

Q. H. C. 97-A]

MANOJA KUMAR KHUNTIA,
A.G.A.

In the High Court of Orissa
ORDER SHEET

M/S Niranjan Lenka, H.K. Mohant
N. Lenka, P. Ku. Baski, S. Rana
G. Dash, T. Ku. Jena
C Sole Respond

BLAPL/W. P. (C) No. _____ of 20 23
WA No. 1053/2023

STATE OF ODISHA
Versus

Petitioner

SHIBASISH BEHERA

Opposite-Party

Sl. No. of Order	Date of Order	ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
			<p>PRESENTED ON 16/05/2023</p> <p>Register and Put up for Orders</p> <p>Registrar (Judicial)</p> <p>For</p> <p>18-5-23</p> <p>BIBHUDENDRA SARANGI ADDL. STAMP REPORT</p>

FC093072

SCANNED



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No. 1053 of 2023

State of Odisha and others *Appellants*

Mr. M.K. Khuntia, Additional Government Advocate
-versus-

Shibasish Behera *Respondent*

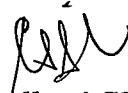
CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MISS JUSTICE SAVITRI RATHO

Order No.

ORDER
21.10.2024

I.A. No.2729 of 2023

01. This matter is taken up through Hybrid mode.
2. Issue notice to the sole respondent on the question of limitation by Registered/Speed Post with A.D., making it returnable within four weeks, requisites for which shall be filed by 25.10.2024.
3. List this matter on 18.11.2024.


(Chakradhari Sharan Singh)
Chief Justice


(Savitri Ratho)
Judge

S. Behera



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No. 1053 of 2023

State of Odisha and others *Appellants*
Mr. Bimbisar Dash, Additional Government Advocate
-versus-
Shibasish Behera *Respondent*

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MISS JUSTICE SAVITRI RATHO

Order No.

ORDER
18.11.2024

02. I.A. No.2729 of 2023

This matter is taken up through Hybrid mode.

2. List this matter on 25.11.2024. In the meanwhile, the up-to-date postal tracking report shall be downloaded and attached to the file.


(Chakradhari Sharan Singh)
Chief Justice


(Savitri Ratho)
Judge

S. Behera



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No. 1053 of 2023

State of Odisha and others *Appellants*

Mr. Bimbisar Dash, Addl. Government Advocate

-versus-

Shibasish Behera *Respondent*

Mr. H.K. Mahanta, Advocate

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MISS JUSTICE SAVITRI RATHO

Order No.

ORDER
25.11.2024

03. I.A. No.2729 of 2023

This matter is taken up through Hybrid mode.

2. Mr. H.K. Mahanta, learned counsel submits that Mr. Niranjana Lenka, learned counsel and associates have instructions to appear on behalf of the respondent and Vakalatnama on his behalf shall be filed in course of the day.

3. List this matter on 02.12.2024.

4. Objection, if any to the application for condonation of delay, shall be filed in the meanwhile.


(Chakradhari Sharan Singh)
Chief Justice


(Savitri Ratho)
Judge



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No. 1053 of 2023

State of Odisha and others *Appellants*

Mr. Bimbisar Dash, Addl. Government Advocate

-versus-

Shibasish Behera *Respondent*

Mr. H.K. Mohanta, Advocate

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MISS JUSTICE SAVITRI RATHO

ORDER

02.12.2024

Order No.

04. This matter is taken up through Hybrid mode.

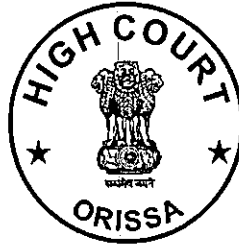
I.A. No.2729 of 2023

2. This application has been filed by the appellants-State seeking condonation of delay of 149 days in filing the writ appeal.

3. Perused the objection filed today in Court on behalf of the respondent.

4. Considering the facts of the case and after hearing the learned counsel for the parties, we are inclined to condone the delay with cost. Accordingly, the delay is condoned subject to payment of cost of 2,000/- (Rupees Two Thousand) to the respondent within two weeks from today.

5. The application stands disposed of.



W.A. No.1053 of 2023

6. Mr. Bimbisar Dash, learned Additional Government Advocate for the appellants undertakes to serve a copy of the appeal memo on Mr. H.K. Mohanta, learned counsel appearing on behalf of respondent within two days.

8. List this matter on 10.12.2024 for fresh admission.


(Chakradhari Sharan Singh)
Chief Justice

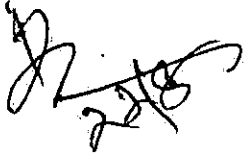
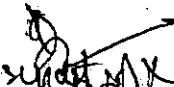

(Savitri Ratho)
Judge

SK Jena/Secy.

IN THE HIGH COURT OF ORISSA

Case No. WA-1053/23

OFFICE NOTES

Sl. No. of Order for compliance	Date of Order for compliance	Notes and action taken on order with signature of Dealing Assistant and Superintendent
		<p>1) I.A no- 2729/23 is at Plag- 'A' for condonation of delay.</p> <p>For Orders</p> <p>Along with WPCO- 30112/2022 (a disp. of case)</p> <p><u>Diswabhusan Nahak</u> DB 22-08-2024</p> <p> 22/8</p> <p>Memo No - 20454 Date - 28/10/24.</p> <p>Notice on limitation matter Issued to the sole respondent by A.P with AD fixing on 11.11.24 for appearance & show cause.</p> <p><u>Diswabhusan Nahak</u> 26/10/24</p> <p></p>

IN THE HIGH COURT OF ORISSA

Case No. WA-1053/23


OFFICE NOTES

Sl. No. of Order for compliance	Date of Order for compliance	Notes and action taken on order with signature of Dealing Assistant and Superintendent
01	21.10.24	<p><u>Order No-1</u></p> <p>i) Further order on I.A no-2729/23 is at Flag-A for condonation of delay.</p> <p>ii) Neither AD nor undelivered notice returned from the sole respondent yet, in this regard postal tracking report showing 'Item Received' at phiringia S.O as at Flag-M.</p> <p>For Orders</p> <p>Along with WPC - 30112/2022 (a disp. of case)</p> <p><u>Biswabhusan Nahak</u> 13/11/24</p> <p>DB <u>Adj. to 18.11.24</u></p>
02	18.11.2024	<p><u>Order No-02</u></p> <p>i) Further order on I.A no-2729/23 is at Flag-A for condonation of delay.</p> <p>ii) Upto-date tracking report showing 'Item Received' at phiringia S.O is at Flag-N.</p> <p>For Orders</p> <p>Along with WPC - 30112/2022 (a disp. of case)</p> <p><u>Biswabhusan Nahak</u> 21/11/24</p> <p>DB <u>Adj. to 25.11.24</u></p>

IN THE HIGH COURT OF ORISSA

Case No. WA-1053/23.

OFFICE NOTES

Sl. No. of Order for compliance	Date of Order for compliance	Notes and action taken on order with signature of Dealing Assistant and Superintendent
03	25.11.2024	<p>M/S Niranjan Lenka & his associates entered appearance for the sole respondent.</p> <p><u>Nalak</u> 28/11/24</p> <p><u>Order No-3</u></p> <p>i) Further order on I.A no- 2729/23 is at 'lag-A' for condonation of delay.</p> <p>ii) Objection for ^{to the I.A for} condonation of delay not yet filed.</p> <p>For Orders</p> <p>Along with WPM- 30112/2022 (a disp. of case)</p> <p><u>Biswabhusan Nalak</u> 28.11.2024</p> <p><u>DB</u> Adj. to 02.12.24</p> <p></p>

IN THE HIGH COURT OF ORISSA

Case No. WA - 1053/2023

OFFICE NOTES

Sl. No. of Order for compliance	Date of Order for compliance	Notes and action taken on order with signature of Dealing Assistant and Superintendent
04.	02.12.2024	<p>For Fresh Admission</p> <p>1) Receipt showing service of payment of cost of Rs. 2000/- to the respondent, subjected to the condonation of delay not yet filed.</p> <p>2) Receipt showing service of copy of appeal memo on the counsel of respondent not yet filed.</p> <p>3) DA no - 2730/23 is at 'Flag-B' for stay.</p> <p>Along with WPC - 30112/2022 (a disp. of case)</p> <p><u>Biswabhusan Nahak</u> 06-12-2024</p> <p style="text-align: right;">DB <u>Adj. to 10.12.2024</u></p> <p><i>[Signature]</i> 31/12/24</p>



[http://10.184.240.222/swecourtishc/periphery/ohcperiphery/filing/...](http://10.184.240.222/swecourtishc/periphery/ohcperiphery/filing/)
ORISSA HIGH COURT
FILING ACKNOWLEDGEMENT SLIP

CNR

ODHC010390852023

Filing No

WA/0001053/2023

Date and Time

16/05/2023-16:51:55

Misc Case/IA

2729/2023,2730/2023

Petitioner Name

STATE OF ODISHA

Petitioner Advocate Name

MANOJA KUMAR KHUNTIA, A.G.A.

Respondents Name

SHIBASISH BEHERA

Respondents Advocate

Amount

Police Station

FIR



Tuesday 16th of May 2023 05:26:46 PM

STAMP REPORT

CASE NO.

W.A. 1053/23

LIMITATION

Date of Judgement Awards 18-11-22
Date of Valid Presentation 16-5-23
Total Period Occupied 179 days
Limitation 30 days
Certified Copy Period — day
Delay in filing 149 days

1. In time NO Expired on 18.12.22
2. Period of delay 149 days delay. J.A. for condonation of delay filed.
3. Court Fee Rs 1812/- paid.
4. Authentication fee due on the
(a) Copy of Trial Court Judgement
Rs.....p..... Decree Rs.....p.....
(b) Appellate Court Judgement Rs.....3/- paid
Decree Rs.....p.....
5. (a) Copy of Trial Court Judgement/Order p
(b) Appellate Court/Revisional Order
Judgement Xerox Copy of C. Copy of impugned order filed.
(c) Second Copy Petition filed.
(d) Receipt showing copy on A.G.p
(e) Vakalatnama properly stamped,
Executed and accepted memo of appearance filed.
6. (a) Cause Title in order.
(b) Provision of Law furnished.
7. Code indicated.
8. Single Judge/Division Bench Case D.B.
9. Other Defects p

STAMP REPORTER

BIBHUDENDRA SARANGI
ADDL. STAMP REPORTER

1. AHQ / AS / CMA / CMPAT / CMPNC / CRA / CRNG / CRRPE / CRRV
CVA / VCREP / CYREV / CERV / DREF / EC / PE / FA / GA / JORA
JCRM / JCRREV / MA / MJC / NREF / OCMC / OJC / OS / SA
SCA / SJC / SM / SH / TA / TNO

Case Type W.A No. 1053 / 2023

Date of Recn. _____

2. If 'State' is a Party, Name the Deptt.: (Pet/Res) (Put mark)

School and Mass Education Department.

If Public Undertakings (Specify name): (Pet/Res) (put mark)

3. (a) Number of category with sub-category under which the matter falls:

31

07

05

If OTHERS, Specify the subject

(b) Which is applicable? (put mark)

(Single Bench/Div. Bench/Three Judge Bench/Five Judge Bench)

4. Article of the Constitution/Act (Central/State) (Put mark)

5. Section/Sub-Section involved:

6. Rules involved. An application under clause-10 of the Letter Patent appeal read with article-4 of the Odisha High Court order 1948.

7. Whether any other matter is pending in this Court on the same point of law:

If so, give the number of matter X

8. Whether any other matter is pending against the impugned order/Judgement?

If so, give the number of matter X

9. Whether the matter is covered by any judgment of the Supreme Court, this Court or any other High Court, if so give details of the judgement:

10. Point of law involved in the matter. Challenging the Order dated 18.11.22 Passed in WPR NO-30112/2022 by the Honble Single Judge.

Custack
DF-15-5-23

ced
MANOJA KUMAR KHUNTIA
Additional Govt. Advocate
B.C.E No 498/1994
M-8017 1994

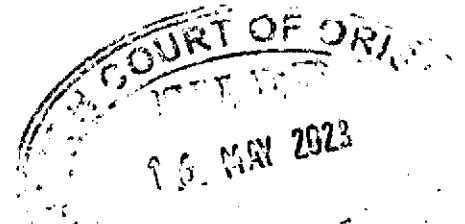
High Court of Orissa Acknowledgement



CNR	: ODHC010390852023		
Efiling No	: AOD20220001886C202300316		
Filing No.	: WA/1053/2023	Date of Filing	: 16-05-2023
Petitioner	: STATE OF ODISHA	Time of Filing	: 16:51:55
Petitioners	: MANOJA KUMAR KHUNTIA,	Respondent	: SHIBASISH
Advocate	A.G.A.		BEHERA
Amount	: 0.00		



[Print](#)



IN THE HIGH COURT OF ORISSA : CUTTACK

W.A. No. 1053 of 2023.

(Arising out of W.P. (C) No. 30112 of 2022
disposed of on 18.11.2022.)

Code No. 310705

State of Odisha and others. ... Appellants.

-Versus-

Shibasish Behera. ... Respondent.

INDEX

<u>Sl. No.</u>	<u>Description of documents</u>	<u>Page</u>
1.	SYNOPSIS	A
2.	List of Date and events	B-C
3.	Memo of Appeal.	1- 13
4.	<u>Annexure-1 series.</u> Copy of the W.P. (C) No. <u>30112</u> of 2022 along with its Annexures	14-52
5.	<u>Annexure-2.</u> Copy of order dated 18.11.2022 passed in W.P. (C) No.30112 of 2022.	53-56 P

Cuttack
Date : 15.05.2023

certs
Addl. Government Advocate.
MANOJA KUMAR KHUNTIA
Additional Govt. Advocate
B.C.E No. 1008/2023
M-9437166



Appendix-I

A

SYNOPSIS

The State Government and its functionaries have preferred this intra-court appeal challenging the legality and propriety of the order dated 18.11.2022 passed by the Hon'ble Single Judge passed in W.P. (C) No.30112 of 2022, wherein and where under the Hon'ble Single Judge on the very first day of hearing, disposed of the Writ Petition filed by the Respondent in the light of the judgment passed in the case of the Malaynanda Sethy Vrs. State of Odisha and Others and also directed the State-Appellants to consider the case of the petitioner for appointment under the OCS(RA) Rule, 1990.

Cuttack

Date: 15.05.23

cert
Addl. Government Advocate.

MANOJA KUMAR KHUNTIA

Additional Govt. Advocate

B.C.E No -0-98/1994

M-9437158044

Appendix-II

B

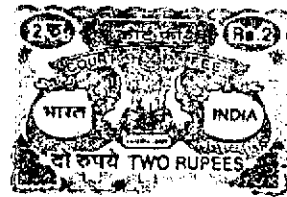
LIST OF DATES & EVENTS

Date	Events
3.5.2013	The father of the Respondent while working as Classical Teacher in Panchyat High School, Jaja died on 3.5.2013.
21.8.2013	Thereafter the Respondent filed application under RA Scheme in the prescribed format.
2018	The present Respondent filed Writ petition bearing No. 30112 of 2022 which was disposed of on 18.11.2022 within an observation to consider the representation within a period of three months.
29.1.2020	The appellant No.3 rejected the claim of the present Respondent with an observation that the claim of the application deserve no merits for consideration.
2021	The present Respondent filed another Writ petition bearing W.P(C) No.30112 of 2022 and the same was disposed of on 21.11.2022, which is impugned in the present writ appeal.

