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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 17th October 2011

No. 9249—li/1-(B)-99/1993-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 31st March 2011 in Industrial Dispute Case No. 39 /2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of The 'Samaj', Cuttack and its workman Shri J. N. Pradhan was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 39 OF 2008 (Previously registered as
I.D. Case No. 94 of 1993 in the file of the P.O., Labour Court, Bhubaneswar)

Dated the 31st March 2011

Present :

Shri Raghubir Dash, OSJS (Sr. Branch),
Presiding Officer, Industrial Tribunal,
Bhubaneswar.

Between :

The Management of 'The Samaj',
Satyabadi Press, Cuttack.

. . First Party—Management

And

Late Jatindra Nath Pradhan,
Substituted by Legal heirs, namely—

. . Second Party—Workmen

1. Manorama Pradhan, Wife
2. Aswini Kumar Pradhan, Son
3. Aruna Kumar Pradhan, Son
4. Ashok Kumar Pradhan, Son

5. Ajit Kumar Pradhan, Son
 6. Pragati Pradhan, Daughter
 7. Pravati Pradhan, Daughter
 8. Sudipti Pradhan, Daughter
 9. Supriti Pradhan, Daughter, of
 Village Odasingh, P.S. Salipur,
 Dist. Cuttack.
 At Present Gandarpur,
 P.O. College Square,
 Cuttack.

Appearances :

Shri S. Mohanty, Advocate	..	For the First Party–Management
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Shri N. K. Mishra, Advocate	..	For the Second Party–Workmen

AWARD

This is a reference under Section 10 of the Industrial Disputes Act, 1947 (for short, ‘the Act’) made by the Government of Odisha in Labour & Employment Department vide their Order No. 8143-li-1(B)-99/1993-L.E., dated the 28th June 1993 which was originally referred to the Presiding Officer, Labour Court, Bhubaneswar for adjudication but subsequently transferred to this Tribunal for adjudication vide Labour & Employment Department’s Order No. 4138-li/21-32/2007-L.E., (5), dated the 4th April 2008. The Schedule of reference runs as follows :—

1. “Whether Shri J. N. Pradhan is a Newspaper Employee as defined under Section 2(c) of the Working Journalist and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 ?
2. Whether Shri J. N. Pradhan was in regular employment under the opposite party management with effect from the 14-2-1962 ? If so, whether he is entitled to get any amount as applied under Section 17 (1) of the above Act in prescribed application (copy enclosed) ?
3. Whether the management’s action in superannuating Shri J. N. Pradhan on attaining the age of 58 years on 6-6-1987 is justified ? If not, what benefits he is entitled to ?”

2. The original second party, namely, Late Jatindra Nath Pradhan having died during pendency of this proceeding, his legal heirs have been substituted to proceed with the case.

3. The averments made in the claim statement, in short, are that the first party establishment of ‘The SAMAJ’, Satyabadi Press, Cuttack is a newspaper establishment in which the deceased Jatindra Nath Pradhan, the original second party herein was a ‘newspaper employee’ as defined under Section 2 (c) of the Working Journalists and other Newspaper Employees

(Conditions of Service) & Miscellaneous Provisions Act, 1955 (for short, 'the Act of 1955,'). Initially, the deceased employee was appointed as Labour Advisor with effect from the 14-2-1962 on a consolidated salary of Rs. 200 per month. Later on, he was made Labour Officer of the establishment with effect from the 1-3-1971 with consolidated salary of Rs. 400 per month. While continuing as such he was absorbed in the said post on regular pay scale with effect from the 1-4-1980. The nature of his job was neither supervisory nor managerial. Right from the beginning of his employment i.e. 14-2-1962 the deceased was on regular roll of the first party and he had been devoting his full time for the work of the first party like other regular employees. Therefore, he was entitled to the salary and all other service benefits in terms of different Wage Board Recommendations, Palekar Award and Bachhawat Wage Board Award by application of Section (s) 13 to 17 and Section 25 of the Act of 1955.

Challenging his superannuation, he has pleaded that the deceased's date of birth being 14-2-1929 and the age of superannuation in respect of the employees of the establishment being 60, the deceased ought to have been superannuated on 14-2-1989. But, in an arbitrary manner he was superannuated on 7-7-1987 on completion of the age of 58 which is illegal, more so when the deceased was duly certified by the Head of the Department of Haematology, S.C.B. Medical College Hospital, Cuttack to be mentally and physically fit to discharge duties. It is further alleged that such premature superannuation is discriminatory as well and amounts to unfair labour practice. Because the management, as a matter of practice and precedence, has allowed numerous employees of the establishment to continue even beyond the age of 60.

