

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 1731 CUTTACK, FRIDAY, DECEMBER 8, 2006 / MARGASIRA 17, 1928

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 14th November 2006

No. 10019—li/1(SS)-21/2003-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 12th September 2006 in Industrial Dispute Case No. 20 of 2003 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial disputes between the Management of SAIL, Rourkela Steel Plant, Rourkela and its workman Shri Rabi Narayan Mohapatra, S/o Late Raghunath Mohapatra at Qrs. No. B/142, Sector 16, Rourkela-3, Dist. Sundargarh was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER
LABOUR COURT, SAMBALPUR

INDUSTRIAL DISPUTE CASE No. 20 OF 2003

Dated the 12th September 2006

Present :

Shri P. K. Mahapatra, LL. B.
Presiding Officer, Labour Court
Sambalpur.

Between :

The Management of SAIL .. First Party—Management
Rourkela Steel Plant
Rourkela,.

And

Its Workman .. Second Party—Workman
Shri Rabi Narayan Mohapatra
S/o Late Raghunath Mohapatra
At Qrs. No. B/142, Sector-16
Rourkela-3, Dist. Sundargarh.

Appearances :

| | |
|--------------------------------|---------------------------------|
| For the First Party—Management | .. Shri G. Pujari, Advocate |
| For the Second Party—Workman | .. Shri B. N. Padhary, Advocate |

AWARD

This case arises out of the reference made by the Government of Orissa, Labour & Employment Department under Sections 10 and 12 of the Industrial Disputes Act, 1947 vide Memo No. 4914(5)-L.E., dated the 19th May 2003 for adjudication of the case as Schedule below :—

“Whether the action of the management of M/s SAIL, Rourkela Steel Plant, Rourkela in retiring Shri Rabi Narayan Mohapatra, Plot No. 11554 prematurely with effect from the 30th June 2001 instead of 30th June 2005 without considering his date of birth as per his Board of Secondary Education Certificate/School Leaving Certificate is legal and/or justified ? If not, to what relief Shri Mohapatra is entitled ?”

2. The workman Shri R. N. Mohapatra has raised an Industrial Dispute against the Senior Manager of Rourkela Steel Plant as according to him, the management side had arbitrarily superannuated him on the 30th June 2001 instead of the 30th June 2005 by conducting a perfunctory enquiry in spite of the fact that at the time of joining in service as a Recorder in Cold Rolling Mills, Rourkela Steel Plant, he had filed his descriptive roll in which his date of birth was recorded as the 6th June 1945 and the certificate issued by the Board of Secondary Education, Orissa and the Headmaster of Ahiyas High School also justifies his claim. According to the workman in the service book it was also corrected by taking note of his Board Certificate by the General Foreman of the Cold Rolling Mills on the 6th July 1973, as a result, the mistake available in the service book that his date of birth is the 6th June 1941 is of no use and cannot be noted for any purpose. To sum up, the workman has prayed that his date of birth be held as the 6th June 1945 and not the 6th June 1941 and accordingly his premature retirement be held as illegal.

3. The management side in the written statement has taken the plea that the date of birth declared by the workman in the descriptive roll has greater significance and accordingly his service book was also prepared and as at the time of joining, the workman has given his date of birth in the descriptive roll as the 6th June 1941, so by taking note of such declaration, he was allowed to join in his service and subsequently, the particulars furnished by him were also entered in the service book. According to the management, for all purposes his date of birth was accepted as the 6th June 1941 and the subsequent correction available in the service book is not to be legally accepted as the person who is authorised by the management has not done it. To sum up, the management has justified the superannuation of the workman by taking note of his date of birth as the 6th June 1941. In the written statement it is also pointed out by the management that the descriptive roll was interpolated subsequently by using chemical and the last number ‘5’ is interpolated by erasing ‘1’ which is apparent to the naked eye and such action of the workman be seriously noted and the claim of the workman be held as illegal. To sum up, the management has taken the plea that there is no reason to answer the reference in support of the workman.

4. In his rejoinder the workman has taken the stand that the plea of interpolation and other connected materials from the side of the management are manufactured stories as because a person cannot possess two dates of birth and even there is any written entry in any document, there is no illegality in correcting it. The workman has also justified his other stand in his rejoinder. In it, he has also mentioned the names of some employees who were employed while they were minors and according to him, subsequently their dates of birth were also corrected by the management. In his rejoinder the workman has prayed for reinstatement in service with full back wages.