Cuttack

Date: 15.05.23

eeh
Addl. Government Advocate.
 MANOJA KUMAR KHUNTIA
 Additional Govt. Advocate
 B.C.E No.-O-98/1994
 M-9437168044



IN THE HIGH COURT OF ORISSA : CUTTACK

W.A. No. 1053 of 2023.

(Arising out of W.P. (C) No. 30112 of 2022
disposed of on 18.11.2022.)

Code No. 310705

IN THE MATTER OF :

An application under Claus-10 of Letter Patents Appeal read with Article-4 of Orissa High Court Order, 1948 read with Rule-2 of Chapter-VIII, Orissa High Court Rules, 1948.

Presented on. 16/5/2023

SM
Registrar (Judicial)

AND

IN THE MATTER OF :

A Memorandum of appeal challenging the order dated 18.11.2022 passed by the Hon'ble Single Judge in W. P. (C) No. 30112 of 2022.

AND

IN THE MATTER OF :

1. State of Odisha, represented through Secretary (Now Commissioner-cum-Secretary) to Government, School and Mass Education Department, At-Lokseva Bhawan, Bhubaneswar, Dist: Khurda.
2. Director of Elementary Education, Odisha, Heads of Department Building, At/Po: Bhubaneswar, Dist: Khurda.

certi
A. G. R.

Pranab Kumar Sarangi
District Education Officer,
Kandhamal, Phulbani

3. District Selection Committee (Rehabilitation Appointment) represented through its Chairman, Office of the DEO, Kandhamal, At/Po/PS/Dist: Kandhamal.
4. Collector, Kandhamal, At/Po/PS/Dist: Kandhamal.
5. District Education Officer, Kandhamal, At/Po/PS/Dist: Kandhamal.
6. Block Education Officer, Phiringia, At/Po/PS-Phiringia, Dist: Kandhamal.

(Opp. Party Nos.1 to 6 in the writ petition)

... **Appellants.**

-Versus-

Shibasish Behera, aged about 30 years, Son of Late Antaryami Behera, At/Po-Shakhipada, PS-Phiringia, Dist: Kandhamal.

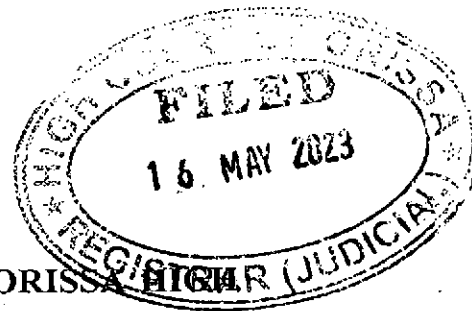
(Petitioner in the writ petition)

... **Respondent.**

The matter out of which this writ appeal arises was before this Hon'ble Court in W. P. (C) No. 30112 of 2022, which was disposed of on 18.11.2022 by the Hon'ble Single Judge.

*cert
A-1*

Pranod Kumar Sarangi
District Education Officer,
Kandhamal, Phulbani



TO

THE HON'BLE CHIEF JUSTICE, ORISSA HIGH COURT AND HIS LORDSHIPS COMPANION JUSTICES OF THE SAID HON'BLE COURT.

The humble petition of the appellants named above;

MOST RESPECTFULLY SHEWETH:

1. That, the appellants above named, who are the functionaries of the State of Odisha, have filed aforesaid memorandum of appeal challenging the order dated 18.11.2022 of the Hon'ble single Judge passed in W.P. (C) No. 30112 of 2022, wherein the Hon'ble Single Judge in the operative portion of the judgment passed the following order:

"XXX XXX XXX

In the above view of the matter, the order dated 16.06.2022 passed by opposite party No.5 under Annexure-12 is hereby quashed. The opposite parties are directed to consider the case of the petitioner in the light of the judgment passed by the Apex Court in the case of Malaya Nanda Sethy (supra) and pass appropriate order in accordance with law within a period of three months from the date of production of certified copy of this order.

XXX XXX XXX"

2. That, it is submitted that such order passed by the Hon'ble Single Judge is not only erroneous and contrary to the law but also the same is gross violation of principle of natural justice and also contrary to the material available on record, for which the State- appellants finding no other alternative

Pranod Kumar Sarangi
District Education Officer,
Kandhamal, Phulbani

*certi-
A.G.K.*

approached this Hon'ble Court by filing the present intra-court appeal. Hence this writ appeal.

3. That, the present appellants are State and functionaries of the State of Odisha and the cause of action for filing the memorandum of appeal arises within the territorial jurisdiction of this Hon'ble Court.

4. That, the factual matrix of the present case as revealed from the averments made in the writ petition that the father of the petitioner namely Late Antaryami Behera while working as Primary School Teacher under Block Education Officer, Phiringia died on 21.03.2013. It is also stated by the present Respondent before the Hon'ble Single Judge that after the death of the father of the Respondent, the competent authority has issued a legal heir certificate.

4. That, the present Respondent has submitted that she made an application before the present Appellant No.3 in prescribed format on 15.03.2014 for appointment under the Rehabilitation Assistance Scheme and after receipt the application of the present Respondent the same was forwarded to the Director, Elementary Education, Odisha and after thorough scrutiny of the said proposal the Opp. Party No.2 approved the proposal and returned the application to reconsider under the Odisha Civil Service (Rehabilitation Assistance) Rules, 2016.

5. That, challenging the decision of the authority prior to filing of W.P. (C) No. 30112 of 2022 the respondent filed

Pranod Kumar Sarangi
District Education Officer,
Kandhamal, Phulbani

*cert
A-22*

another writ petition bearing W.P. (C) No. 13376 of 2022 which was disposed of by this Hon'ble Court on 27.05.2022. In obedience to the order dated 27.05.2022 passed by this Hon'ble Court, the present Appellant No.5 considering the grievance of the petitioner rejected the claim of the respondent vide office order No.4334 dated 16.06.2022.

6. That, further the respondent challenging the office order No.4334 dated 16.06.2022 filed a writ petition before this Hon'ble Court bearing W.P. (C) No. 30112 of 2022 seeking a direction to give her appointment under R.A. Scheme Rule 1990, within a stipulated time with all consequential service and financial benefits. Copy of writ petition along with its annexures is filed herewith and marked as Annexure-1 series.

7. That, the aforesaid writ petition was listed before the Hon'ble Single Judge for the first time on 18.11.2022 and at the stage of admission without giving opportunity to the State-appellants to file their reply/ response, disposed of the writ petition by directing the State- appellants to consider the case of the petitioner in the light of judgment passed by the Apex Court in the case of Malayananda Sethy (supra) and pass appropriate order in accordance with law within a period of three months. Copy of order dated 18.11.2022 is filed herewith and marked as Annexure-2.

P. Aravind Kumar Sarav
District Education Officer,
Kandhamal, Phulbani

ceds
A.C.

Being aggrieved by the aforesaid order dated 18.11.2022 passed in W.P. (C) No. 30112 of 2022 of the Hon'ble Single Judge the present appellants challenge the same on the following amongst other;

GROUNDS

A) For that the order passed by the Hon'ble Single Judge under Annexure-2 is not at all sustainable as the Hon'ble Single Judge has not appreciated the fact and law involved in the case in its proper prospective, for which the impugned order under Annexure-2 passed by the Hon'ble Single Judge by disposing the writ application at the stage of admission in the light of judgment passed in the case of Malayananda Sethy is liable to be quashed.

B) For that the impugned order passed by the Hon'ble Single Judge is not tenable in the eye of law for the simple reason that the Hon'ble Single Judge without providing any opportunity to the State- appellants for filing its response has disposed of the matter at the stage of admission by directing the State Government to consider the case of the Respondent, which is required to be quashed, as the Hon'ble Single Judge has not decided the claim of the Respondent as to whether he is entitled to be appointed under Rehabilitation Assistance scheme or not and without adjudicating the matter on

Pravod Kumar Sarang
District Education Officer,
Kandhamal, Phulbani

*certi
P-2*

merit, the direction of the Hon'ble Single Judge at the stage of admission is not at all sustainable in the eye of law and such order passed by the Hon'ble Single Judge is not only contrary to law, but also same is contrary to the statutory rule governing the field. Hence the impugned order is liable to be quashed.

C) For that it is submitted by the present Respondent that she had applied for appointment under Rehabilitation Assistance on 15.03.2014 in the proper form when Rehabilitation Rule 1990 was in force. In this regard it is humbly submitted that the present appellant No.3-District Education Officer, Kandhamal considered the application of the present respondent by way of computing points under OCS (RA) Rules, 2020.

D) For that it is humbly submitted that challenging the order of the present appellant No.3-District Education Officer, Kandhamal, the present respondent had filed writ petition bearing W.P. (C) No. 30112 of 2022.

E) For that the Hon'ble Single Judge without verifying the fact in issue in the instant case and without examining the ratio decided in Malaya Nanda Sethy case (supra) and without perusing the pleadings and material documents available on record illegally and most unreasonably disposed of the writ petition directing the Appellants to consider the case of the

Pranod Kumar Sarangi
District Education Officer,
Kandhamal, Phulbani

*cert.
A.L.*

respondent in the light of the principle decided in the case of Malaya Nanda Scthy (supra) and accordingly illegally directed to extend the benefit to the respondent within a period of 3 months from the date of communication of the order. It is humbly submitted that such an observation of the Hon'ble Single Judge is an outcome of total non-consideration of the material facts and pleadings made by the State authorities and the aforesaid findings and observations arrived at by the Hon'ble Single Judge resulted in grave miscarriage of justice. Hence the impugned order is liable to be set aside.

F) For that it is humbly submitted that the matter relating to appointment under the Rehabilitation Assistance scheme has already been set at the rest by the Hon'ble Apex Court in the case of N.C. Santosh Versus State of Karnataka and others reported in 2020(7) SCC, page 617, where the Hon'ble Apex Court have clearly held that the norms prevailing on the date of consideration of the application should be the basis for consideration of claim for compassionate appointment. Therefore, in the instant case since the Odisha Civil Service (Rehabilitation Assistant) Rule, 1990 is no more available in view of the introduction of the new rule in the year 2020 and more particularly the said new rule 2020 is yet to be made applicable in respect of either fully aided institution or block grant institution,

Poornima Kumar Sarangi
District Education Officer,
Kandhamal, Phulbani

*cel
Aa*

therefore, the very writ petition filed by the present Respondent before the Hon'ble Single Judge is thoroughly misconceived and contrary to settled position of law and the Hon'ble Single Judge has not considered the said legal aspect while passing the impugned order. Hence the impugned order passed by the Hon'ble Single Judge is liable to be quashed.

G) For that the Hon'ble Single Judge while passing the impugned order has not taken into consideration of Rule 6 (9) of Odisha Civil Service (Rehabilitation Assistance) Rules, 2020. In that Rule it is provided that "all pending cases as on the date of publication of these rules in the Odisha Gazette shall be dealt in accordance with the provision of these rules. Though the present Respondent No.1 challenged the rejection order in the writ application on the ground that his case will be considered in the old rules i.e. Odisha Civil Service (Rehabilitation Assistance) Rules, 1990, but he has not choose to challenge the 6.9 of Odisha Civil Service (Rehabilitation Assistance) Rules, 2020, wherein it was provided that all pending cases will be dealt in accordance with the Rule, 2020. Therefore, in absence of such challenge, the writ application before the Hon'ble Single Judge is not maintainable. The Hon'ble Single Judge has also not considered the said rule while disposing the matter and directed that his case may be considered in the old rules on the basis of

Pranab Kumar Sarangi
District Education Officer,
Kandhamal, Phulbani

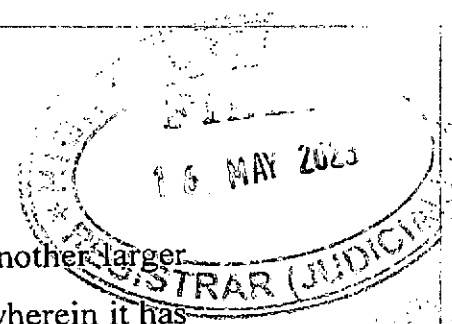
*cert.
ACW*

Malayananda Sethy's case. In absence of challenge of 6.9 of Odisha Civil Service (Rehabilitation Assistance) Rules, 2020, which is a statutory rule under Article 309 of the Constitution of India, the direction made in the writ petition is not sustainable in the eye of law.

H) For that it is a fact with regard to applicability of the rule in respect of appointment under Rehabilitation Assistance Scheme, though there are some conflicting judgments not only passed by this Hon'ble Court, but also by the Hon'ble Apex Court, but issue decided in the case of N. C. Santosh as referred in the foregoing paragraph is a larger Bench judgment which is binding over all other judgment and more over the very same issue with regard to applicability of the norms for consideration of Rehabilitation Assistance application is also pending and referred to a larger bench in the case of State Bank of India Versus Sheo Shankar Tewari reported in (2019) 5 SCC 600 and the said issue is still pending before the Hon'ble Apex Court. Basing on such issue pending before the Hon'ble Larger Bench of the Hon'ble Apex Court, the Division Bench of this Hon'ble Court vide its order dated 27.07.2022 in W.P. (C) No. 37575 of 2020 observed that awaiting the judgment of larger bench of the Hon'ble Apex Court in the above case adjourned the said case as sine die till the final decision of the Hon'ble Supreme Court. Therefore, since the issue is pending before the Hon'ble Apex

Premod Kewar Sarangi
District Education Officer,
Kandhamal, Phulbani

*clear
A-6*



Court in the larger bench and more over another larger bench in the case of N.C. Santosh (supra) wherein it has been held that the norms prevailing on the date of consideration of the application should be the basis for consideration of claim for compassionate appointment. Therefore, the Respondent is not entitled to be appointment under Rehabilitation Assistance Scheme, but the order of the Hon'ble Single Judge for consideration of the case of the Respondent relying the judgment in the case of Malayananda Sethy is appears to be not sustainable in the eye of law for which the impugned order under Annexure-2 is liable to be quashed.

I. For that the impugned order passed by the Hon'ble Single Judge is also liable to be quashed for the reason that admittedly the Respondent prayed before the Hon'ble Single Judge to give her appointment under R.A. Scheme Rule, 1990, but the Hon'ble Single Judge erroneously disposed of the writ petition at the stage of admission, therefore the order passed by the Hon'ble Single Judge is not sustainable in the eye of law, hence the impugned order passed the Hon'ble Single Judge is liable to be quashed.

J. For that, it is well settled principle of law that appointment on compassionate ground is not a matter of right and since the father of the Respondent died in 2012 and in the meantime more than ten years

Prafulla Kumar Sahoo
District Education Officer,
Kandhamal, Phulbani

clerk
A. S. S.

have already been passed and such a belated stage the claim of the Respondent cannot be sustained and the same is contrary to the aims and object provided for compassionate appointment. Therefore, the claim of the Respondent is not at all tenable in the eye of law, hence the same is liable to be quashed.