With such averments it is claimed that the deceased is entitled to salary from July 1987 to 14-2-1989 (the period he should have been continued had he not been prematurely superannuated), differential salary from December, 1962 to March 1979 and other service benefits such as encashment of accumulated leave, bonus, gratuity, etc. from 1963 till the due date of superannuation.

4. The first party management in its written statement has contended that the deceased was working in managerial/supervisory capacity and as such he was not a 'workman' as defined under the Act. He was not appointed as a whole time Labour Advisor with effect from 14-2-1962 and his services were never regularised from time to time. During the period from the 14-2-1962 to 31-3-1980 the deceased had been working in several establishments including the first party's. It was only with effect from the 1-4-1980 he was given appointment as Labour Officer on regular basis and he continued as such till 7-7-1987 when he was retired on reaching the age of superannuation as contemplated in the Certified Standing Orders of the establishment. On the plea that the workman was arbitrarily not allowed to continue beyond 60 years of age, the management has contended that some retired employees of the establishment whose services were essentially required in the interest of the establishment are engaged on contract basis even after their attaining the age of superannuation. But, that does not vest any right in the deceased to avail similar benefit. His superannuation at the age of 58, which is in terms of the Certified Standing Orders, is legal and justified. On the claim of differential arrear dues, it is contended that since the

deceased was neither a 'newspaper employee' nor being in regular employment under the first party from 14-2-1962, he is not entitled to get any amount under the provisions of Section (s) 13 to 17 and Section 25 of the Act of 1955.

5. Basing on the pleadings as well as the Schedule of reference the following issues have been settled :—

ISSUES

1. "Whether Shri J. N. Pradhan is a Newspaper Employee as defined under Section 2(c) of the Working Journalist and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 ?
2. Whether Shri J. N. Pradhan was in regular employment under the opposite party management with effect from the 14-2-1962 ? if so, whether he is entitled to get any amount as applied under Section 17 (1) of the above Act in prescribed application (copy enclosed) ?
3. Whether the management's action in superannuating Shri J. N. Pradhan on attaining the age of 58 years on 6-6-1987 is justified ?
4. If not, what benefits he is entitled to ?"

6. One witness is examined from each side. One of the deceased's sons is examined as W.W. No.1 and the Personnel Officer of the first party is examined as M.W. No.1. Both sides have exhibited several documents.

FINDINGS

7. *Issue No. (i)* —According to the second party, the deceased is a 'newspaper employee' as defined under the Act of 1955 but the first party does not agree to it. In this regard Section 2(c) of the Act of 1955 which defines the term 'newspaper employee' may be reproduced below :

"Newspaper employee' means any Working Journalist and includes any other person employed to do any work in or in relation to any newspaper establishment."

There is no dispute that the first party is a newspaper establishment as defined under the Act of 1955. It is also not disputed that the deceased was employed as a Labour Advisor/Labour Officer to do certain work in or in relation to the newspaper establishment. As Labour Advisor/Labour Officer of the establishment he used to receive salary from the first party establishment. Therefore, this Tribunal holds that the deceased was a 'newspaper employee' as defined under the Act of 1955.

On behalf of the management it is argued that the deceased was neither a 'Working' Journalist" nor a 'Non-journalist newspaper employee' inasmuch as he was employed in a Supervisory capacity and he used to perform duties mainly of managerial nature. Since the second party has not specifically claimed that the deceased was a Working Journalist and considering that he was engaged as a Labour Officer there is no difficulty in giving a finding that he was not a Working Journalist. But, in order to give a finding as to whether he was a 'Non-journalist newspaper employee', the materials placed before this Tribunal need to be considered carefully. Section 2(dd) of the Act of 1955 runs as follows :—

“2(dd) 'Non-journalist newspaper employee' means a person employed to do any work in, or in relation to, any newspaper establishment, but does not include any such person who—

- (i) is a working journalist, or
- (ii) is employed mainly in a managerial or administrative capacity, or
- (iii) being employed in a supervisory capacity, performs, either by the nature of the duties attached to his office or by reason of the powers vested in him, functions mainly of a managerial nature.”

