

**AFR****IN THE HIGH COURT OF ORISSA AT CUTTACK****W.P.(C) NO. 32953 OF 2024**

In the matter of an application under Articles 226 & 227 of the Constitution of India.

Rasmita Nayak

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Petitioner**-Versus-****State of Odisha & Others**

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Opp. Parties**Advocates appeared in this case:**

For Petitioner : M/s. Lingaraj Mohanty, P. Pattanaik and
T. Sahoo, Advocates

For Opp. Parties : Mr. J.K. Khandayatray,
Addl. Standing Counsel

CORAM:**THE HON'BLE MR. JUSTICE DIXIT KRISHNA SHRIPAD****J U D G M E N T**

Date of hearing & judgment :: 16.10.2025

PER DIXIT KRISHNA SHRIPAD,J.

Petitioner's father, who was working as Peon in KSUB College, Bhanjanagar, died in harness on 22.12.2010. Petitioner, being the daughter, filed the application on 10.09.2011 before OP No.3 seeking



appointment on compassionate ground. One lady, Smt. Ranjani Nayak, claiming to be the widow of deceased, objected to the application. Therefore, petitioner obtained legal heir certificate dated 27.12.2012. The said Ranjani filed Misc. Appeal No. 3 of 2013 against the grant of legal heir certificate, which came to be dismissed by the Sub-Collector on 05.07.2014.

2. The Governing Body of the College, in the meanwhile, forwarded petitioner's application on 19.04.2013 to OP No.3 recommending her case for compassionate appointment. OP No.3, on 23.05.2013, in turn forwarded it, vide letter no.437/2014, to the Collector of Ganjam district for issuance of distress certificate. Distress certificate was issued and despite that OP No.2, vide order dated 03.08.2021, rejected the application on the sole ground that it was time barred in terms of Rule 7(5) of OCS (RA) Rules, 2020. Aggrieved thereby, petitioner is knocking at the doors of Writ Court.

3. Learned counsel for the petitioner seeks to falter the impugned order on the following grounds:

3.1. The application of the petitioner ought to have been considered under the OCS (RA) Rules, 1990 and not 2020 Rules and therefore, there is error apparent on the face of record. Had it been considered under the



1990 Rules, the claim would have been within the limitation period prescribed under Sub-Rule (6) of 1990 Rules.

3.2. Applying for compassionate appointment, there is a prescribed application form at Annexure-A to the 1990 Rules and the said form requires production of legal heir certificate & death certificate, therefore, in computing the limitation period of one year, the time taken for obtaining the same has to be discounted.

3.3. Even otherwise, under Sub-Rule (11) of Rule 9 of 1990 Rules, the Government is empowered to condone delay; this aspect having not been adverted to by the OP No.2, the impugned order suffers from vice of non-application of mind and therefore, is liable to be set at naught.

3.4. Lastly, be it 1990 Rules or 2020 Rules or the 2025 Amendment Rules, they are promulgated to enable the distressed family to tide over the difficulty resulting from the death of its bread winner. Therefore, in construing the conditions prescribed by the Rules, compassion cannot be kept in cold storage.

4. Learned ASC appearing for the OPs resists the petition making submission in justification of the impugned order on the following grounds:

4.1. Compassionate Appointment is intended to rehabilitate family of the deceased employee dying in harness and it is granted by way of an exception to the general rule of equality obtaining in the realm of public



employment. Therefore, all and whatever conditions prescribed by the Rules have to be strictly complied with.

4.2. The extant Rules, be it of 1990 or of 2020, prescribe a period of one year/two years for applying for compassionate appointment and in the instant case the application having been filed beyond the prescribed period of limitation, has been rightly rejected on that ground.

4.3. The petitioner had never sought for condition of delay at the hands of the Government and therefore the plea that delay ought to have been condoned, is untenable. He hasten to add that, although a separate application need not be made seeking condonation of delay, at least, a paragraph could have been written in the very application itself mentioning the circumstances that resulted into delay.

5. Having heard learned counsel for the parties and having perused the petition papers, this Court is inclined to grant indulgence in the matter as under and for the following reasons:

5.1. Admittedly, father of the petitioner Mr. Dhoba Nayak died on 22.12.2010 in harness. Petitioner had sent the application on 10.09.2011 to OP No.3, who in turn had referred it to the District Collector. Following the same, the District Collector, vide letter no.437 of 2013 dated 23.05.2013, had referred it to OP No.2 on 05.11.2015. Therefore, the first contention that the application was time barred, does not merit



acceptance, the same having been made within one year reckoned from the date of death of the employee in harness.