K) For that judging from any angle the order passed by the Hon'ble Single Judge cannot sustain in the eye of law and the same is liable to be quashed.

L) For that in view of the aforesaid facts and circumstances the order dated 18.11.2022 of the Hon'ble Single Judge passed in W.P. (C) No. 30112 of 2022 is not sustainable in the eye of law, accordingly the same may be quashed.

PRAYER

It is, therefore, most humbly and respectfully prayed that this Hon'ble Court may graciously be pleased to admit the appeal, issue notice to the respondents, call for the records and after hearing the parties the Hon'ble Court may be pleased to quash the impugned order dated 18.11.2022 passed by the Hon'ble Single Judge in W.P. (C) No. 30112 of 2022 under Annexure-2 and further the writ petition filed by the present Respondent before the Hon'ble Single Judge may be dismissed being devoid of any merit;

And may pass such other order/orders as may be deemed just and proper for the ends of justice.

Pranod Kumar Sarangi
District Education Officer,
Kandhamal, Phulbani

*certs
A.G.*

And for this act of kindness the appellants as in
duty bound shall ever pray.

By the appellants through;

Cuttack,
Date: 15.05.23

cert
Addl. Government Advocate.

CERTIFICATE

Certified that the grounds set forth above are good
grounds involving substantial question of law to be canvassed
in this appeal and having prepared and filed. I undertake to
support the same at the time of hearing if instructed.

Further certified that due to non-availability of
cartridge papers plain blue papers have been used.

Cuttack
Date: 15.05.23

cert
Addl. Government Advocate.

MANOJA KUMAR KHUNTIA
Additional Govt. Advocate
B.C.E. No.-O-98/1994
M-9437168044

Manoj Kumar Sarangi
District Education Officer,
Kandhamal, Phulbani

Annexure -J

Serial 9.

IN THE HIGH COURT OF ODISHA, CUTTACK
(Original Jurisdiction Case)

WP(C) No. 30112 /2022

Code No.301705

Shibasish Behera

... PETITIONER

Vrs

State of Odisha and others

... OPP. PARTIES

INDEX

Sl. No.	Description of documents	Annexure	Page
1.	Copy of Writ Petition		1-16
2.	Copies of death certificate	Annexure-1	17
3.	Copies of legal heir certificate	Annexure-2	18
4.	Copy of letter dtd.29.12.2014	Annexure-3	19
5.	Copy of R.A application	Annexure-4	20-21
6.	Copy of letter dtd.13.10.2015	Annexure-5	22
7.	Copy of letter dtd.15.09.2017	Annexure-6	23
8.	Copy of letter dtd. 19.06.2018	Annexure-7	24
9.	Copy of affidavit	Annexure-8	25
10.	Copy of letter dtd. 16.10.2021	Annexure-9	26
11.	Copy of application dtd.02.12.2021	Annexure-10	27
12.	Copy of order dtd. 27.05.2022	Annexure-11	28-31
13.	Copy of impugned order dtd. 16.06.2022	Annexure-12	32-33
14.	Copies of some orders in similar cases	Annexure-13 Serial	34-38
	<u>VOKALATANAMA</u>		

Cuttack

Date: 04.11.2022

H.K. Mahanta

ADVOCATE

For the petitioner

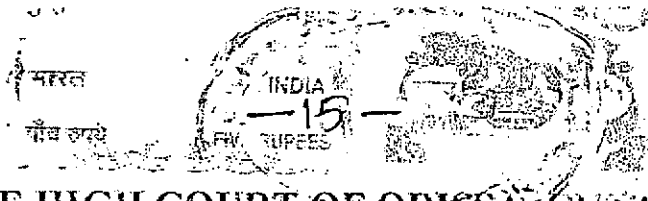
(NIRANJAN LENKA, Adv.,

ENRL No.O-232 of 1987)

PH-933811/098

True Copy Attested

District Education Officer,
Kandhamal, Phulbani



IN THE HIGH COURT OF ORISSA, CUTTACK
(Original Jurisdiction Case)

W.P. (C) No. 30112 OF 2022

Code No. 301705

In the matter of:

An application under Article 226 and 227 of the
Constitution of India;

AND

In the matter of:

An application challenging an illegal, arbitrary and unlawful order dtd. 16.06.2022 passed by the District Education Officer, Kndhamal in rejecting the application of the petitioner for appointment under Rehabilitation Assistant Rules, on the ground that as per the Notification No.5651 dtd.17.02.2020 of the Govt., GA&PG Department, he is not found eligible to get appointment under OCS(Rehabilitation Assistance) Rules-2020. The petitioner seeks to challenge the said order mainly on the ground that while passing the said impugned order, the direction dtd. 27.05.2022 of this Hon'ble Court passed in WPC No. 13376 of 2022 has been completely ignored. the case of the petitioner should have been considered as per the provision of OCS(RA) Rules 1990 which was prevailing at the time of death of his father, the ratio decided by the Hon'ble Apex Court in the Case of The State of Madhya Pradesh Vrs. Baalendu Yadav reported in 2021(11) OLR-1072, State of Moharashtra Vrs. Manj Kumar Deheria (2020) 2 SCC-729, 2022(11) OLR-1 Malaya Nanda Sethi Vrs. State of Odisha and others, 2021(11) OLR-1072 The State of Madhyapradesh Vrs Ashis Awasti, have not been taken in to consideration and above all the order suffers from the vice of violation of principle of natural justice.

PRADIPTA KUMAR MOHANTY
Notary, Cuttack, Odisha
Regd. No. OH-04/1995

AND

In the matter of:

Shibasish Behera , aged about 29 years,

S/o- Late Antaryami Behera

At/Po-Shakhipada Ps-Phiringia

Dist-Kandhamal.

... .. PETITIONER

Vrs

1. State of Odisha represented through Secretary School and Mass Education Department Govt. of Odisha, Secretariat Building, Bhubaneswar, Dist-Khurda.
2. Director of Elementary Education Odisha, Bhubaneswar Heads of the Dept. Building, Odisha, Bhubaneswar
3. District Selection Committee (Rehabilitation Appointment) represented through it Chairman Office of DEO, Kandhamal, At/Po/Ps /Dist-Kandhamal
4. Collector, Kandhamal, At/P.O/P.S/Dist-Kandhamal.
5. District Education Officer, Kandhamal At/pO/PS/Dist-Kandhamal
6. Block Education Officer Phiringia At/Po/Ps-Phiringia Dist-Kandhamal

... .. OPP. PARTIES

The matter out of which this writ application arises was before this Hon'ble Court in WPC

No. 13376 of 2022 disposed of on 27.05.2022.

H.K. Mohanta
Adv

To

The Hon'ble Chief Justice of Orissa High Court and His Lordship's other companion justices of the said Hon'ble Court.

The humble petition of the
petitioner above named

MOST RESPECTFULLY SHEWETH:-

1. That, the petitioner who has lost his father while in service and who has been consistently harassed at the hands of the Opp.Parties, filed the present writ application calling in question the legality, propriety and sustainability of an order dtd. 16.06.2022 passed by the District Education Officer, Kandhamal (herein after referred to as the DEO, Kandhamal) the Opp.Party No.5. In the said impugned order the Opp.Party No.5 has illegally, arbitrarily and giving scant regards to the settled principle of law so also the direction of this Hon'ble Court passed in the earlier writ application, has rejected the application of the petitioner for appointment under Rehabilitation Rules, on the ground that, as per the Notification No.5651 dtd.17.02.2020 of the Govt., GA&PG Department, he is not found eligible to get appointment under OCS (Rehabilitation Assistance) Rules-2020. The petitioner seeks to challenge the said order mainly on the ground that while passing the said impugned order, the direction dtd. 27.05.2022 of this Hon'ble Court passed in WPC No. 13376 of 2022 has been completely ignored, there is violation of principle of natural justice, the case of the petitioner should be considered as per the provision of OCS(RA) Rules 1990 which was prevailing at the time of death of his father, the ratio decided by the Hon'ble Apex Court in the Case of The State of Madhya Pradesh Vrs. Baalendu Yadav

RECEIPTA ANNAK MOHANTY
Notary, Cuttack Town
Regd. No. OH-01/2017

A. K. Mohanta
Adv

reported in 2021(11) OLR-1072, State of Moharastra Vrs. Manj Kumar Deheria (2020) 2 SCC-729, 2022(11) OLR-1 Malaya Nanda Sethi Vrs. State of Odisha and others, have not been considered and apart from that since father of the petitioner died in on 21.03.2013, in harness, the petitioner made due application for being appointed under Rehabilitation Assistant Rules 1990 but the authorities sat over the said application of the petitioner for a quite long time and finally have rejected his case basing on the provisions of new Rules, which is not applicable to the petitioner. Under aforesaid facts and circumstances interference of this Hon'ble Court is warranted.

2. That, the petitioner is the citizen of India and the cause of action for this writ application arises within the jurisdiction of this Hon'ble court.

3. That, the facts leading to the present writ application are that the father of the petitioner namely Antaryami Behera was a govt. employee as he was working as Asst. Teacher in the Govt. School under School and Mass Education Dept. of Govt. of Odisha and more specifically under the administrative control of BEO, Phiringia in the district of Kandhamal. While working as such the father of the petitioner died, in harness, on 21.03.2013 at an early age of 50 years of age. Copy of the death certificate of the father of the petitioner is annexed as ANNEXURE-1.

4. That, the father of the petitioner died leaving behind his old and ailing father and mother of 90 and 80 years respectively, his wife Sanjukta Behera and two minor sons including the petitioner and one Umashakar Behera and out of them the petitioner is the elder. Copy of the legal heir certificate of the deceased employee is annexed as ANNEXURE-2.

PRADIPTA KUMAR MOHANTY
Notary, Odisha
[Signature]

A.K. Mohanta
A-10

5. That, at the time of death of his father the petitioner was a minor of 17 years and his younger brother was also a minor of 13 years of age. So far as the mother of the petitioner is concerned she was the only person to look after and shoulder the burden of the old and ailing father and mother of the deceased employee including his two minor sons, hence he was unable to apply.

6. That, after attaining the majority i.e after attaining 18 years of age, on 15.03.2014 the petitioner submitted an application before the BEO, Phiringia the Opp.Party No.6, in the prescribed form, seeking for his appointment under the provisions of OCS(RA) Rules 1990. On the same day i.e on 15.03.2014 the BEO, Phiringia send the said application of the petitioner to the Collector for enquiry and to submit report whether the family of the deceased employee is in distress or not. After conducting due enquiry the Collector by his office order No. 2310 dtd. 29.12.2014 returned back the said application to the BEO, Phiringia with the certificate that the family of the deceased employee is in distress condition, with due intimation to the petitioner. Copy of letter dtd. 29.12.2014 of the collector Kandhamal and the application of the petitioner are annexed as ANNEXURE-3 and 4 respectively.

7. That, on receipt of the said letter along with the application from the Collector, Kandhamal, the BEO, Phiringia the Opp.Party No.6, forwarded the said application to the Director, Elementary Education the Opp.Party No.2, the appointing authority to consider the case of the petitioner. After passing about ten months from the date of submission of said report by the Collector, the Opp.Party No.2 by his office order No. 17468 dtd. 13.10.2015 asked the BEO, Phiringia the Opp.Party No.6 to furnish the no employment affidavit of all major legal heirs including the petitioner as per

Rule-2(iii) of OCS(RA) Rules 1990. Copy of the said letter was also send to the petitioner. Copy of said letter dtd.13.10.2015 is annexed as ANNEXURE-5.

8. That, pursuant to the said order of the Opp.Party No.2 vide annexure-5 the petitioner filed the required affidavit before the BEO, Phiringia the Opp.Party No.5, inter alia mentioning there in that none of the family members are either in Govt., or public sector employment. Since the copies of said affidavit are not available with the petitioner he is unable to produce the same. The petitioner came to know that the BEO, Phiringia the Opp.Party No.6 send the said affidavits to the Opp.Party No.2 for consideration.

9. That, when the matter stood thus and when the petitioner was under hope and trust that since his case for appointment under Rehabilitation Scheme is coming under the deserving category very soon he will be given appointment. But in the month of September 2017 he was served with the order No.7148 dtd. 15.09.2017 of the DEO, Kandhamal, Phulbani, which was addressed to the BEO, Phiringia the Opp.Party No.6. In the said order it was mentioned that the Director Secondary Education, Odisha Bhubaneswar has returned all applications for appointment under R.A Scheme submitted by erstwhile DIs/BEO/HMs and directed to take appropriate actions for appointment of applicant under R.A Scheme as per OCS(RA) Amendment Rules-2016. In the said letter so far as the petitioner is concerned, the fresh legal heir certificate of all major legal heirs of the deceased employee, the certificate from the competent authority to ascertain the movable and immovable properties, declaration in shape of affidavit to maintain the family and the educational certificate of

the petitioner were called for. Copy of said letter dtd. 15.09.2017 is annexed as ANNEXURE-6

10. That, pursuant to the said letter vides annexure-6 the petitioner collected all the above mentioned documents and submitted the same before the BEO, Phiringira. The petitioner came to know that BEO, Phiringia by his office order dtd. 19.06.2018 forwarded the said documents to the DEO, Kandhamal Phulbani with due intimation to the petitioner. Copy of said letter dtd. 19.06.2018 showing submission of documents and the affidavit submitted by the petitioner are annexed as ANNEXURE-7 & 8 respectively.

11. That, though all the formalities required for appointment of the petitioner under R.A Scheme were complied with still then the Opp.Party No.2 sat over the matter. Though the petitioner had been to the said authorities time and again but all the time he was given assurance that his case will be considered in time.

12. That, when the matter stood thus and when the petitioner was expecting early action on his application for appointment particularly when his case is a year old case and more particularly when he has already complied with all formalities, but to his shock and surprised he was served with the letter dtd. 16.10.2021 issued by the DEO, Kandhamal, Phulbani, the Opp.Party No.4, whereby the petitioner was informed that his application for appointment under R.A Scheme has been rejected in view of the resolution No.5651 dtd. 17.02.2020 of the GA & PG Department of Govt., of Odisha. Copy of said letter dtd. 16.10.2021 is annexed as ANNEXURE-9.

13. That, for appreciation of this Hon'ble Court it may be submitted here that by virtue of the said notification

No.5651 dtd. 17.02.2020, in supersession of previous OCS(RA) Rules 1990 the OCS(RA) Rules 2020 came in to operation w.e.f the date of its publication in the Odisha Gazette.

14. That, after receipt of said letter dtd. 16.10.2021 vide annexure-9 the petitioner on 02.12.2021 submitted a representation before the Opp.Party No.2 inter alia praying that his application for Rehabilitation appointment may be considered under the provisions of OCS(RA) Rules 1990 as the provisions of OCS (RA) Rules 2020 which came in to operation prospectively is not applicable to his case as his father died in the year 2013 when the said 1990 Rules was in operation. Copy of the said representation dtd. 02.12.2021 is annexed as ANNEXURE-10.