A reading of the definition of 'Newspaper' in juxtaposition to the definition of 'Non-journalist newspaper employee' would make it clear that all newspaper employees who are not Working Journalists are not 'Non-journalist newspaper employees'. Persons employed mainly in a managerial or administrative capacity and persons employed in a supervisory capacity who perform functions mainly of a managerial nature are excluded from the definition 'Non-journalist newspaper employees'.

Therefore, it is to be considered as to whether the deceased who was a newspaper employee was employed mainly in a managerial or administrative capacity or in a supervisory capacity performing the functions mainly of a managerial nature.

In the written statement there is no pleading as to what was the nature of duties the deceased, as the Labour Officer, used to discharge. But, in Para.7 of his affidavit evidence M.W. No.1 has stated that as Labour Officer the deceased used to deal with the service conditions of the employees like fixation of wages, fixation of salary, increments, etc. It is further stated that he used to deal with the promotion, recruitment, dismissal and grant of leave of the employees. It is further stated that the deceased used to represent the management before different authorities in the matter of labour problems and allied work. It is further stated that he used to conduct domestic enquiries. In cross-examination the witness has stated that the deceased as Labour Officer had no power to recruit and appoint employees and that he simply used to initiate the recruitment process. Some documents are exhibited to show that the deceased's duty was managerial/administrative in nature. Ext.D is an Enquiry Report which reflects that the deceased was appointed as an Enquiry Officer. But, it cannot be said that persons appointed as Enquiry Officer must be necessarily, in managerial or administrative capacity. Therefore, this document is not going to help the management. Ext.H is a note put up by the deceased for orders to be passed by the General Manager. It reflects that the deceased as Labour Officer had made the office note for regularisation of two probationers to be

approved by the General Manager. On the basis of Ext.H it can be said that the General Manager was managerial/administrative capacity but not the Labour Officer/deceased who submitted the note. Ext.J is a letter which shows that the deceased was appointed as an Enquiry Officer to conduct domestic enquiry. It also does not show that the deceased was employed mainly in a managerial or administrative capacity.

It is not shown that the deceased was employed mainly in a managerial or administrative capacity. It is not shown that he had the power to make independent decision in the matter of fixation of wages, grant of increments, giving promotion to the subordinates or even in the matter of granting leave to the subordinates. Therefore, it cannot be said that he was not a 'Non-journalist newspaper employee' as defined in the Act of 1955.

The issue is answered accordingly.

8. *Issue No. (ii)* —According to the second party, the deceased was appointed as Labour Advisor in the establishment of the first party with effect from the 14-2-1962 on a consolidated salary of Rs.200 per month and he was continued as such till 28-2-1971. Then, with effect from the 1-3-1971 he was appointed as the Labour Officer on a consolidated salary of Rs.400 per month. It was only with effect from the 1-4-1980 he was absorbed in the employment of the first party as Labour Officer on regular scale of pay. According to the first party, initially the deceased was a part-time Labour Advisor/Labour Officer of the first party from 14-2-1962 to 31-3-1980 and during this period he had been working in several other establishment as well. It was only with effect from the 1-4-1980 he was given appointment on regular basis. The evidence available on record may be taken into consideration. Ext.A is the copy of the Service Book of the deceased which has been marked without objection. There is entry in the Service Book to the effect that on 29-2-1962 the deceased was first appointed as a part-time Labour Advisor with a remuneration of Rs. 200 per month, then on 1-11-1964 he was given consolidated pay of Rs. 400 per month and then with effect 1-4-1979 he was brought to the regular time scale of pay as per the order of the Chairman dated 11-6-1980. Ext.B reflects that as per the order of the Chairman dated 11-6-1980 the deceased was allowed the time scale of pay as prescribed in the Wage Board Recommendations and the order was given retrospective effect from the 1-4-1979. Ext.G which is marked with objection is a xerox copy of certified copy of one affidavit purportedly sworn by the deceased in connection with a certified case in the Court of the Magistrate, 1st Class, Cuttack. The affidavit dated the 18-4-1972 purports to have been sworn on behalf of the first party. Therein it is mentioned that the deceased was then a part-time Labour Advisor to several concerns such as M/s Konark Ceramics (P) Ltd., Nirupama Pradhan, Mines owner, 'The SAMAJ', Cuttack, Gopabandhu Type Foundary, Cuttack etc. located at district of Cuttack, Jagatsinghpur and Bhubaneswar. Ext.R is a letter issued by the Chief General Manager, Odisha Industries Ltd. under the Right to Information Act wherein it is mentioned that the deceased was working in the Odisha Industries Ltd. and his Provident Fund Account number is OR-20-1350 and that there had been deduction from his salary towards Provident Fund from March 1966 to June 1970. Relying on Ext.G and R it is argued on behalf of the first party that the deceased was working in more than one establishments and for that it is clear that he was a part-time employee of the first party till he was brought to regular scale vide order Ext.B. On behalf