5.2. The extant Rules require that the applicant has to produce vouching material such as Death Certificate, Legal Heir Certificate, Distress Certificate, along with the application for compassionate appointment, as prescribed in the format in Annexure-A to the Rules. These certificates obviously have to be applied for and obtained only after the demise of the bread winner. A living person has no legal heir. Added, all these certificates are to be obtained at the hands of different authorities, who function on ex-office basis under several statutes. There is a whole lot of procedure such as issuing notice to other side or public notice, hearing of contestants or rival claimants, as has happened in this case. A person cannot be asked to perform the impossible, in the sense that he should obtain all these certificates within the prescribed limitation period. Unless these certificates are produced, the application for compassionate appointment will be incomplete and therefore suffers rejection. Law does not expect anyone to do the impossible, vide *lex non cogit ad impossibilia* (“Maxwell on The Interpretation of Statutes”, 12th Edn. page-326). Therefore, while computing the period of limitation, be it one year or two years, the time taken for procuring the requisite certificates should be



excluded. An argument to the contrary would defeat the very solemn purpose for which Rehabilitation Rules are promulgated as a State Policy.

5.3. This Court has been noticing several cases wherein challenge is led go the orders that have rejected the claim for compassionate appointment only the ground that they were time barred. A time barred claim cannot be entertained, is known to even 1st year student of law. The point is, from which date the period of limitation is to be reckoned. Although, the 1990 and 2020 RA Rules specified the date of death as the reckoning point, there is no prohibition for excluding the time taken for obtaining the requisite certificates such as Death Certificate, Legal Heir Certificate, Distress Certificate, etc. it hardly needs to be stated that these certificates cannot be applied for in contemplation of death of employee in harness. It is only after the death, the cause of action for applying these certificates would arise. It may not be irrelevant to mention that even the Limitation Act, 1963 has several provisions which provide for excluding the time taken for obtaining copies of judgments, orders & decrees while computing the period of limitation. Although, these provisions are not applicable to RA Claims, analogical wisdom can be drawn from them

5.4. In the case at hand, one Smt. Ranjani Nayak had contested petitioner's claim for compassionate appointment on the ground that she



was the widow of deceased. This necessitated petitioner securing legal heir certificate on 27.12.2012. The said Ranjani filed a Statutory Appeal in Misc. Appeal No.3 of 2013 that came to be dismissed by the Sub-Collector only on 05.07.2014. All this was made available in petitioner's dossier containing the application for compassionate appointment. That being the position, the matter ought to have been referred to the Government for considering as to whether there was delay and if there was any, the same merited condonation. This course having not been adopted by OP No.2-Director, the impugned order suffers from a grave legal infirmity to the enormous prejudice of petitioner. This Court does not subscribe to the contention of learned ASC that any specific prayer for condonation of delay ought to have been made in the very application itself, if not separately. While construing social welfare legislations like RA Rules, one has to take into account the realities of life and its underlying policy content & intent. Otherwise, it ceases to be 'living law of the people' to barrow the phrase of Austrian jurist Eugen Ehrlich (14 September 1862 – 2 May 1922). Purposive construction of law of the kind would advance its laudable object whereas literal interpretation would defeat it.



5.5. There is force in the submission of learned counsel appearing for the petitioner that when the bread winner of the family dies, it would be like a bolt from the blue. Distress & difficulty come in train, in various forms & means. It is with laudable object of mitigating the same, the Rehabilitation Schemes are evolved by the Welfare States by promulgating Rules of the kind. More of than not, such Rules are rightly called Compassionate Appointment Provisions and therefore, while construing their provisions, compassion should be the substratum or undercurrent. Otherwise, the State will not bring Welfare Governance which the Constitution of India ordains.

5.6. Lastly, the impugned order is made keeping in view the provisions of 2020 Rules, when 1990 Rules were applicable, the bread winner having died on 20.12.2010. Under the 1990 Rules, there is a provision for condonation of delay vide Rule 9(11), whereas such a provision is conspicuously absent in 2020 Rules, which prescribed a limitation period of two years vide Rule 7(5). Thus, there is a gross non-application of mind to the legal position and to the material borne out by records. But for that, the application of the petitioner would have been favoured.

In the above circumstances, this petition succeeds; a Writ of Certiorari issues quashing the impugned order; matter is remitted to the



portal of OP No.1 and not OP No.2, with a direction to decide the same afresh within an outer limit of three months. If delay is brooked, OP No.1 shall pay to the petitioner Rs.500/- (rupees five hundred) only per day from his pocket and not from the public money.

It is open to OP Nos.1 & 2 to solicit any information or documents from the side of petitioner or from any other offices, as are required for due consideration of the matter; however, in that guise no delay shall be brooked

Now, no costs.

Web copy of the judgment to be acted upon by all concerned.

(Dixit Krishna Shripad)
Judge

Orissa High Court, Cuttack
The 16th day of October, 2025/ GDS / Anisha