15. That, though the aforesaid representation of the petitioner vide annexure -10 was duly received by the Opp.Party No.2 but no action was taken thereon and the said authorities sat tight over the grievance of the petitioner putting the petitioner in utter prejudice.

16. That, under the aforesaid facts and circumstances and in view of the settled principle of law, the petitioner approached this Hon'ble Court in WPC No. 13376 of 2022, seeking for a direction to the Opp.Parties, to consider his application for appointment under RA Scheme as per the provision which was governing the field at the time of death of the Govt., employee. This Hon'ble Court by order dtd. 27.05.2022 disposed of the said writ petition setting in aside the said impugned order dtd. 16.10.2021 vide Annexure-9 and remitted the matter to the DEO, Kandhamal, the Opp.Party No.5 to take a fresh decision in the light of the orders passed by the Hon'ble Apex Court in the case of The State of Madhya Pradesh Vrs. Baalendi Yadav reported in 2021(11) OLR-

1072. Copy of said order dtd.27.05.2022 passed by this Hon'ble Court in WPC No.13376 is annexed as ANNEXURE-11.

17. That, the petitioner meet the Opp.Party No.5 in person and served the copy of said order of this Hon'ble Court along with the judgment of Hon'ble Apex Court in case of The State of Madhya Pradesh Vrs. Baalendi Yadab reported in 2021(11) OLR-1072 and prayed that his case may be considered in view of the ratio decided in that case so also the judgement passed by this Hon'ble Court in the similar cases.

18. That, after submission of said order before the Opp.Party No.5, the petitioner was under hope and trust that very soon he will be issued with the order of appointment as he fulfills all the required criteria as per the said OCS(RA) Rules 1990. But his hope and trust was shattered when he was served with an order dtd. 16.06.2022 of the DEO. Kandhamal, the Opp.Party No.5, where by his application for appointment under Rehabilitation Scheme, has been rejected on the ground that as per the Notification No. 5651 dtd.17.02.2020 of OCS(RA)Rules 2020 of GA & PG Department he is not becoming eligible to get appointment under Rehabilitation Assistance Scheme as he has secured 28 points which is less than 44 points. Copy of said order/letter dtd. 16.06.2022 is annexed as ANNEXURE-12.

19. That, in this writ petition the petitioner seeks to challenge the aforesaid impugned order dtd.16.06.2022 passed by the DEO, Kandhamal, the Opp.Party No.5 vide Annexure-12 and seeks for quashing of the same on the following grounds.

A) That, aforesaid impugned order dtd.16.06.2022 passed by the DEO, Kandhamal the Opp.Party No.5 vide Annexure-12, being otherwise illegal, arbitrary and contrary to law is liable to be

[10]

set aside and the Opp.Parties should be directed to appoint the petitioner under Rehabilitation Assistance Rules, under the Provisions of OCS(RA) Rules 1990 taking in to consideration of his educational qualification.

B) That, aforesaid impugned order dtd.16.06.2022 passed by the DEO, Kandhamal the Opp.Party No.5 vide Annexure-12, is unsustainable, hence liable to be set aside only on the ground that, while passing the impugned order the Opp.Party No.5 has given scant regards to the said order dtd. 27.05.2022 passed by this Hon'ble Court in WPC No. 13376 of 2022. In the said order this Hon'ble Court, while disposing of the said writ petition, and quashing the order dtd. 16.10.2021 by which order the application of the petitioner for being appointed under RA Scheme 1990 was rejected, specifically directed the Opp.Party No.5 to consider the Case of the petitioner in the light of the judgment passed by this Hon'ble Court in various writ petition so also in view of the judgment of the Hon'ble Apex Court in the case of **The State of Madhya Pradesh Vrs. Baalendu Yadav reported in 2021(11) OLR-1072, (Supra)**. But while passing the impugned order the Opp.Party No.5 has neither taken in to consideration of the said orders/judgments of the Hon'ble Apex Court in to consideration. .

C) That, aforesaid impugned order dtd.16.06.2022 passed by the DEO, Kandhamal, the Opp.Party No.5 vide Annexure-12 is liable to be set aside as the Opp.Party No.5, while passing the said order has not taken in to consideration of the law controlling the field. The Hon'ble Apex Court in the case of **The State of Madhya Pradesh Vrs. Baalendu Yadav reported in 2021(11) OLR-1072, State of Moharashtra Vrs. Manj Kumar Deheria (2020) 2 SCC-729, 2022(11) OLR-1Malaya Nanda Sethi Vrs.**

State of Odisha and others and The state of Madhya Pradesh and ors Vrs. Ashis Awasti reported in 2021 (11) OLR -1072, has decided the law that the case of the applicant for appointment under Rehabilitation Assistance Rules should be considered under the provision of Rules which was in Vogue at the time of death of the deceased employee and not as per the subsequent rules.

D) That, aforesaid impugned order dtd.16.06.2022 passed by the DEO, Kandhamal, the Opp.Party No.5 vide Annexure-12 is also not sustainable and liable to be quashed as the same has been passed in complete violation of the principle natural justice. It may be submitted here that prior to passing the impugned order against the petitioner, he has not been given an opportunity of hearing. Had the petitioner been given the opportunity of hearing, he could have convinced the authority/Opp.Party No.5 that the Hon'ble Apex Court so also this Hon'ble Court in plethora of decision have held that the applications for appointment under Rehabilitation Scheme should be considered as the Rules which was prevailing at the time of death of the deceased employee.

D) That, there is no dispute that the father of the petitioner was a Govt. employee and he died on 21.03.2013 in harness. It is also not disputed that on 15.03.2014 the petitioner made application for his appointment under Rehabilitation Assistant Rules and it is also not disputed that in the year 2013 itself the application of the petitioner were sent to the Collector, Kandhamal for submission of distress certificate. It is also not disputed that in the year 2013 itself the Collector, Kandhamal submitted the report that the family is in financial distress. But instead of considering the application of the petitioner for being appointment then and there, the said authority sat over the grievance of the petitioner.

SPRABHA KUMAR PRASANN
Notary, Cuttack, Odisha
Date: 20.06.2022

Now he has mechanically rejected the petition of the petitioner on the ground that the new Rules came in to operation and under the said new Rules the petitioner is ineligible to get the appointment under RA Scheme as he has scored only 22 point.

E) That it is relevant to submit here that the application of the petitioner for appointment was made when the Rehabilitation Assistant Rules 1990 was in vogue i.e much prior to 2020 Rules came in to force. Hence the application of the petitioner should have been considered under the said 1990 Rules as the said 2020 Rules was not there. It is the authorities, particularly the Opp.Party No.4 who sat over the matter for last more than seven years and after coming in to operation the new Rules, rejected the application of the petitioner, which is not only perse illegal but also not sustainable in the eye of law. Consequently the the action/order of the Opp.Party No.4 to consider the case of the petitioner as per the new Rules is not sustainable in the eye of law and the application of the petitioner for appointment under Rehabilitation Assistant Scheme should be considered as per the rules which was in force at the time of death of his father

F) That, aforesaid impugned order dtd.16.06.2022 passed by the CDMO, Rayagada, the Opp.Party No.5 vide Annexure-12 should be quashed only on the ground that while passing the impugned order the Opp.Party No.5 has not taken in to consideration of the fact that the father of the petitioner died in the year 2013 and on 15.04.2014 the application for appointment under RA scheme was filed by the petitioner. Had his case been considered then and there, the petitioner would have been completed more than six years of service by now and the

H.K. Mahapatra
12/11/2022

authorities would not have get the chance to reject the application of the petitioner in view of the new Rules.

G) That, non-consideration of the case of the petitioner for appointment under Rehabilitation Assistant Rules 1990, should be deprecated as the same suffers from the vice of discrimination and violation of Article 14 & 16 of the Constitution of India. When the application of the similarly situated person have been considered and they have already been given appointment under Rehabilitation Assistant Schemes, which was prevailing at the time of death of the Govt. employee absolutely there is no reason in not considering the case of the petitioner in the light of the orders/judgment passed by the Hon'ble Apex Court so also this Hon'ble Court.

H) That, aforesaid impugned order dtd.16.06.2022 passed by the DEO, Kandhamal, the Opp.Party No.5 vide Annexure-12, should be quashed also on the ground that as per the settled principle of law, a particular statute shall come into operation prospectively if specifically there is no provision that it would have the retrospective effect. Here in the present case the application of the petitioner should have been considered in view of RA Scheme, 1990 as the father of the petitioner died in 1990 i.e much prior to the said 2020 Rules came into operation. But here in the present case the cause of action in favour of the petitioner arose much before the said RA Rules, 2020 came into operation. The father of the petitioner died on 21.03.2013 he applied in the month of 15.03.2014 i.e much prior to said RA Rule, 2020 came in to operation. Had the authorities considered the case of the petitioner immediately thereafter the provision of Rules RA Rule, 2020 would not have come on his way. Apart from that since the RA Rule, 2020 came much after the date of death of the father of the

Pl. K. Mahapatra
Adv

11
BY ADVOCATE
S. K. MAHAPATRA

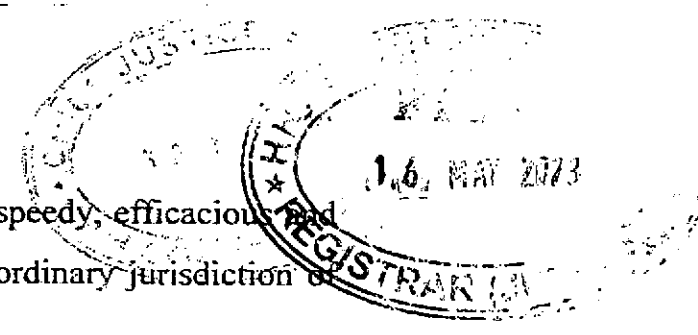
[[14]]

petitioner same is not applicable to him. In view of the law settled by this Hon'ble Court as stated above the case of the petitioner should be considered in view of the law prevalent at the time of death of the father of petitione, but the Opp.Party No.5 has utterly failed to appreciate the same.

1) That, while passing aforesaid impugned order dtd.16.06.2022 vide Annexure-12, the DEO, Kandhamal, the Opp.Party No.5 has failed to appreciated that this Hon'ble Court in several reported and unreported decisions have settled the law that the particular Rules which has not seen the light of the day, has no application to the cases taking place prior to such rule come into existence. Further this Hon'ble Court relying on the decisions of the Hon'ble Apex Court in case of **Canara Bank and onther Vs. M. Mahesh Kumar** reported in (2015) 7 SCC-412, has held that the case of the applicant for appointment under Rehabilitation Assistance Rules shall be considered as per the provisions which was prevailing at the time of death of the deceased employee. Copies of some orders of this Hon'ble Court are annexed as ANNE-XURE-13 series.

J) That, aforesaid impugned order dtd.16.06.2022 passed by the DEO, Kandhamal, the Opp.Party No.5 vide Annexure-12 cannot be allowed to sustain in view of the fact that while passing the impugned order the Opp.Party No.5 has not considered the case of the petitioner in consonance with the order passed by this Hon'ble Court on 27.05.2022 in WPC no.13376 of 2022

20. That, in the aforesaid facts and circumstances interference of this Hon'ble Court is warranted for a direction to the Opp. parties to give appointment to the petitioner under OCS (RA) Rules, which was in vogue at the time of death of his father.



21. That, the petitioner finding no other speedy, efficacious and alternate remedy seeks to invoke the extraordinary jurisdiction of this Hon'ble Courts

PRAYER

It is therefore, prayed that, this Hon'ble court be graciously pleased to admit the writ application, issue rule NISI in the nature of writ of mandamus or any other writ or writs as deem fit and proper impugned order dtd.16.06.2022 passed by the DEO, Kandhamal, the Opp.Party No.5 vide Annexure-12 shall not be quashed and why they shall not be directed to give appointment to the petitioner under OCS(RA) Rules 1990 immediately taking in to consideration of the educational qualification of the petitioner.

In the event of the Opp. Parties fail to show-cause or show insufficient cause said rule be made absolute.

And further be pleased to pass any order/orders direction/directions as deem fit and proper.

And for this act of kindness the petitioner shall as in duly bound ever pray.

Cuttack

By the petitioner through

Dtd.04.11.2022

H.K. Mahanta

ADVOCATE

PRADIPTA KUNAR MOHANTY
Notary, Cuttack Town
A-11, B-1, Cuttack Town

- 30 -

[[16]]

AFFIDAVIT

I, Shibasish Behera, aged about 29 years S/o- Late Antaryami Behera At/Po-Shakhipada Ps-Phiringi Dist-Kandhamal, do hereby solemnly affirm and state as follows:

1. That, I am the petitioner in this Writ Application.
2. That, the facts stated above are true to best of my knowledge and belief.

Identified by

H.K. Mahanta

ADVOCATE

Shibasish Behera

DEPONENT

CERTIFICATE

Due to non-availability of Cartridge papers this petition is being typed in white thick papers. The petitioner undertakes to file the English version of Oriya Annexure later on if necessary

H.K. Mahanta
ADVOCATE

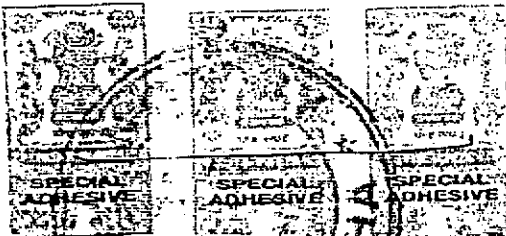
Corrected

Date: 04.11.2022

(NIRANJAN LENKA, ADV.,

ENRL NO.O-232 OF 1987)

Ph.No.9338117098



Satish Chandra Behera
S/o. Late Antaryami Behera
At/Po-Shakhipada Ps-Phiringi Dist-Kandhamal
Date: 04/11/2022
04/11/2022
H.K. Mahanta
Advocate
Enrl No. O-232 of 1987
Ph. No. 9338117098



GOVERNMENT OF ORISSA
DEPARTMENT OF HEALTH AND FAMILY WELFARE
PHULBANI MUNICIPALITY
CERTIFICATE OF DEATH

Issued under section 12/17 of the Registration of Births and Deaths Act, 1969 and rules of Odisha Births and Deaths, Rule 2001.

This is to certify that the following information has been taken from the original record of death which is in the register for **PHULBANI MUNICIPALITY** of Tahasil **PHULBANI** of District **KANDHAMAL** of State of **ODISHA**

Date of Death **21/03/2013**

Sex **MALE**

Name **ANTARYAMI BEHERA**

Name of Father

SANTOSH BEHERA

Date Of Registration **24/03/2013**

Date: **4.5.13**

Permanent Address **AT/PO- SAKHIPADA PS.**

PHIRINGIA DIST. KANDHAMAL ODISHA INDIA

Place of Death **PHULBANI DISTRICT HEADQUARTER**

HOSPITAL PHULBANI

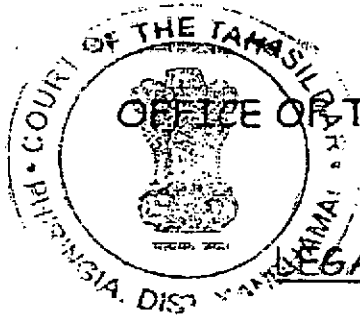
Registration No. **79/2013**

Signature of Issuing Authority
Registrar

Births & Deaths
PHULBANI MUNICIPALITY

*This copy attested
H.K. Mohanta
Adu.*

131



OFFICE OF THE TAHASILDAR, PHIRINGIA

Miscellaneous Certificate Case No. 3611 / 13

LEGAL HEIR CERTIFICATE

This is to certify that the person/ persons specified below is/ are the legal heir/heirs of Late Antarjyami Behera Son/Daughter/Wife of Santosh Behera of village: Sakhipada, P.S. Phiringia Tahasil: Phiringia, Phulbani in the district of Kandhamal.

