CORAM:**

**JUSTICE SASHIKANTA MISHRA**

**JUDGMENT**

**18<sup>th</sup> October, 2023**

**SASHIKANTA MISHRA, J.**

The petitioner has filed this writ petition being aggrieved by order dated 23.03.2022 (signed on 17.03.2022) passed by Chief District Veterinary Officer, Sambalpur (opposite party No. 2) in holding him ineligible for appointment under the Rehabilitation Assistance Scheme.

2. The facts of the case are that the petitioner's father was working as Veterinary Trainer (VT) under Sub-divisional Veterinary Officer, Kuchinda (opposite Party No. 3) and died in harness on 03.11.2014. He left behind his widow, a daughter and a son (petitioner). A family being plunged in financial distress upon death of its only earning member, the widow wanted to apply for appointment under the Rehabilitation Assistance Scheme but in a Medical Board conducted by the CDMO, Sambalpur on 04.03.2015, she was declared unfit to join in Government Job as she was suffering from DM and HTN with CKD. The petitioner therefore, applied before the Opposite Party No. 3 for appointment under the Rehabilitation Assistance Scheme which was forwarded to the Director of Animal Husbandry and Veterinary Services (Opposite Party No.1) on 11.03.2015. Be it noted that the petitioner's mother and sister also submitted affidavit stating that they had no objection to the appointment of the petitioner under Rehabilitation Assistance Scheme. On 30.12.2017, the Opposite Party No. 3 issued a letter to Opposite Party No. 2 forwarding the relevant documents of the petitioners. Again on 28.08.2018, Opposite Party No. 3 resubmitted the documents to Opposite Party No.

2. On 06.11.2018, Opposite Party No. 2 called upon Opposite Party No. 3 to submit certain documents for finalisation of the matter. Pursuant to such letter, Opposite Party No. 3 resubmitted the entire documents to Opposite Party No. 2 along with letter dated 26.02.2019. On 12.06.2020, the Opposite Party No. 2 wrote to the petitioner asking him to resubmit his application along with necessary documents. The petitioner submitted the necessary documents by letter dated 07.01.2021. Ultimately by order dated 23.03.2022, the Opposite Party No. 2 rejected the application of the petitioner by holding that he had not secured the required points for being eligible for such appointment. Said order is enclosed as Annexure-13 to the writ petition and is impugned.

3. Heard Mr. G. Sahu, learned counsel for the petitioner and Mr. S. Das, learned Additional Government Advocate for the State.

4. Mr. Sahu would argue that the Opposite Party authorities are guilty of gross delay in considering the application of the petitioner and in the process frustrated the chance of the petitioner for being appointed under the OCS(Rehabilitation Assistance) Rules, 1990. Mr. Sahu, further argues that the petitioner cannot be blamed for the

delay. If his application had been considered promptly at the relevant time, he would have secured a Class-III post in view of the qualification possessed by him. However, the authorities despite being guilty of gross delay and laches have denied the benefit to him by considering his case under the OCS(Rehabilitation Assistance) Rules, 2020. Mr. Sahu has cited the decision of the Supreme Court in the case of **Malayananda Sethy vs. State of Odisha & Others** reported in (2022)2 OLR 1 (SC) in support of his contentions.

5. Per contra, Mr. Das, learned State counsel submits that delay cannot be a ground to ignore the prevailing rule since it is specifically laid down in the new Rules that all existing applications are to be considered under the said Rules. The petitioner's application could not therefore, have been considered under the old Rules. Moreover, the petitioner himself caused delay in submitting the required documents. Mr. Das also argues that the object of appointment under the Rehabilitation Assistance Scheme is to prevent a distressed family from immediate distress. In the instant case, however, the immediate distress is no longer in existence in view of the lapse of so many years since death of the Government Servant.

6. The facts of the case are not disputed inasmuch as the petitioner's father died on 03.11.2014 and his mother was declared unfit for Government Job. The petitioner applied before expiry of one year from the death of his father. It appears from the documents enclosed to the writ application that there was several correspondence between Opposite Party No. 3 and Opposite Party No. 2 in this regard whereby the application and relevant documents relating to the petitioners have been submitted on multiple occasions. The application appears to have caught the attention of the Opposite Party No. 1 only in June, 2020. There is no explanation whatsoever as to why the application was kept pending for more than 5 years and taken up for consideration at a time when the new Rules had come into force. This Court is reminded of the oft quoted principle that 'delay defeats justice'. This is a case, where the family of deceased Government servant, which was obviously thrown to the distress because of his premature death did not receive the required succour from the Government as contemplated as under the OCS (Rehabilitation Assistance) Rules, 1990. Thus, by sitting over the application for no justified reason, for as long as 5 years, the authorities have simply turned a

deaf ear to the repeated entrities of the family. Though, it has been argued that delay has robbed the case of its immediacy, this Court is not impressed particularly when the delay is on account of the authorities themselves and the petitioner is not to be blamed. In almost a similar case, the Supreme Court in **Malayananda Sethy** (supra) held as follows:

*14. 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.*

*15. In view of the above discussion and for the reasons stated above, the impugned judgment and order passed by the High Court is hereby quashed and set aside. The respondents are directed to*

*consider the case of the appellant for appointment on compassionate grounds under the 1990 Rules as per his original application made in July, 2010 and if he is otherwise found eligible to appoint him on the post of Junior Clerk. The aforesaid exercise shall be completed within a period of four weeks from today. However, it is observed that the appellant shall be entitled to all the benefits from the date of his appointment only. The present appeal is accordingly allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.*

*16. 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.”*

7. Having regard to the peculiar facts and circumstances, this Court finds that the principle underlying the judgment rendered in **Malayananda Sethy** (supra) would be squarely applicable to the present case.

8. For the foregoing reasons therefore, the writ petition is allowed. The impugned order under Annexure-13 is hereby quashed. The opposite party authorities are directed to reconsider the application of the petitioner for appointment under the Rehabilitation Assistance Scheme

as per the 1990 Rules. Since the Government servant died way back in the year 2014, the authorities shall do well to dispose of the application of the petitioner as early as possible, preferably within a period of two months from the date of production of certified copy of this order by the petitioner.

.....  
**Sashikanta Mishra,**  
**Judge**

**Orissa High Court, Cuttack,**  
**The 18<sup>th</sup> October, 2023 / Deepak**

