

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 1292 CUTTACK, THURSDAY, JUNE 2, 2011/JAISTHA 12, 1933

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 23rd May 2011

No. 4700—IR (M)-12/2010-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 8th September 2010 in Industrial Dispute Misc. Case No. 1 of 2009 (U.S. 33-A) of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of the Divisional Forest Officer, Kendu Leaf Division, Rairakhol and its Workman Shri Harekrushna Pradhan through the Vice-President, Orissa Kendu Leaf Karmachari Sangha, Rairakhol was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, SAMBALPUR
INDUSTRIAL DISPUTE MISC. CASE No. 1 OF 2009 (33-A)

Dated the 8th September 2010

Present :

Miss Sarojini Mahapatra, M.A.,LL.B.,
Presiding Officer,
Labour Court, Sambalpur.

Between :

Shri Harekrushna Pradhan,
through the Vice-President,
Orissa Kendu Leaf
Karmachari Sangha,
Rairakhol.

.. Petitioner/Complainant—Workman

Vrs.

The Divisional Forest Officer,
Kendu Leaf Division,
Rairakhol.

.. Opposite Party—Management

Appearances :

Shri Chhabila Tripathy, . . For the Petitioner—Workman
 Vice-President, Orissa
 Kendu Leaf Karmachari Sangha.

Shri K. S. Panigrahi, . . For the Opposite Party—Management
 Junior Clerk.

AWARD

1. The petitioner Shri Harekrushna Pradhan through the Vice-President, Orissa Kendu Leaf Karmachari Sangha, Rairakhol filed this petition under Section 33-A of the Industrial Disputes Act, 1947 against the opposite party/management with a prayer to adjudicate the dispute of termination of service of the petitioner and to set aside the order of opposite party Dt.2-3-2009 and Dt. 31-3-2009 as per the provisions contained under Section 33-A of the Industrial Disputes Act, 1947 and to direct the opposite party to reinstate the petitioner in his service with back wages from the date of refusal of service till the petitioner attains his age of superannuation.

2. The petitioner's case stated as follows—

The reference made by the Government of Orissa, Labour & Employment Department vide their Order No.12586, Dt. 19-11-2007 with the schedule question in I.D. Case No.25/2007 which is pending in this Court. The opposite party/management has been guilty of contravention of the provisions of Section 33 of the Industrial Disputes Act, 1947. The petitioner Shri Harekrushna Pradhan raised an industrial dispute as the opposite party denying his promotion from the post of Checker to Circle Checker with effect from the 20-1-2005. The matter was taken up by the District Labour Officer, Subarnapur and the conciliation proceeding was failed. When the above I.D. Case is pending in this Court, the opposite party without taking permission of this Court under Section 33 of the Industrial Disputes Act, 1947 has terminated the service of the petitioner/Shri Harekrushna Pradhan taking the plea that he has already completed 60 years of age and cannot continue in service under the opposite party. The plea taken by the opposite party that Shri Harekrushna Pradhan is over aged and it is a clear case of victimisation of the opposite party-management having no document to prove. The opposite party with *mala fide* intention has not maintained any service record nor any Service Book/Service Roll of the petitioner. The opposite party also has not taken the signature of the petitioner on any document at the time of appointment.

3. It further reveals from the case of the petitioner that as per the voter list of the year 2008 of Biramaharajpur Constituency No. 114, name of the petitioner (Harekrushna Pradhan) appears at Sl. No. 503, Ghara No.25, Bhaga No.17, where the age of the petitioner has been mentioned as 53 years. The said voter list is corrected and up to date voter list published by the Election Commissioner of India. The D.F.O., Rairakhol, Kendu Leaf Division without examining the documents refused engagement of the petitioner vide Order Dt. 2-3-2009 and 31-3-2009. So, the petitioner prayed to adjudicate the dispute of termination of service of the petitioner and to set aside the order of the opposite party, Dt. 2-3-2009 and 31-3-2009 as per the provisions contained under Section 33-A of the I.D. Act, 1947 and the petitioner prayed for an award in favour of the petitioner directing the opposite party to reinstate the petitioner in his service with full back wages from the date of refusal of service till the petitioner attains his age of superannuation.