This certificate is being granted only of the purpose of family pension and other arrear dues.

SL. No.	Name	Age	Relationship with the deceased
1	2	3	4
1	Santosh Behera	90	Father
2	Ranga Behera	80	Mother
3	Sanjukta Behera	40	Wife
4	Sibasish Behera	17	Son
5	Umasankar Behera	13	Son

Signature of the Applicant

Remain copy attached

Com

27/6/13

Asst. Dist. Magistrate
Kandhamal, Kandhamal

[Handwritten signature]

TAHASILDAR
Phiringia, Dist. Kandhamal.
Signature of the Revenue Officer
(Designation with seal and date)
2

The Copy attached
H.K. Mahanta
H.W.

Office of the Collector, Kandhamal, Phulbani

No. - 2310 /BEE Lt-102 - /2014 Dated 29/12/2014

To

The Block Education Officer,
Phiringia.

Sub: R.A. Case of Sri Shibasish Ch. Behera, S/O Late Antaryami Behera, Ex-Asst. Teacher.

Ref: Your letter No.269 dt 15.3.2014. - 511C

Sir,

With reference to the letter on the subject cited above, I am directed to return herewith the original R.A. application of Sri Shibasish Ch. Behera, S/O Late Antaryami Behera, Ex-Asst. Teacher duly signed the distress certificate in part IV of the application form by the Collector, Kandhamal for necessary action at your.

Encl: As above.

Yours faithfully,

R. K. Behera
29/12/14
Establishment Officer,
Collectorate, Kandhamal,
Phulbani.

Memo No. 2311 /dated. 29/12/2014

Copy to Sri Shibasish Chandra Behera, S/O Late Antaryami Behera, Ex-Asst. Teacher, At/PO-Sakhipada, P.S.-Phiringia Dist. Kandhamal for information.

R. K. Behera
29/12/14
Establishment Officer,
Collectorate, Kandhamal,
Phulbani.

The Copy attested
H.K. Mahapatra
AOK

FORM OF APPLICATION FOR APPOINTMENT UNDER THE REHABILITATION ASSISTANCE SCHEME (TO BE SUBMITTED IN DUPLICATE)

PART-I

- 1) Name of the deceased Government Servant : LATE ANTARYAMY BEHERA
- 2) Designation and Office/Department of the Government servant : Asst. Teacher, Block Officer, Phiringia
- 3) Whether permanent or temporary : Permanent
- 4) ~~DATE OF DEATH~~ : ~~21.03.2013~~
- 5) Date of death (Enclose an attested copy of the death certificate issued by the Health and family Welfare Department) : 21.03.2013.
- 6) List of family members as per the Legal Heir Certificate issued by the concerned Talasildar. : Legal Heir enclosed.
(list of 5 family members)
- 7) Income and status of each of the legal heirs : No.
- 8) Is any of the members listed under item 6 has been appointed under compassionate ground? If so, give particulars of such appointment. : No.
- 9) Total assets of the deceased Government servants : No.
- a) Details of immovable property, if any in the name of deceased Government servant and member and members of family
- b) Movable Property
- c) Pension, family pension and T.I. etc. : P.P.Rs. 7,435/- with T.I. as admissible.

PART-II

- 10) Name of the candidate for appointment : Sri Shibasish Ch. Behera
- 11) His/her relationship with the deceased Government servant : Son
- 12) Date of birth : 05.07.1996
- 13) Particulars of Education/Technical Qualification and experience, if any : Matric Pass
(Xerox copies of Certificate enclosed)
- 14) Whether belongs to any of the following categories :
 - a) S.C./S.T. : SEBC
 - b) Ex-service men : No.
 - c) Physically Handicapped : No.
 - d) Sportsmen : No.

8) The post applied for

~~70~~ -35-

Junior Clerk

I, Shibasish Behera, Son of Late Antaryami Behera hereby declare that the information furnished above is true to the best of my knowledge and belief. If any of the facts herein mentioned are found to be incorrect or false at the future date my service can be terminated by the appointing authority without furnishing notice or reasonable opportunity of hearing.

Shibasish Behera
Signature of the applicant.

Date:

PART-III

Forwarded to Collector, Kandhamal for enquiry and report whether the family of the deceased Government servant is in distress financially.

18/7/17
Block Education Officer
Appointing Authority
Phiringia
(Seal & Designation)

PART-IV

(Certificate by Collector of District)

Certified that the information furnished by the applicant in this application form have been enquired into and found correct/~~incorrect~~. The family of the deceased Government employee is in distress/~~not in distress~~. The annual income of the family from all sources excluding Pension and T.I. is Rs. 8,000/- for the year 2013.

Forwarded to the Block Education Officer, Phiringia.

Appointing Authority

18/7/17
Collector

(Collector & District Magistrate)
20/7/17
District Magistrate

(No authority except the Collector and District Magistrate shall sign this certificate)

The Copy offered
H.K. Mahanta
Adm.

DIRECTORATE OF ELEMENTARY EDUCATION, ODISHA, BHUBANESWAR
No. 8R-114-2015-VIII-17468

//Date: 13-10-15

To

The B.E.O. Phiringia,
Dist: Kandhamal.

Sub: Appointment of Sri Shibasish Behera, S/o. Late Antaryamee Behera
under R.A. Scheme.

Sir,

I am directed to invite a reference to your letter No. 914 dt: 28.08.2015 on the subject noted above and to say that you were requested vide this Dte. letter No. 1105 dt: 08.07.2015 to furnish No employment affidavit of all major legal heirs including the applicant as per Rule-2(iii) of the O.C.S. (R.A) Rules, 1990 in the following manner.

That, none of the family members of the employee who has died while in service is already in employment of Govt. Public or Private Sector or engaged in independent business.

But, you have not furnished the same in the proper manner.

You are therefore requested to furnish the same in the proper manner to this Dte. immediately for further action.

Yours faithfully,

[Signature]
Deputy Director

Memo No.

17469 //Dt: 13-10-15

Copy forwarded to Sri Shibasish Behera, S/o. Late Antaryamee Behera, At/Po: Sakhipada, P.S: Phiringia, Dist: Kandhamal for information.

[Signature]
Deputy Director

True Copy attached
for Mahant
Adv

-37-

ANNEXURE-6

DISTRICT EDUCATION OFFICE, KANDHAMAL, PHULBANI

Letter No 7148 /Date 15.9.17 //

The Block Education Officer/ Headmaster Phiringga

Sup. - Appointment under Rehabilitation Assistance Scheme as per Govt. Guide line issued vide letter No 25296/SME date 22-12-2016 and GA Dept. Notification No 23345/Gen date 05-11-2016.

Sr.


The Director Secondary/ Elementary Education Odisha, Bhubaneswar has returned all the applications for appointment under R. A Scheme submitted by the Erstwhile D.IS/ BEO /HMS and directed to take appropriate action for appointment of applicant under R.A. Scheme as per OCS (R.A.) Amendment Rules-2016 (List enclosed)

Hence, you are requested to submit the following documents/information along with Annexure -B duly filled in favour Sri Shibasi Behara at an early date for taking further course of action at this end.

1. Fresh Income Certificate of all major legal heir. (Income from all sources, private, public. Agriculture or business by the family members who have been identified as legal heirs of the deceased government employee)
2. Certificate from competent Authority to ascertain Movable/immovable property with latest market Value in Rupees.
3. Declaration of the applicant in shape of affidavit to maintain family.
4. Educational Certificates of the candidate (if not submitted earlier)

Yours faithfully

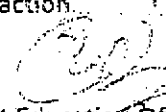
Encl:- As above

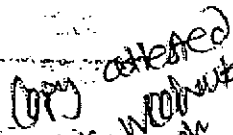


District Education Officer
Kandhamal, Phulbani

Memo No 7149 /Date 15.9.17 //

Copy. forwarded to Sri Shibasi Behara S/O 10/10/1 w/H date

At Sakhi pada P.O Sakhi pada
Dist- Kandhamal For information and necessary action P.S. Phiringga


District Education Officer
Kandhamal, Phulbani.


True 
H.K. Mohapatra
Asst

-38- ANNEXURE-I
OFFICE OF THE BLOCK EDUCATION OFFICER, PHIRINGIA,
KANDHAMAL

Letter No 1159 // Dtd 19.6.18 //

To

District Education Officer,
Kandhamal.

✓
Scanned

Sub: Appointment under Rehabilitation Assistance Scheme in favour of Sri Shibasish
Behera S/O- Late. Antaryami Behera, Asst. Teacher under this Block.

Sir,

I submit herewith following documents for consideration of rehabilitation assistance scheme at your level.

This is for favour of your kind information and necessary action.

1. Fresh application from (23 Annexure- A) in duplicate.
2. Copy of death certificate
3. Copy of legal heir certificate
4. Declaration in shape of an affidavit regarding number of dependants, number of unmarried daughter, number of minor children, liability towards education of children, monthly income of earning members and income from property excluding family pension, movable / immovable property.
5. Certificate from the competent authority relating to class in which the youngest 02 (two) children of the deceased employee are educating at the time of death.
6. Certificate from the competent authority concerned relating to payment of un-utilized leave salary and DCRG.
7. Xerox copy of pension book to determine the monthly pension and DCRG.
8. Declaration of the applicant in shape of affidavit to maintain family.
9. Educational certificate of the applicant.
10. 1st page of Original service book of deceased.

11. UOI-284428

12. DCRG-202660

Yours faithfully,

[Signature]
19.06.18
Block Education Officer
Phiringia, Kandhamal

Memorandum-1160 dt-19.6.18
Copy to Shibasish Behera S/O- Late. Antaryami Behera for information.

[Signature]
19.06.18
Block Education Officer
Phiringia, Kandhamal

*The copy attached
H.K. Mahapatra
Not*



ଓଡ଼ିଶା ଗୋଟିଆ ODISHA Before the Notary Public, Phulbani 707903
AFFIDAVIT

I, Shubasish Behera, aged about 21 Years, son of Late Antarjyami Behera, resident of village : Sakhipada, P.O.: Sakhipada, P.S.: Phiringia, in the district of Kandhamal, do hereby solemnly affirm and state as follows :-

1. That, I am the deponent and declarant of this affidavit.

2. That, I have made an application for my employment under Rehabilitation Assistance Scheme.

3. That, I do hereby undertakes that I shall maintain dependent family members by providing the food, shelter Education, and day to day requirements till their self-sufficient.

4. That, the purpose of this affidavit is to produce before the competent authority as a declaration to maintain the family members, for consideration of my employment under Rehabilitation Assistance Scheme.

That, the facts stated above are true to the best of my knowledge and belief.

Identified by CERTIFICATE
The deponent having been identified by

Solemnly affirmed and stated before me this 12/11/18
At Phulbani
Advocate

Shubasish Behera
DEPONENT

True Copy attested
H.K. Mahanta
Adv

No. 228
12/11/18

Notary Public

20-40-

ANNEXURE-9

DISTRICT EDUCATION OFFICE, KANDHAMAL, PHULBANI

Letter No. 5570 /Date 16.10.2021 //

To

Sri Sibasish Behara

Son / Daughter / Wife of late Antonyanor Behara

At:- Sakhipada

Po:- Sakhipada

Ps:- Phiringia

Dist:- Kandhamal


Sub: - Verification of your application Under Rehabilitation Assistance Scheme.

Sir,

With reference to your application under Rehabilitation Assistance Scheme; I am to inform you that your application verified as per instruction issued vide Government Notification no. 5651 date 17-02-2020 of G.A. Department. You secured total points in Part I of the evaluation sheet given in Form 'D' to these rules is 28 which is 44 or less than 44.

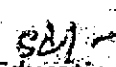
Hence, you are not eligible for appointment under the Scheme as per rule.

Yours faithfully


District Education Officer
Kandhamal, Phulbani.

Memo No. _____ /Date _____ //

Copy forwarded to the BEQ Headmaster/ Headmistress
Phiringia for information and necessary action.


District Education Officer
Kandhamal, Phulbani.

True Copy attested
H.K. Walant
H.K.

207-41-

ANNEXURE 10

The Director
Elementary Education
Govt. of Odisha Bhubaneswar

Sub - Grievance Petition of Sri Shibasish Behera S/o - Late Antaryami Behera of Sakhipada under Phiringia Block, Dist-Kandhamal for appointment under R.A. Scheme.

Honorable Sir/Madam,

With due respect, I Sri Shibasish Behera S/o - Late Antaryami Behera Ex - teacher of Sakhipada under Phiringia B.E.O at Kandhamal Dist Beg to platform the personal Grievance as detailed below.

1. My father Late Antaryami Behera was service as a teacher under the kind administrative control of D.E.O Kandhamal under the B.E.O Phiringia and Expired On DL21.03.2013 at that time my age was below 18 and I was reading so I could not applied for R.A. Scheme during the year 2013.
2. As per Govt. instruction I have applied for appointment under R.A. Scheme in the year 2014. The Collector Kandhamal has issued decess certificate I have applied observing all the formality as per Guideline issued vide Letter No.25290/SME. Dt.22.12.2016 and No.23345 Dt 05.11.2016.
3. The B.E.O Phiringia has to the proper Quarter; the same was forwarded to the director Elementary Education vide No.914 Dt. 28.08.2015.
4. The Deputy Director Elementary Education Odisha BBSR has instructed to the B.E.O Phiringia to direct submit and receive all members to furnish No Employment. Of all major legal heir including the applicant vide Letter No.11054 Dt. 08.07.15 accordingly I have submitted the required documents to the B.E.O Phiringia. But the Phiringia has submitted my R.A application along with all the relevant documents to the D.E.O Kandhamal vide Letter No.1159 Dt.19.06.2018(Enclosed)
5. After a lapses of long period that is from 2014 to till 2021 my case has not been considered. On 16.10.2021 the D.E.O Kandhamal has intimated that My R.A application has been rejected mentioned in the General Administrative Department resolution No.5651 Dt. 17.02.2020 vide Letter No.5570 Dt.16.10.2021. but in the said resolution it is clearly mentioned that the same will be come into force on the Date Of there publication in the Odisha Gazette in this regard I am to inform that my claim is prior to the above resolution it should not be applicable to my case.
6. For the I am to intimate that the honourable high court of odisha has take a decision in case of Ratalipuri to has shelter court of law before the honourable high court of odisha the court has order all the case under R.A. scheme prior resolution No.5651 Dt.17.02.2020 should be considered as per old manner (Paper Cutting Dt.13.09.2021 Enclosed) accordingly my case should be considered as my case relates to the year 2015 I am further the intimate that my father was only earning member after his death we are facing much financial hardship. In view of the facts I prayed before the Honorable Director Elementary Education Odisha BBSR to considered my sympathetically and I may be appointed as I was claimed earlier for which act of your kindness we family members and my staff remained grateful to your kind Honour.