of the second party it is submitted that Ext.G cannot be taken into consideration inasmuch as it is a mere copy of a copy which is not admissible in evidence. However, no cross-examination was made challenging the contents of Ext.G. Even if Ext.G excluded from consideration, other documents such as Exts.A, B and R sufficiently establish that the deceased was initially employed on part-time basis.

That apart, the deceased was admittedly employed by the first party on consolidated salary till he was brought to regular scale of pay. He had been working under the first party from the 14-2-1962 till he was absorbed as a regular Labour Officer vide Order marked Ext.B and during this long period he had never raised any dispute claiming that even though he was discharging duties like a regular employee he was being deprived of regular pay scale. Even after he came to the regular scale and continued as such for a period of about eight years he had never raised any such dispute. It was only after he was superannuated at the age of 58 that he demanded arrear differential wages claiming that all along he had been discharging duties as a regular employee. Apart from this, the claim of arrear differential wages which is based on the plea that the deceased had been devoting all his time as a regular employee of the first party is not substantiated by evidence. Added to all these, the second party has not cited any provisions of law under which the first party is to be deemed to be under any obligation to bring the deceased on regular pay scale with effect from the 14-2-1962 even though he had agreed to work with the first party establishment on consolidated remuneration.

Since there is no evidence in support of the claim that the deceased was in regular employment under the first party with effect from the 14-2-1962 and in the absence of any legal obligation on the part of the management to pay full salary to the deceased deeming him to be an employee on regular pay scale from the very first date of his employment, this issue is answered against the second party.

9. *Issue No. (iii)* —There is no dispute that the deceased's date of birth is 14-2-1962 and that he was superannuated on 7-7-1987, few months after he completed the age of 58. But, according to the second party, the deceased should have been retired only on his completing 60 years of age. It is claimed that he was prematurely superannuated in contravention of the practice/precedence of the first party establishment and in sheer defiance of the rulings of the Hon'ble Courts. On behalf of the first party, it is argued that the deceased was superannuated in accordance with its Certified Standing Orders marked Ext.C. It is not in dispute that the age of superannuation of an employee of the first party, as per the Certified Standing Orders, is 58. Evidence is adduced by the second party to the effect that the deceased was fit both mentally and physically to perform his job beyond the age of 58 years. Evidence is also adduced to the effect that on 20-8-1987 (after his superannuation) the deceased submitted a representation attached with a medical certificate seeking his continuation till his 60th year. Ext.12 is his representation with a copy of the medical certificate annexed thereto. In the claim statement also there is averment that since he was mentally and physically fit to perform his work he should have been continued like many other employees of the establishment beyond the age of 58. In support of this stand the second party has cited the judgement

dated 10-8-1990 of our Hon'ble High Court passed in O.J.C. No. 1001 of 1989, copy whereof is marked Ext.8. In the said Judgement of Hon'ble High Court the Recommendations of the Wage Board in respect of 'Working Journalists' were under consideration. While the workman in the said reported case (O.P. No.3 the OJC) was an Assistant Editor in the newspaper establishment of the present first party, the deceased herein was a Labour Officer. Since he was not a Working Journalist, the Wage Board Recommendations in respect of 'Working Journalists', which was the subject matter of consideration in the OJC, cannot be made applicable. However, for reasons to follow the observations made by the Hon'ble High Court in the said OJC are to be borne in mind while considering the effect of similar recommendations made by the Central Wage Board for 'Non-journalist employees'. From the Judgement in O.J.C. No.. 1001 of 1989 (Ext.8) it is gathered that the Wage Board Report for 'Working Journalist' contains recommendations on age of superannuation at two different paragraphs ; one in paragraph 3.40 and the other in paragraph 4.34. While accepting almost all the recommendations of the Board contained in Chapter IV of the Wage Board Report, the Government of India did not accept the recommendations contained in paragraph-4.34, but it did not exclude paragraph-3.40. Taking these facts and circumstances into consideration their Lordships have held that the Government of India in its Notification, dated 27-10-1967 has accepted the Recommendations of the Board contained in paragraph-3.40 intending to give effect to the Recommendations in paragraph-3.40 for the 'Working Journalist'. Paragraph-3.40 of the Recommendations made by the Wage Board for 'Working Journalists' runs as follows :—