4. The opposite party filed show cause and contested in this case.

5. The Misc. Case is not maintainable in the eye of law. As per the statute under Section 2 of the I.D. Act, 1947, Clause (oo), special Clauses (a) (b), read with the provisions of the Industrial Employment (Standing Order) Act, 1947, the petitioner-workman attained the age of retirement or

attained the age of superannuation, she/he should be retrenched from service. Accordingly the petitioner has been informed about his engagement vide Order Memo. No. 482, Dt. 2-3-2009. So, the opposite party never violated the principles of Section 33, read with 33-A of the I.D. Act, 1947, Seasonal workmen were being engaged for three months in kenduleaf season in each year, until they attained the age of superannuation. The opposite party vide its letter No. 669, Dt. 31-3-2009 communicated to the petitioner-workman about his non-acceptance of joining report. The petitioner-workman was engaged as seasonal staff. The workmen were called for to submit documents regarding proof of age or record of age and almost all of the workmen submitted their documents excluding this petitioner-workman. So, the voter list of Ward No.8 of village Mendilipali of the year 2006 published in Assembly Constituency No.124,—Biramaharajpur against this workman was taken for consideration regarding the record of age. Although the I.D. Case pending since the year 2007, this petitioner-workman relied upon a certified copy of the voter list vide Sl. No.503 of Biramaharajpur Constituency No.114 of the year 2008 to prove his age. So, as per the case of the opposite party there is possibility of tampering of such documents as collected after thought by the petitioner. The petitioner has filed a medical certificate which is not in form and in objectionable. So, the opposite party prayed to dismiss this Misc. case.

6. Rejoinder filed by the petitioner. The opposite party has violated the provisions of under Section 33 of the I.D. Act, read with Section 2 of the said Act. The opposite party should have obtain permission from this Court when the I.D. Case No. 25/2007 is pending and without obtaining the permission from the Court retrenched him from service. The opposite party is thoroughly misconceived as to the meaning of the service condition. As per the case of the opposite party, the petitioner exceeded the age of 60 years in the year 2007 but he was allowed to work in the year 2008 and disallowed to work in the year 2009. The determination of correct date of birth/age of retirement of an employee is a condition of service and when promotion dispute of the petitioner was pending since the year 2005 and the case pending since the year 2007, the retirement order of the petitioner should have been affected only after obtaining permission from the Court. It is the main duty of the employer to ascertain the correct date of birth of the employee and reflected the same in his service record. The voter list is not the sole proof for determination the age or date of birth of the employee. The petitioner has filed voter list of the year 2008 and the doctor certificate. The opposite party did not take these above documents for consideration and illegally superannuated the petitioner in the year 2009 although the petitioner was of 52 years aged in the year 2008. The opposite party obtained the voter list in the year 2006 which is manufactured one. The voter list of the year 2006 does not contain the signature of any Legal Officer nor it is certified to be true copy. It is not the duty of the petitioner to get ossification test report to determine his age/date of birth, merely because he has submitted all his documents regarding his age.

7. In order to prove the case, the petitioner only is examined as A.W.1 Harekrushna Pradhan. He has filed some documents which are marked as Ext. A-1 to Ext. A-7. The opposite party has not examined any witness in support of its case.

8. Admittedly the I.D. Case No. 25/2007 was pending in this Court. The petitioner has filed this petition under Section 33-A of the I.D. Act, 33-A of the I.D. Act reveals special provision for adjudication as to whether conditions of service etc. changed during pendency of the proceeding— “Where an employer contravenes the provisions of Section 33 during the pendency of the proceedings before the Conciliation Officer, Board, Arbitrator, Labour Court, Tribunal or National Tribunal, any employee aggrieved by such contravention may make a complaint in writing in the prescribed manner.”

It reveals from the case record that the petitioner filed this case to set aside the order of the opposite party, Dt. 2-3-2009 and 31-3-2009 as per the provisions contained under Section 33-A of the I.D. Act, 1947 as well as to adjudicate the dispute of termination of service of the petitioner. The main grievance of the petitioner is that the opposite party violates the provisions of Section 33-A of the I.D. Act while the I.D. Case No. 25/2007 was pending in this Court. His further case leads to the fact that his age was altered from 55 years to 61 years and he was refused employment from March 2009 without obtaining any permission from this Court. Moreover it reveals from his claim that prior to alteration of age from 55 years to 61 years no notice was served on him and the opposite party without ascertaining the correct age of the petitioner, superannuated him from service violating the principles of natural justice. The opposite party has not sent him for ossification test to determine his correct age as well as date of birth. The opposite party did not accept the voter list of the year 2008 and the doctor certificate but accepted the voter list of the year 2006. The representative of the petitioner submitted that the opposite party obtained the voter list of the year 2006 behind the back of the petitioner. The age of the petitioner reveals in the said voter list as 61 years. The petitioner relied upon the documents which are marked as Ext. A -1 to Exts. A-7 to establish its case.