21-07-22-2021

Yours Faithfully

Shibasish Behera
(Shibasish Behera)

S/o - Late Antaryami Behera
AUPo-Sakhipada
Dist - Kandhamal

Copy Submitted to the Collector Kandhamal/D.E.O Kandhamal/B.E.O Phiringia Dist-Kandhamal for kind information and necessary action

Shibasish Behera
(Shibasish Behera)

S/o - Late Antaryami Behera
AUPo-Sakhipada
Dist - Kandhamal

True Copy attached
H.K. Mohanta
Adv

Shibasish Behera

IN THE HIGH COURT OF ORISSA, CUTTACK
(Original Jurisdiction Case)

W.P. (C) No. 1334-L OF 2022

Code No. 2103

In the matter of:

An application under Article 226 and 227 of the
Constitution of India;

AND

In the matter of:

An application seeking for a direction to the Opp. parties to
consider the case of the petitioner for appointment under
Registrar (Rehabilitation Assistant Rules as per the provision prevailing
at the time of death of the father of the petitioner and in view
of the ratio decided by the Hon'ble Apex Court in the Case
of The State of Madhya Pradesh Vrs. Baalendu Yadav
reported in 2021(11) OLR-1072, State of Maharashtra
Vrs. Manj Kumar Deheria (2020) 2 SCC-729. The father
of the petitioner who died in the year 2013, at that time the
petitioner was 17 years old and after attaining majority in the
year 2014 he made due application for appointment under
Rehabilitation Assistant Rules 1990 Rules 1990 was in
vogue. But the authorities, instead of considering the said
application, sat over the matter for years together despite
submission of distress certificate by the Collector. Now they
have rejected the grievance of the petitioner in the year 2021
under the provisions of new Rules giving scant regards to the
settled principle of law that the application of the petitioner
should be considered as per the provisions of law which was
prevailing at that time.



11211
AND

In the matter of:

Shibasish Behera, aged about 28 years,
S/o- Late Antaryami Behera
At/Po- Shakhinada Ps- Phiringia
Dist-Kandhamal.

..... PETITIONER

Vrs

1. State of Odisha represented through Secretary
School and Mass Education Department Govt.
of Odisha, Secretariat Building, Bhubaneswar,
Dist-Khurda.
2. Director of Elementary Education Odisha,
Bhubaneswar, Heads of the Dept. Building,
Odisha, Bhubaneswar.
3. Collector, Kandhamal.
At/P.O/P.S/Dist-Kandhamal.
4. District Education Officer, Kandhamal.
At/pO/PS/Dist-Kandhamal.
5. Block Education Officer Phiringia
At/Po/Ps-Phiringia Dist-Kandhamal

..... OPP. PARTIES

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.[C] No.13376 of 2022

Shibasish Behera

Petitioner

VERSUS

State of Odisha & Ors.

Opposite Parties

COROM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

27.05.2022

Order No

01. 1..This matter is taken up through Hybrid Mode.

2. At the outset on the oral prayer of Mr. Lenka, he is permitted to make necessary correction of the Annexure as indicated in the prayer.

3. Heard Mr. N. Lenka, learned counsel for the Petitioner and learned Standing Counsel appearing for the S & ME Dept.

4. In view of the decision relied on by the learned counsel appearing for the Petitioner reported in 2021 (II) OLR (SC) 1072 and the order passed by this Court in different writ Petition, the order dtd.16.10.2021 under Annexure-9 is set aside and the matter is remitted back to the DEO, Kandhamal-O.P. No.3 to take a fresh decision in the light of the order passed by the Hon'ble Apex Court in the aforesaid decision.

5. Such decision shall be taken by the said Opp. Party within a period of one month from the date of receipt of the order with communication of the result thereof to the Petitioner within that time.

6. The writ Petition is accordingly allowed.

sd/- B. P. Satguthy J.

Sucha

Comp. by C. J. M. / 31/5/72

The copy checked
H. K. W. / 31/5/72

-46-
-300-

ANNEXURE-12

DISTRICT EDUCATION OFFICE, KANDHAMAL, PHULBANI

Office order No 4334 /G. Est./Date 16.06.2022

The Hon'ble High Court Orissa, Cuttack has passed the order dated 27-05-2022 in W.P (C) No. 13376 of 2022 filed by Sri Shibasish Behera-Vrs-State of Odisha & others. The operative part of the order is cited below:-

"In view of the decision relied on by the learned counsel appearing for the petitioner reported in 2021 (II) OLR (SC) 1072 and the order passed by this court in different writ petition, the order dtd. 16-10-2021 under Annexure-9 is set aside and the matter is remitted back to the DEO, Kandhamal -O.P. No. 3 to take afresh decision in the light of the order passed by the Hon'ble Apex Court in the aforesaid decision. Such decision shall be taken by the said Opp. Party within a period of one month from the date of receipt of the order with communication of the result thereof to the petitioner within that time. xxx"

Pursuant to the aforesaid orders of the Hon'ble High Court, Cuttack the Respondent No. 3 i.e. the District Education Officer, Kandhamal, Phulbani considered the claim of the applicant, Sri Shibasish Behera made in the writ petition and passed the following order.

Whereas, the father of the petitioner namely Antaryami Behera while serving as Primary school teacher under Block Education Officer, Phiringia died on 21-03-2013. Soon after death of his father, the petitioner submitted his application for appointment under Rehabilitation Scheme before B.E.O, Phiringia. The Block Education Officer, Phiringia submitted the details information of the petitioner to the Collector, Kandhamal for issuance of Distress certificate in favour of the applicant. The Collector Kandhamal issued the Distress Certificate of the petitioner vide letter No. 2310 dtd. 29-12-2014. The BEO, Phiringia after obtaining Distress Certificate submitted the R.A. application of the petitioner to this respondent i.e. the District Education Officer vide his office letter No. 1159 dtd. 19-06-2018.

While the application of the petitioner pending at the disposal of this respondent, O.C.S (Rehabilitation Assistance) Rule 2020 came in to force w. e. f. 17-02-2020.

Para 9 of the O.C.S (Rehabilitation Assistance) Rule 2020 envisaged that *"All pending cases as on the date of publication of these Rules in the Odisha Gazette shall be dealt in accordance with the provision of these rules"*

Hence, the application of the petitioner assessed by the District selection committee as per parameter laid down in OCS (RA) Rules-2020 and the petitioner obtained 28 points; which is less than 44 and declared ineligible and communicated the petitioner vide office letter No. 5570 dtd. 16-10-2021 of this respondent

The instant rule clearly transpires that appointment under rehabilitation assistance shall be governed under the provision prescribed therein i.e. O.C.S (Rehabilitation

13.6.22

Assistance) Rules 2020. The O.C.S (Rehabilitation Assistance) Rules 1990 has been superseded.

In view of the above, the claim of the applicant deserves no consideration and is hereby rejected.

District Education Officer

Kandhamal, Phulbani.

Memo No 4335 /Date 16.06.2022 //

Copy forwarded to Sri Shisibah Behera, Son of Late Antaryami Behera; At/Po-Sakhipada; Ps-Phiringia; Dist- Kandhamal for information and necessary action.

District Education Officer

Kandhamal, Phulbani.

Memo No 4336 /Date 16.06.2022 //

Copy submitted to the Standing Counsel, School & Mass Education Cell, Cuttack for favour of kind information and necessary action. He is requested to appraise the matter to the Hon'ble OAT.

District Education Officer

Kandhamal, Phulbani.

Memo No 4337 /Date 16.06.2022 //

Copy submitted to the Director Elementary Education Odisha, Bhubaneswar/ Collector Kandhamal for favour of kind information and necessary action.

District Education Officer

Kandhamal, Phulbani.

Memo No 4338 /Date 16.06.2022 //

Copy submitted to the Additional Secretary to Govt. School & Mass Education Department, Odisha, Bhubaneswar for favour of kind information and necessary action.

District Education Officer

Kandhamal, Phulbani.

True Copy attested
H.K. Mahanta
Adv

- 48 -

ANNEXURE - 13 Series

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.17419 of 2021

Minati Rath

.....

Mr. R.N. Paimayak, Advocate

Vs.

State of Odisha and others

.....

Opposite parties

Mr. S.N. Nayak, ASC

CORAM:

DR. JUSTICE B.R. SARANGI

ORDER

27.07.2021

Order No.

02

The matter is taken up by video conferencing mode.

Heard learned counsel for the parties.

The petitioner has filed this writ petition seeking direction to opposite parties to consider her case for compassionate appointment in place of her late husband under the Odisha Civil Service (Rehabilitation Assistance) Rules, 1990 instead of Odisha Civil Service (Rehabilitation Assistance) Rules, 2020.

Looking to the date of death of the deceased involving whom appointment under the Rehabilitation Assistance Scheme is sought for and the date of application for appointment under the Rehabilitation Assistance Scheme, this Court finds that rejection of the claim of the petitioner for compassionate appointment applying the provision in the 2020 Rule, which has not been seen the light of the day either on the date of death or on the date of submission of application for appointment under the Rehabilitation Assistance Scheme, remains contrary to the decision of this Court in disposal of W.P.(C) No.10168 of 2021 and W.P.(C) No.8486 of 2021 and also the judgment of the Hon'ble apex Court in the case of *Canara Bank and another Vs. M. Mahesh Kumar* with two other matters reported in (2015) 7 SCC 412.

In such view of the matter, this Court disposes of this writ petition and directs the party no.2 to consider the case of the Petitioner for appointment under the Rehabilitation Assistance Scheme in terms of the provision at Orissa Civil

Services (Rehabilitation Assistance) Rules, 1990. The entire exercise shall be completed within a period of three months from the date of communication of authenticated/certified copy of this order by the Petitioner.

With the aforesaid observation and direction the writ petition stands disposed of.

As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a print out of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed, vide Court's Notice No.4587 dated 25th March, 2020, as modified by Court's notice no. 4798 dated 15th April, 2021.

Ashok

(DR. B.R. SARANGI, J.)



True Copy attested
H.K. Mahanta
Adv

2 19.03.2021

Heard Miss. Mohapatra, learned counsel for Petitioner and Sri Tripathy, learned Additional Government Advocate for the Opposite Parties.

This writ petition involves the following prayer:

"Under the facts and circumstances as narrated above, this Hon'ble Court may graciously be pleased to admit this writ petition, issue Rule Nisi to the opposite parties and if the opposite parties will fail to show cause or shown insufficient cause made the said rule absolute by directing the opposite parties to provide employment to the petitioner as per prevalent Rules and further be pleased to quash the letter dated 09.03.2021 under Annexure-7;

And further be pleased to pass any other order/orders as may be deemed fit and proper.

And for this act of kindness, the humble petitioner as in duty bound shall ever pray."

Taking this Court to the pleadings, the death of the deceased taking place on 20.06.2016 and application for Rehabilitation Assistance, was filed by the mother requiring service in favour of her son by way of Rehabilitation Assistance appointment, it is contended that the application being filed on 6.1.2017 and death having taking place in the year 2016, the OCS (RA) Amendment Rule, 2016 prevailing at the relevant point of time, should have been considered instead the public authority has applied (OCS) RA Rules, 2020 and rejected the claim of the petitioner. It is on this premises, application of non-existing rule to the case of the petitioner, prayer is made to allow the writ petition in setting aside of Annexure-7. To substantiate the request involved herein, learned counsel for the petitioner refers a

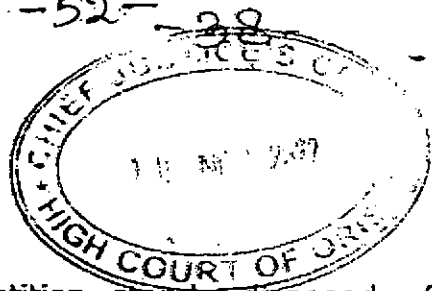
decision of this Court dated 05.03.2021 in W.P.(C).No.8486 of 2021.

To the contrary, Sri Tripathy, learned Additional Government Advocate appearing for the State submits that at the time of consideration of the application the Rule 2016 was already in vogue, the authority was constrained to consider the rule already taken place in the meantime and thus claimed that there is no illegality in Annexure-7. Sri Tripathy, however did not dispute applicability of decision of this Court in W.P.(C).No.8486 of 2021 to the case at hand.

Considering the rival contentions of the parties, this Court finds for the settled position of law through the Hon'ble Apex Court, a rule which has not seen the light of the day, has no application to the cases taking place prior to such rule come into existence. Admittedly, the death involved herein took place in the year 2016, consequently, the application for Rehabilitation Assistance appointment was also filed in 2017 when Rule 2016 was in place and Rule 2020 had not come into existence even. Petitioner claim for application of judgment in W.P.(C).No.8486 of 2021 to the case at hand finds justified.

In view of the settled position of law, this Court sets aside the order at Annexure-7 and directs the opposite party no.2 to issue appointment order in favour of the petitioner following the recommendation already there in favour of petitioner by completing the entire exercise within a period of four weeks.

-52-28




The writ petition stands disposed of with the observation and direction made hereinabove.

Biswanath Rath, J.

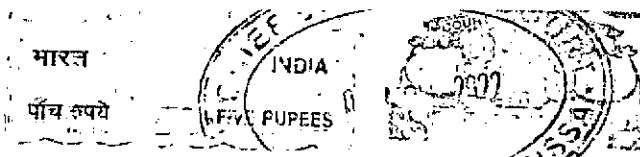
SKS

*True Copy attested
H.K. Mahan
Ad.*

True Copy Attested


**District Education Officer,
Kandhamal, Phulbani**

DISK
54485
23



Ann xuae-2

56165

-53-

THE HIGH COURT OF ORISSA, CUTTACK
(Original Jurisdiction Case)

W.P. (C) No. 30112 OF 2022

Code No. 301705

In the matter of:

An application under Article 226 and 227 of the
Constitution of India;

AND

In the matter of:

An application challenging an illegal, arbitrary and unlawful order dtd. 16.06.2022 passed by the District Education Officer, Kndhamal in rejecting the application of the petitioner for appointment under Rehabilitation Assistant Rules, on the ground that as per the Notification No.5651 dtd.17.02.2020 of the Govt., GA&PG Department, he is not found eligible to get appointment under OCS(Rehabilitation Assistance) Rules-2020. The petitioner seeks to challenge the said order mainly on the ground that while, passing the said impugned order, the direction dtd. 27.05.2022 of this Hon'ble Court passed in WPC No. 13376 of 2022 has been completely ignored, the case of the petitioner should have been considered as per the provision of OCS(RA) Rules 1990 which was prevailing at the time of death of his father, the ratio decided by the Hon'ble Apex Court in the Case of **The State of Madhya Pradesh Vrs. Baalendu Yadav reported in 2021(11) OLR-1072, State of Moharashtra Vrs. Manj Kumar Deheria (2020) 2 SCC-729, 2022(11) OLR-1Malaya Nanda Sethi Vrs. State of Odisha and others, 2021(11) OLR-1072 The State of Madhyapradesh Vrs Ashis Awasti**, have not been taken in to consideration and above all the order suffers from the vice of violation of principle of natural justice.