5. By taking note of the pleading of the parties the following issues have been framed in this case :—

ISSUES

(i) “Whether the retirement of the workman on the 30th June 2001 is legal and/or justified in view of the fact that the date of birth as mentioned in Board of Secondary Education Certificate and School Leaving Certificate is the 6th June 1945 ?

(ii) To what relief the workman is entitled ?”

6. During the course of hearing the workman has adduced his evidence and he has also filed some documents which are marked as Exts. A to H. He has not examined any other witness to suffice his claim. The documents filed by him will be referred in this award as and when required.

The management side has examined Shri Sanjay Kumar Mehrotra, Deputy Manager (Personnel) as Management witness No. 1 and Shri P. K. Das, the Senior Manager of Personnel as Management witness No. 2. To add to this, they have also filed documents which are marked as Exts. 1 to 12. The Documents filed from the side of the management will also be referred in this award as and when required.

7. As it appears, the management side has filed a petition at the inceptient stage to frame a issue pertaining to the fairness of the domestic enquiry and to treat the same as a preliminary issue. But vide order, dated the 4th April 2006, the said petition was rejected and it was held that the enquiry conducted on the 20th June 2001 is not a ‘domestic enquiry’ as visualised in Industrial law and it was simply an enquiry conducted in obedience of the order of the Hon’ble High Court passed in OJC No. 7271 of 2001. In view of the above position there is no point of holding that there was domestic enquiry prior to retiring the workman on the 30th June 2001.

8. Admittedly, the workman after receiving a letter from the management on the 3rd May 2001 that his date of retirement is on the 30th June 2001, had made a representation to the management, but there was no response in this regard, as a result, he had approached the Hon’ble High Court by filing the above referred writ case and after hearing the parties, the Hon’ble High Court directed the management to scrutinise the documents produced by the workman and after affording an opportunity of being heard the claim of the petitioner be determined. Our Hon’ble Court have also directed the management to dispose of the issue

of the workman on or before the 28th June 2001. According to the workman, he had approached the management for perusal of his documents, but without verifying the genuineness of the documents, the management justified its issuance of notice for superannuation and then the present reference arose at his instance. By keeping the above background in view I will now deal with the issues settled in this case.

FINDINGS

9. *Issue Nos. (i) and (ii)* :—Admittedly, the workman joined in service on the 22nd January 1962 (afternoon). He has claimed that his date of birth is the 6th June 1945. If the same is accepted, then his age at the time of joining in the service would have been only 16 years, 7 months and 16 days, so he was a minor on the date of his joining. As per law, no minor can be employed in service. Though the workman has taken the plea that several minors have been enrolled in the cadre of the Steel Plant and subsequently their dates of birth have been changed according to the Matriculation Certificate, but the same cannot be the guiding factor to decide the fate of the present workman. So the normal presumption is that at the time of entry in service, he has given a declaration that his date of birth is the 6th June 1941 and not the 6th June 1945 as claimed by him now. This aspect is well forthcoming from the body of the service book. The other documents filed by the management is also lending support to conclude that his date of birth is the 6th June 1941 and not the 6th June 1945. In the descriptive roll, the last number so far the year of birth of the workman is concerned is interpolated. The above development is quite clear to the naked eye and after perusing the same. I am of firm view that the same was interpolated by someone other than the authority of the Steel Plant. It is hard to fathom that the Steel Plant Officers entrusted with it have done it, as because they are keenly contesting the claim of the workman. In the service book the General Foreman has given an endorsement that by taking note of the Board Certificate the date of birth is accepted as the 6th June 1945. But admittedly at the initial stage it is recorded as the 6th June 1941 which as per the normal practice is borrowed from the descriptive roll presented by the workman. The management side has filed a catena of documents to show that his date of birth is all along accepted as the 6th June 1941. So the fact that at the time of his joining the workman has given a declaration that his date of birth is the 6th June 1941 cannot be ruled out. Rather it sounds probable that he has given it to get the employment, as otherwise his employment at the relevant time would have been an imagination for him, so, once he has given such a declaration and accordingly got the benefit of joining in service, subsequently he cannot take it back by merely filing certain documents. For a long period, his date of birth is accepted as the 6th June 1941 by the authority. The other documents relating to his service are also prepared accordingly. The workman preferred to remain silent for such a long period. His long silence can be treated as his consent that his date of birth is the 6th June 1941.