9. It reveals in the case of the opposite party that the seasonal staff under the Kenduleaf Division were included under the purview of the I.D. Act, 1947. The petitioner was a seasonal staff under Orissa Kenduleaf Manual, 1973 wherein some responsibilities have been casted on the seasonal staff without any service condition nor any service condition is framed for the seasonal staff. As almost all the seasonal staff have submitted the documents regarding their age proof besides this petitioner. So, the opposite party called for the voter list of the year 2006 of Ward No.8 of village Mendilpali to ascertain the age of the petitioner. It reveals from the voter list of the year 2006 the age of the petitioner is 61 years for which he was superannuated in the year 2009 by the opposite party. The petitioner for the first time relied upon a voter list of the year 2008 to prove his age. The representative of the opposite party submitted that during pendency of the I.D. Case No. 25/2007 the petitioner collected the voter list of the year 2008. Moreover he submitted that the petitioner has not examined the doctor who issued the medical certificate. The petitioner has not put his signature on the Doctors's report.

10. As per the Section 2 (oo) of the I.D. Act, 1947. Retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise then as a punishment inflicted by way of disciplinary action but does not include—(a) voluntary retirement of the workman, (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contends a stipulation in that behalf.

11. The representative of the petitioner submitted that without giving any prior notice to the petitioner, the opposite party superannuated him from his service.

Special Section 9-A of the I.D. Act—notice of change—no employer, who purposes to effect any change in the condition of service applicable to any workman in respect of any matter specified in the fourth schedule shall effect such change.

It reveals from the case of the petitioner that the opposite party violated the provisions of the I.D. Act. The petitioner said his date of birth is 55 years and as on March 2005 he was 50 years. In order to prove his case the petitioner stated that he read up to IV Class in the village Chatasali under the Abadhana. There was no School record maintained by the Abadhana in village Chatasali.

So, he has not filed any documents of any School. The petitioner stated in his evidence that the D.F.O.,K.L. Division, Rairakhol issued a letter refusing his service as he has already attained the age of 60 years. However, the petitioner basing on his case relied upon the reported decision—State of Orissa *Vrs.* Dr. (Miss) Binapani Devi reported in Supreme Court Service Rullings, Vol.4, P. 424 decided on 7-2-1967—Where there is dispute reported in the date of birth of an employee, inquiry to be made following principles of natural justice and the employee must be given a fair opportunity of meeting the case.

12. The petitioner also reiled upon the case—Jiwan Kishore *Vrs.* Delhi Transport Corporation reported in Supreme Court Service Rullings, Vol. 5, P. 275—Compulsory retirement—conflict in records on date of birth—Medical Board report to be obtained and accepted.

Hari Singh *Vrs.* State of Bihar and others reported in 2000 Supreme Court Cases P.832—date of birth—order retiring of a Government servant on the basis of disputed date of birth without notice to him—Cannot be sustained.

13. It reveals from the case record that the opposite party considering on the voter list of the year 2006 superannuated the petitioner in a proper way. However, the opposite party relied upon reported decision Vol. 110 (2010), CLT-7—Industrial Disputes Act, 1947—Section 33-A—Whether charge of retirement age amounts to change in service condition within the meaning of the Act ?—Hon'ble Court held—No age of retirement of an employee is not a service condition—complaint under Section 33-A is not maintainable on the subject of retirement age.

14. In the above decision relied upon by the opposite party is applicable for the present case. Hence the complaint under Section 33-A is not maintainable. In view of such facts and circumstances, the petitioner is not entitled to get any relief in this case. Hence the following award :

AWARD

The Misc. Case is dismissed on contest but without any cost. The petitioner is not entitled to get any relief in this case.

Dictated and corrected by me.

S. MAHAPATRA
8-9-2010
Presiding Officer
Labour Court
Samablpur

S. MAHAPATRA
8-9-2010
Presiding Officer
Labour Court
Samablpur

By order of the Governor
T. K. PANDA
Under-Secretary to Government