Presented in Court

8
10-11-22 B.O.

H.R. Mohanty
Advocate



PRADIPTA KUMAR MOHANTY
Notary, Cuttack Town
Regd. No- ON-04/1993

[[2]]

AND

In the matter of:

Shibasish Behera , aged about 29 years,
S/o- Late Antaryami Behera
At/Po-Shakhipada Ps-Phiringia
Dist-Kandhamal.

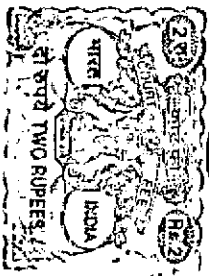
... .. PETITIONER

Vrs

1. State of Odisha represented through Secretary
School and Mass Education Department Govt.
of Odisha, Secretariat Building, Bhubaneswar,
Dist-Khurda.
2. Director of Elementary Education Odisha,
Bhubaneswar Heads of the Dept. Building,
Odisha, Bhubaneswar
3. District Selection Committee (Rehabilitation
Appointment) represented through it Chairman
Office of DEO, Kandhamal, At/Po/Ps /Dist-
Kandhamal
4. Collector, Kandhamal,
At/P.O/P.S/Dist-Kandhamal.
5. District Education Officer, Kandhamal
At/pO/PS/Dist-Kandhamal
6. Block Education Officer Phiringia
At/Po/Ps-Phiringia Dist-Kandhamal

... .. OPP. PARTIES

The matter out of which this writ application



H.K. Mahanta
Adv

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No.30112 of 2022

Shibasish Behera

.....

Petitioner

Mr. Niranjana Lenka, Advocate

Vs.

State of Odisha and others

.....

Opposite Parties

State Counsel

CORAM:

DR. JUSTICE B.R. SARANGI

ORDER

18.11.2022

Order No.

01

This matter is taken up through hybrid mode.

2. Heard learned counsel for the parties.
3. The petitioner has filed this writ petition seeking to quash the order dated 16.06.2022 under Annexure-12 issued by opposite party no.5, and further to issue direction to the opposite parties to give appointment to the petitioner under Rehabilitation Assistance Scheme as per Odisha Civil Service (Rehabilitation Assistance) Rules, 1990 within a stipulated period.
4. Mr. N. Lenka, learned counsel for the petitioner contended that the case of the petitioner is covered by the judgment of the apex Court in the case of **Malaya Nanda Sethy v. State of Orissa**, Civil Appeal No. 4103 of 2022 disposed of on 20.05.2022. Therefore, this writ petition may be disposed of in the light of the aforesaid order, to which learned State Counsel has raised no objection.
5. In the above view of the matter, the order dated 16.06.2022 passed by opposite party no.5 under Annexure-12 is hereby quashed. The opposite parties are directed to consider the case of the petitioner in the light of the judgment passed by the apex Court in the case of **Malaya Nanda Sethy** (supra) and pass appropriate order in accordance with law within a period of three months from the date of production of certified copy of this order.

Issue urgent certified copy as per rules.

Sd - Dr. B. R. Sarangi, J.

Alok

*Comp by
Sudh
19/11/23*

- 56 -

Date of Application : 28-3
 Date of Notification : 17-4
 Date of Surrender : 19-4
 Date of ... : 19-4
 Date of ... : 20-4



36385 / 1123

	Rs.	P.
Application Fee	0	50
Cost of ...	—	—
Extra Fee for ...	3	35
Folio 2-3	2	50
Hologram Fee (3)	3	00
Other items if any	1	95
Total	11	70

(Rupees *Eleven* & Paise *Seventy* only)

Ab
19-4-23
ASO

EXAMINER OF
 CUM
 SUPERINTENDENT
 COPYING DEPARTMENT

Ab
19-4-23

CERTIFIED TO BE A TRUE COPY

De
19-4-23

Assistant Registrar (Genl.)
 ORISSA HIGH COURT
 Authorised Under Section 26, Act of 1972

IN THE HIGH CO

WA / - No. 1053 of 2023

STATE OF ODISHA & OTHER'SPETITIONERS.

.....APPELLANTS

-VERSUS-

.....OPP. PARTIES.

Shibabigh Behera.....RESPONDENTS.

M E M O

I/We hereby enter my appearance in the above
noted case on behalf of the Petitioners / Appellants.

Cuttack

Date: 15.05.2023

cert
Addl. Govt. Advocate

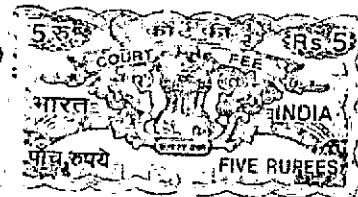
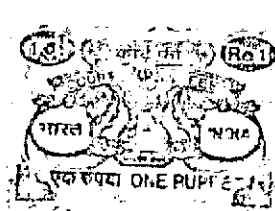
MANOJA KUMAR KHUNTIA

Additional Govt. Advocate

B.C.E No.-O-98/1994

M-9437163044





IN THE HIGH COURT OF ORISSA : CUTTACK.

I.A. No. 2729 of 2023.

(Arising out of W.A. No. 1053 of 2023)

IN THE MATTER OF:

An application under Section 5 of the
Limitation Act for condonation of delay.

AND

IN THE MATTER OF:

State of Odisha and others ... Appellants.

-Versus -

Shibasish Behera. ...

Respondent.

TO

**THE HON'BLE CHIEF JUSTICE, ORISSA HIGH
COURT AND HIS LORDSHIPS COMPANION
JUSTICES OF THE SAID HON'BLE COURT.**

The humble petition of the
appellants named above ;

MOST RESPECTFULLY SHEWETH:

1. That, the appellants above named who are the
functionaries of the State of Odisha have filed the present
memo of appeal challenging the order dated 18.11.2022 passed
by this Hon'ble Single Judge in W.P. (C) No.30112 of 2022.

*certi
W*

B. MISHRA
NOTARY, CUTTACK
ODISHA

Pranab Kumar Sanyal
District Education Officer,
Kandhamal, Phulbani

18-9-

2. That the averments made in the memo of appeal may be read and treated as part and parcel of this application and those are not reiterated for the sake of brevity.

3. That, the above said writ petition was disposed of by this Hon'ble Court vide order dated 18.11.2022.

4. That, after thorough examination of the said order dated 18.11.2022 passed in W.P. (C) No. 30112 of 2022 passed by this Hon'ble Court in favour of the present respondent (Writ Petitioner), the Joint Secretary to Government in the Department of School and Mass Education vide letter No. 7866/SME dated 06.04.2023 instructed the present deponent to file Writ appeal challenging the above said order dated 18.11.2022 passed by the Hon'ble Single Judge.

5. That, it is humbly submitted that after receipt of the above said instruction from Government, this deponent vide letter No. 4963/M dated 13.04.2023 requested the Learned Advocate General, Odisha to prepare the writ appeal and this deponent came to the Office of the Advocate General, Odisha, Cuttack for filing of writ appeal as well as the Interim application for stay and for condonation of delay and the same was filed on

6. That, it is humbly and respectfully submitted that the delay caused for filing of memorandum of appeal is bonafide, unintentional and not willful, on the other hand the delay caused for filling of the memo of appeal is due to observation of the official formalities.

Pramod Kumar Sarangi
District Education Officer,
Kandhamal, Phulbani

certi
A co

B. MISHRA
NOTARY, CUTTACK
ODISHA

7. That in the given sets of facts and circumstances, it is humbly prayed that this Hon'ble Court may graciously be pleased to condone the delay in filling the Writ appeal.

8. That, it is humbly submitted that in the interest of justice, equity and fair play the delay in filing the writ appeal may be condoned and the same may be heard on merit.

PRAYER

Therefore, in view of the above facts and circumstances, it is humbly prayed that this Hon'ble Court may graciously be pleased to allow this petition by condoning the delay of ... days in filling the writ appeal;

And pass any such other order/orders as this Hon'ble Court may deem fit and proper;

And for this act of kindness, the Appellants shall as in duty bound ever pray.

By the Appellants through;

CUTTACK

DATE: 18.05.23

cert
Addl. Government Advocate.
MANOJA KUMAR KHUNTIA
Additional Secretary, Government of Odisha
CUTTACK

AFFIDAVIT

I, Smt. Subhalaxmi Nayak, aged about 40 years, Wife of Sri Soubhagya Ranjan Mohanty, at present working as District Education Officer, Kandhamal, do hereby solemnly affirm and state as follows :



[Signature]
B. MISHRA
NOTARY, CUTTACK
ODISHA

Pranod Kumar Sarangi
District Education Officer,
Kandhamal, Phulbani

20
-4-

1. That I am the Appellant No.3 in this case. I have been duly authorised by the other appellants to swear this affidavit on their behalf.
2. That the facts stated above are true to my knowledge, based on official records.

Identified by
G. Barik 15-5-23
Advocate Clerk,
A.G. office.

Pramod Kumar Sarangi
Deponent.
District Education Officer,
Kandhamal, Phulbani

CERTIFICATE

Certified that cartridge papers are not available.

CUTTACK.

Date: 15.05.23

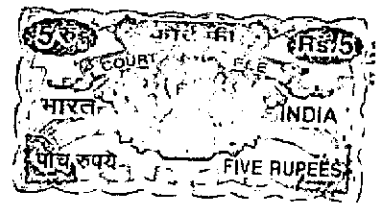
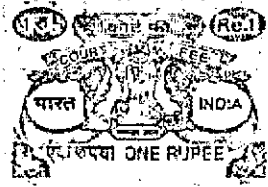
ced
Addl. Government Advocate.

MANOJA KUMAR KHUNTIA
Additional Govt. Advocate
B.C.E. No.-O-98/1994
M-9437168044



solemnly Sworn before me by *Pramod Kumar Sarangi*
being identified by *G. Barik* Advocate's clerk (AG office)
at Cuttack dated *15/05/2023*

D. Mishra 15/05/23
D. MISHRA
NOTARY, CUTTACK
ODISHA



IN THE HIGH COURT OF ORISSA : CUTTACK

I.A. No. 2730 of 2023.

(Arising out of W.A. No. 1053 of 2023)

IN THE MATTER OF:

An application under Chapter VI Rule-
27(A) of the High Court of Orissa;

AND

IN THE MATTER OF:

An application for stay of impugned order
dated 18.11.2022 passed in W.P. (C) No.
30112 of 2022;

AND

IN THE MATTER OF:

State of Odisha and others ... Appellants.

-Versus -

Shibasish Behera.

Respondent.

Respondent

TO

THE HON'BLE CHIEF JUSTICE, ORISSA HIGH
COURT AND HIS LORDSHIPS COMPANION
JUSTICES OF THE SAID HON'BLE COURT.

The humble petition of the
appellants named above ;

MOST RESPECTFULLY SHEWETH:

1. That, the appellants above named who are the
functionaries of the State of Odisha have filed the present

Pranved Kumar Sarangi
District Education Officer,
Kandhamal, Phulbani

cello
A.O.

[Signature]
B. MISHRA
NOTARY, CUTTACK
ODISHA

15
- 9 -

memo of appeal challenging the order dated 18.11.2022 passed in W.P. (C) No.30112 of 2022 by the Hon'ble Single Judge.

2. That, the averments made in the writ appeal may be read as part and parcel of this interim application and those are not reiterated here for the sake of brevity.

3. That the petitioner respectfully submit that unless operation of the order dated 18.11.2022 passed in W.P. (C) No.30112 of 2022 is stayed, the petitioner shall suffer irreparable loss and substantial injury.

4. That the impugned order dated 18.11.2022 passed in W.P. (C) No. 30112 of 2022 is illegal, arbitrary and not sustainable in the eye of law.

5. That in the interest of justice, equity and fair play the operation of order dated 18.11.2022 passed in W.P. (C) No. 30112 of 2022 be stayed pending final decision of this writ appeal.


Pranod Kumar Sanay
District Education Officer,
Kandhamal, Phulbani

PRAYER

It is, therefore prayed that, your lordships may graciously be pleased to allow this interim application and grant stay of the operation of the impugned order dated 18.11.2022 passed in W.P. (C) No. 30112 of 2022 till disposal of the writ appeal;

And may further be pleased to pass such other order/orders as deem just and proper.

And for this act of kindness, the Appellants shall as in duty bound ever pray.


D. MISHRA
NOTARY, CUTTACK
ODISHA

ced
By the Appellants through;
MANOJA KUMAR KHUNTIA
Additional Govt. Advocate
B.C.E No.-0-98/1994
M-9437168044

CUTTACK

Date: 15-05-2023

Addl. Government Advocate.

AFFIDAVIT

I, Smt. Subhalaxmi Nayak, aged about 40 years, Wife of Sri Soubhagya Ranjan Mohanty, at present working as District Education Officer, Kandhamal, do hereby solemnly affirm and state as follows:

1. That, I am the Appellant No.3 in this case. I have been duly authorised by the other Respondent to swear this affidavit on their behalf.
2. That the facts stated above are true to my knowledge, based on official records.

Identified by:

B. Mishra
Advocate Clerk,
A.G. office.

Pranod Kumar Sarangi
Deponent.

District Education Officer,
Kandhamal, Phulbani

CERTIFICATE

Certified that cartridge papers are not available.

CUTTACK.

Date: 15.05.23

Addl. Government Advocate.

MANOJA KUMAR KHUNTIA

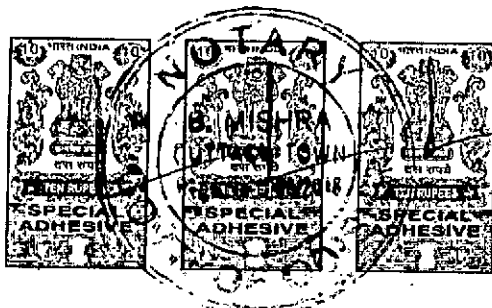
Additional Govt. Advocate

B.C.F. No. 198/1994

M 9437 3844

Solemnly Sworn before me by *Pranod Kumar Sarangi*
being identified by *B. Mishra* Advocate's clerk
at Cuttack dated *15/05/2023* (AG's office)

B. Mishra
NOTARY, CUTTACK
ODISHA



SCANNED

COMPUTERISED FILING COUNTER
ORISSA HIGH COURT,CUTTACK
ACKNOWLEDGEMENT SLIP

Seat No : 7

Branch No : WRIT APPEAL

Receipt No : 132135/2024

Date Of Receiving : 23/10/2024

Time : 03:15:27 PM

Filing No : D- WA 1053/2023

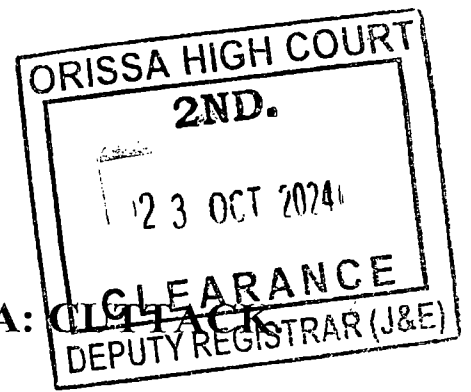
Case No : WA 1053/2023

Received From : Petitioner

Filed By: ADVOCATE FOR THE PETITIONER

Document(s) Filed :

1- REQUISITE FOR OPS --- Postal Fee -Rs.40



IN THE HIGH COURT OF ORISSA:

WA No. – 1053 OF 2023

STATE OF ODISHA AND OTHERSAPPELLANTS.