10. In the Board Certificate, his date of birth is mentioned as the 6th June 1945. No good ground is shown as to why he preferred to give his date of birth as the 6th June 1941 at the time of his joining. So the normal presumption is that he has given it to get an early employment. As such, now he is estopped from claiming that his date of birth is the 6th June 1945. To add to this, the management side had conducted an enquiry and the said Enquiry Officer has also

determined his date of birth as the 6th June 1941. The School Leaving Certificate relates to Ahiyas High School of Cuttack District and as per the evidence of the workman, he was reading in Kantabania High School of Jajpur and he had never read in Ahiyas High School. It is also forthcoming from his evidence that he had appeared through Ahiyas High School as his original High School was not a recognised one. So the date of birth issued by the Headmaster of Ahiyas High School cannot be accepted as correct, as because, the said Headmaster is not the competent Authority to determine or fix his date of birth in the School Leaving Certificate issued by the Headmaster of Ahiyas High School there is no mention as to when the present workman had admitted in that School and the date when he left the School. By taking note of the evidence that he was the student of Kantabania High School and that he appeared through Ahiyas High School it can be safely said that the Headmaster of Ahiyas High School is not competent to give his date of birth as the 6th June 1945 and he had issued the School Leaving Certificate in a mechanical manner. Though the workman has taken the plea that he is not the author of the interpolation available in the description roll, but it is hard to say that the management side has done it. As such, the only alternative is that the workman has his hand in it. Such conduct of the workman is to be used against him. By taking note of his declaration at the time of his entry in service, the entry with regard to the date of birth available in the Board Certificate cannot be taken into account at this belated stage, so there is no reason to interfere in the decision of the authority.

11. After perusal of the documents filed from the parties what emerges is that there is a interpolation in the descriptive roll and the change of date of birth affected in the service book is after a long lapse of his entry in service. The management side has adduced evidence that the correction in the service book is without their knowledge and it was done by an incompetent person. The learned counsel for the workman has cross-examined the witness of the management, but nothing substantial is elicited to suffice the above aspect. The memory of the workman had also failed him to adduce independent and reliable evidence showing the circumstances under which the correction in the service book was affected. No document is filed to suffice that a congenial situation arose during his service career which compelled the management to carry out the correction in the service book. At the cost of repetition, I would like to mention that the workman has accepted his date of birth as the 6th June 1941 right from the date of his entry in service and now after availing the benefit, he is estopped from claiming that his date of birth is the 6th June 1945. The theory that a person cannot blow 'hot' and 'cold' at a time squarely applies to the case of the present workman. His plea that other employees have also availed similar type of benefits at the time of their entry in service and that subsequently their dates of birth have been changed according to their High School Certificate cannot be a good ground as a wrong committed by an employer cannot be allowed to continue further. Furthermore, the oral evidence in this regard from the side of the management is foggiest in nature and basing on such evidence it is very difficult to give a finding in favour of the workman. So the notice of superannuation issued to the workman is justified and the subsequent superannuation by taking his date of birth as the 6th June 1941 is legally valid. As such there is no reason to interfere with the order passed by the management in this regard and accordingly the reference is answered against the workman. Hence the following award :—

AWARD

The reference is disposed of on contest, however, in the circumstances there is no order pertaining to cost. The action of the management of M/s SAIL, Rourkela Steel Plant, Rourkela in retiring Shri Rabi Narayan Mohapatra, PI. No. 11554 prematurely with effect from the 30th June 2001 instead of 30th June 2005 is held to be legal and justified and the workman is not entitled to get any relief in this case.

Dictated and corrected by me.

P. K. MAHAPATRA
12-9-2006
Presiding Officer
Labour Court, Sambalpur

P. K. MAHAPATRA
12-9-2006
Presiding Officer
Labour Court, Sambalpur

By order of the Governor
N. C. RAY
Under-Secretary to Government