-VRS-

SHIBASISH BEHERA.....RESPONDENTS.

M E M O

In pursuance of the Hon'ble High Court order dated 21.10.2024, one set a copy of limitation petitions and one envelope affixing postage stamp of Rs.40 /- (Rupees forty) only **with** A.D is filed herewith for issuance of notice on limitation through registered post to the sole respondent in the above noted case.

Cuttack.
Dt. 23.10.2024


Addl. Govt. Advocate
Addl. Standing Counsel,



Sign In

Register

M

भारतीय डाक
डाक सेवा-जन सेवाIndia Post
Dak Sewa-Jan Sewa

A

ॐ

हिन्दी



You are here Home>> Track Consignment

Track Consignment

Quick help

* Indicates a required field.

* Consignment Number

RO177881012IN

Track More

Article Type

Registered Letter

Event Details For : RO177881012IN

Current Status : Item Received

Date	Time	Office	Event
01/11/2024	15:38:56	Phiringia S.O	Item Received
30/10/2024	13:44:02	Berhampur RMS L1R	Item Dispatched
30/10/2024	13:19:40	Berhampur RMS L1R	Item Bagged
30/10/2024	11:06:34	Berhampur RMS L1R	Item Received
29/10/2024	12:46:55	Cuttack CRC L1R	Item Dispatched
29/10/2024	12:38:37	Cuttack CRC L1R	Item Bagged
29/10/2024	07:48:46	Cuttack CRC L1R	Item Received

Home

About Us

Forms

Recruitments

Holidays

Feedback

Right To Information

[Tenders India](#)

[Related sites](#)

[Website Policies](#)

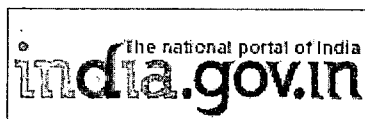
[Contact Us](#)

[Employee Corner](#)

[Sitemap](#)

[Help](#)

External Links



[National Voter's Service Portal](#)

[India Code](#)

[Application Security Audit Report](#)



[Download the Post Info App](#)

This website belongs to **Department of Posts, Ministry of Communications, Gov.** Created and Managed by **Tata Consultancy Services Ltd.**

Content owned and updated by Department of Posts, Ministry of Communications, Government of India. Last Updated: **12 Nov 2024**



Sign In Register



India Post
Dak Sewa Jan Sewa

▼ A ॐ हिन्दी



You are here Home>> Track Consignment

Track Consignment

Quick help

* Indicates a required field.

* Consignment Number

RO177881012IN

Track More

Article Type

Registered Letter

Event Details For : RO177881012IN

Current Status : Item Received

Date	Time	Office	Event
01/11/2024	15:38:56	Phiringia S.O	Item Received
30/10/2024	13:44:02	Berhampur RMS L1R	Item Dispatched
30/10/2024	13:19:40	Berhampur RMS L1R	Item Bagged
30/10/2024	11:06:34	Berhampur RMS L1R	Item Received
29/10/2024	12:46:55	Cuttack CRC L1R	Item Dispatched
29/10/2024	12:38:37	Cuttack CRC L1R	Item Bagged
29/10/2024	07:48:46	Cuttack CRC L1R	Item Received

- Home
- About Us
- Forms
- Recruitments
- Holidays
- Feedback

Right To Information

[Tenders India](#)

[Related sites](#)

[Website Policies](#)

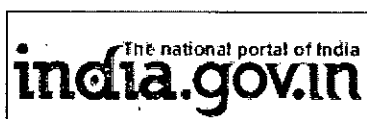
[Contact Us](#)

[Employee Corner](#)

[Sitemap](#)

[Help](#)

External Links



[National Voter's Service Portal](#)

[India Code](#)

[Application Security Audit Report](#)



[Download the Post Info App](#)

This website belongs to **Department of Posts, Ministry of Communications, Gov.** Created and Managed by **Tata Consultancy Services Ltd.**

Content owned and updated by Department of Posts, Ministry of Communications, Government of India. Last Updated: **20 Nov 2024**

SCANNED

COMPUTERISED FILING COUNTER
ORISSA HIGH COURT,CUTTACK
ACKNOWLEDGEMENT SLIP

Seat No : 7

Branch No : WRIT APPEAL

Receipt No : 144714/2024

Date Of Receiving : 25/11/2024

Time : 01:01:20 PM

Filing No : WA/1053/2023

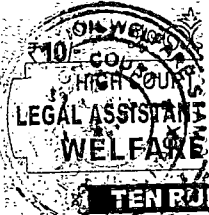
Case No : WA/1053/2023

Received From : Respondent

Filed By: M/S NIRANJAN LENKA

Document(s) Filed :

2- Vakalatnama --- Court Fee -Rs.12 (34600/2024)



FORM OF VAKALATNAMA

IN THE HIGH COURT OF JUDICATURE ORISSA, CUTTACK

WA NO. 1053

of 2023

Between State of Odisha & others

Appellant/Petitioner

Shibasish Behera - VERSUS -

Respondent /Opp. Party

KNOW ALL MEN BY THESE PRESENTS, that by this VAKALATNAMA

I/We Shibasish Behera, aged about 29 years
S/O Late Antargyan Behera, At/PO- Shakhapada
P.S- Phiringia, Dist- Kandhamal (Respondent)

Appellant/Respondent / Petitioner / Opp Party in the aforesaid Revision / Appeal case do hereby appoint and retain NIRANJAN LENKA (Enrl. No. O-232/1987, Mob. No.9338117098), HEMANTA KUMAR MOHANTA, Enrl. No. O-30/2010, Mob. 9438190975, MRS. NIBEDITA LENKA, Enrl. No. O-562/2016, Mob. 8018884418, PRASANT KUMAR BARIK, Enrl. No. O-1010/2011, Mob. 9337413031, Mrs. SUBHALAXMI RANA, Enrl. No. O-533/2022, Mob. 7008123096, GOURAV DASH, Enrl. No. O-1060/2022, Mob. 8917598722 & TAPAS KUMAR JENA, Enrl. No. O-1779/2023, Mob. 7873745729 Advocate (s) to appear for me/us, in the above case and to conduct and prosecute (or defend) the same and all proceedings that may be taken in respect of any application connected with the same or any decree or order passed therein including all applications for return of documents or receipt of any money that may be payable to me/us in the said case and also in applications for review in appeals under Orissa High Court order and in applications for leave to appeal to Supreme Court. I/We authorise my/our Advocate(s) to admit any compromise lawfully entered in the said case.

Dated, the.....24/11/2024.....

Email: lenka_nirajan08@yahoo.com

Received from the executant (s)
satisfied and accepted as I hold
no brief for the other side.

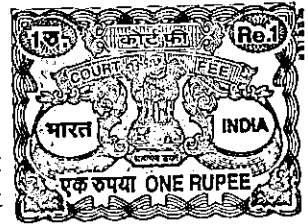
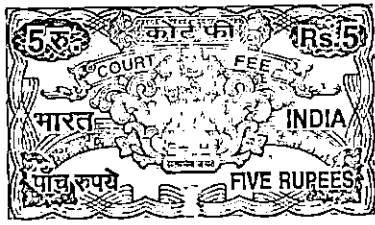
Shibasish Behera
SIGNATURE OF EXECUTANTS

Advocate
Accepted as above

H.K. Mohanta
Advocate
Accepted as above
Barik
Advocate
Accepted as above

N. Lenka
Advocate
Accepted as above
Dash
Advocate O-1060/22
Accepted as above
S. Rana
Advocate
Accepted as above
Tapas
Advocate





IN THE HIGH COURT OF ORISSA, CUTTACK

I.A No.2729of 2023

(Arising out of WANO.1053of 2023)

In the matter of:-

State of Odisha and others

.....APPELLANTS

-Vrs-

Shibasish Behera.

.....RESPONDENT

OBJECTION FILED BY THE RESPONDENT TO THE I.A FILED

BY THE APPELLANT FOR CONDONATION OF DELAY.

1. That, challenging the order dtd. 18.11.2022 passed by the Hon'ble Single Judge of this Hon'ble High Court in WP(C) No. 30112 of 2022, directing the authorities to consider the case of the Opp.Party/respondent for appointment under Rehabilitation Assistance Rules 1990 in view of the judgment rendered by the Hon'ble Apex Court in the case of Malayananda Sethy Vrs. State of Odisha and others, the State Authorities have filed the present Writ Appeal.
2. That the I.A for condonation of delay should be dismissed as because the appellant filed present Appeal challenging the order dtd. 18.11.2023 passed by the Hon'ble Single Judge of this Hon'ble Court in WP(C) No. 30112 of 2022 for which the Appeal should have been filed within thirty days i.e. by 18.12.2022. But the present appeal has been filed on 17.05.2023 where there is delay of 147 days in filing the appeal. Since the Appeal is hopelessly barred by limitation same should be entertained and the I.A should be dismissed.

H.K. Mohanta (new)
2/20/2024
Suresh Prasad Bha
Advocate
NOTARY CUTTACK

3. That, the appeal should be dismissed on the ground of delay because of the fact that the appellants have not given the sufficient cause in support of such inordinate delay. The reason assigned that in the I.A for condonation of delay is that due to observation of the official formalities delay was caused. It may be submitted here that the Hon'ble Supreme Court in various judicial pronouncement have deprecated such reason inter alia holding that, delay caused due to official formalities cannot be the ground to condone the delay.
4. That, the inordinate delay of 147 days should not be condoned and the I.A filed by the appellant should be dismissed on the ground that the reason assigned by the appellant in the present I.A. for condonation of delay are not the proper ground and the appellant has not explained the delay properly for which the delay should not be condoned.
5. That I.A for condonation of delay should not be allowed on the ground that in in Paragraph-4 of the I.A. the appellants have stated that after thorough examination of the order dtd. 18.11.2022 passed by the Hon'ble Single Judge of this Hon'ble Court in WP(C) No.31112 of 2022, the Joint Secretary to Government School and Mass Education Department vide letter No. 7866/SME dtd. 06.04.2023 instructed the present deponent to prefer appeal. But the appellants have not given the reason as to why the Joint Secretary sat over the order from 18.11.2022 to 06.04.2023 and then from 06.07.2023 to 17.05.2023. Since the delay has not been explained properly and the reason assigned that due to observation of the official formalities the delay was caused is not the sufficient ground, the I A be dismissed .
6. That, the I.A should be dismissed as Hon'ble Apex Court Court, so also this Hon'ble Court in so many decisions has clearly stated that when any appeal filed on delay, the appellant should explained the each and every days of delay properly, but in the present case the appellants have not at

St.

NOTARY PUBLIC
Advocate

H.K. Mohanta
(Adv)

all explained the delay properly, for which the I.A for condonation of delay be dismissed.

7. That, the I.A for condonation of delay should be dismissed only on the ground that in order to avoid to comply this Hon'ble Court's order dtd.18.11.2022, the Appeal has been filed. By this rocess the Opp.Party has been harassed sufficiently and has been deprived of getting the genuine claim i.e appointment under RA Rules, particularly when his family id reeling under financial stringency.
8. That in view of the facts stated above the I.A. filed by the appellant for condonation of delay be dismissed.

Cuttack.

By the petitioner through

Date.30.11.2024

H.K. Mohanta
ADVOCATE.

11.11.2024
Surendra Prasad Dha
Advocate
NOTARY, CUTTACK

Surendra Prasad Dha
Advocate

IN THE HIGH COURT OF ORISSA, CUTTACK

I.A No 2729 /2023

(Arising out of WA No. 1053 / 2023)

IN THE MATTER OF;

State of Odisha and others

..... APPELLANTS

-VERSUS-

Shibasish Behera

.....RESPONDENT

AFFIDAVIT

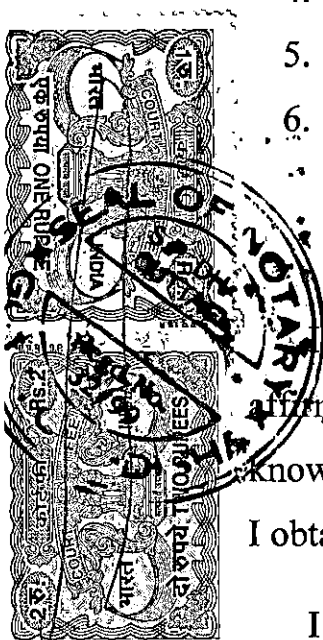
1. I, Shibasish Behera, Occupation –Un-Employed, Aged about 31 years, At.-Sakhipada, P.S.-Phiringia, Dist.: -Kandhamal.
2. Father's Name- Late Antaryami Behera.
3. Number of proceedings pending in the High Court or would be instituted(Caveat): No.
4. Statements of facts: As per averments in the petition.
5. That I am the respondent in the present case.
6. That the facts stated are true to the best of the knowledge and belief of the deponent.

DECLARATION

Shibasish Behera, the deponent above named do hereby solemnly affirm that the facts stated in the paragraphs 1 to 7 are true to be my own knowledge and in paragraph 1 to 7 are true the best of my information which I obtained from my personal sources:-

I believe the information to be true for the following reasons: basing upon official records and information.

Surendra Prasad Dhol
Advocate.
NOTARY, CUTTACK



Solemnly declare at the above said this 30th day of November 2024.

Identified By
H.K. Mohanta
ADVOCATE

Shibasish Behera.
DEPONENT

Solemnly affirm before me by Shibasish Behera, Who is identified before me by Hemanta Kumar Mohanta, Advocate, Whom I personally know.

This the 30th of November 2024

CERTIFICATE.

Certified that due to non-availability of Cartridge papers, the petition has been typed in thick white papers.

Place- Cuttack

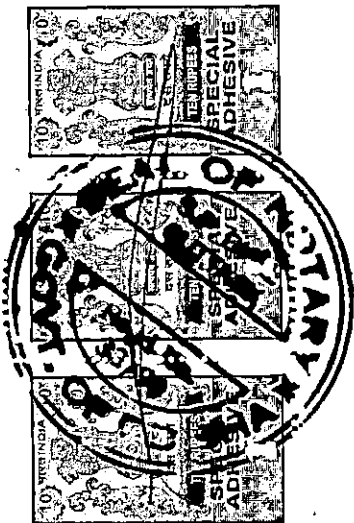
Date:-30.11.2024

H.K. Mohanta
ADVOCATE.

MR. NIRANJAN LENKA, ADV

ENRL. NO. -O-232 OF 1987

MOB-9338117098



The above named Deponent

Solemnly affirm on...

...Being identified

by...

Surendra Prasad D...
Advocate
NOTARY, CUTTACK