“3.40. The Board is fully conscious of the fact that the proposal regarding the age of retirement is likely to be challenged on the ground that it does not strictly fall within the purview of the Board. The evidence as recorded by the Board indicates that there is no uniform practice in respect of age of retirement. This disparity has given rise to some dissatisfaction amongst the employee. Besides as the wage scales have been formulated for a period ranging from 8 to 18 years, there is apprehension in the minds of the employees that in order to avoid paying the maximum pay of the scale, newspaper establishments may take the advantage of disparate practice and retire the employees earlier. This is likely to cause great hardship to those employees who have served for a number of years. For these reasons the representatives of the employees and employees were unanimously of the opinion that there should be uniformity in respect of age of retirement in the industry and that the age of retirement should be 58 years. However, a 'Working Journalist' shall be continued in service up to the age of 60 years on production of fitness certificate from the District Medical Officer. In order to give full and uniform effect to the proposed wage scales the Board decided to include this provision in its proposals. It may, however, be mentioned that if need be the Government may incorporate this provision in the 'Working Journalists' (Conditions of Service) and Miscellaneous Provisions Act by undertaking the necessary amendment”.

10. Now I shall discuss how indential recommendations as quotted above have been made by the Wage Board for Non-journalist employees. The Wage Board Recommendations for 'Working Journalists' was notified by the Government of India in its Notification dated 27-10-1967. On 21-11-1967 the Government of India notified in another Extraordinary Gazette the Recommendations made by a Wage Board for the 'Non-journalist employees' of the newspaper establishments.

Ext.E is a copy of the said Extraordinary Gazette Notification. It is relied on by the Management to support its contention that though the Wage Board vide para. 4.31 of its recommendations had recommended that the age of retirement of a 'Non-journalist' shall be 58 years, but he/she shall be continued in service up to the age of 60 years on production of a fitness certificate from any Registered Medical Practitioner which was not accepted by the Central Government. The entire of the Final Report submitted by the Wage Board for Non-Journalist employees is not brought on record. But it is found Ext.6, the copy of an Award passed by this Tribunal in I.D. Case No.31 of 1991 on 17-6-1994 between the Management of Prajatantra Prachar Samittee, Cuttack and their workman, that besides the recommendation in Para. 4.31 the Wage Board for Non-journalist employees had also made the following recommendation which is extracted from Ext.6 itself :—

“The Board is fully conscious of the fact that the proposal regarding the age of retirement is likely to be challenged on the ground that it does not strictly fall within the purview of the Board. The evidence recorded by the Board indicates that there is no uniform practice in respect of age of retirement. This disparity has given rise to some dissatisfaction among the employees. Besides as the wage scales have been formulated for a period ranging from 8 to 18 years, there is apprehension in the minds of the employees that in order to avoid paying the maximum pay of the scales, newspaper establishment may take the advantage of this disparate practice and retire the employees earlier. This is likely to cause great hardship to those employees who have served for a number of years. For these reasons the Board decided that the age of retirement should be fixed at 58 years and that a non-journalist shall be continued in service up to the age of 60 years if he produce a certificate of fitness from a Registered Medical Practitioner. In order to give full and uniform effect to the proposed wage scales the Board decided to include this provision in its proposals.”

Since the above quoted recommendation do not find place in the Gazette of India (Extraordinary) marked Ext.E, it is presumed that Ext.E does not contain all the recommendations that the Wage Board had made for Non-journalist employees. Either of the parties should have taken the pain to exhibit the whole of the Wage Board Report for better appreciation. Having gone through the Judgment of the Hon'ble High Court in O.J.C. No.1001/1989 alongwith the Gazette of India (Extraordinary) marked Ext.E and the Judgment of this Tribunal in I.D.Case No. 31 of 1991 marked Ext.6, this Tribunal has reason to believe that like the Wage Board for Working Journalists the Wage Board for Non-journalist employees also had made recommendations on age of superannuation at two different paragraphs of their Report and while one of the two paragraphs (paragraphs -4.31) was not accepted by the Central Government, the recommendation in another paragraph which has been quoted above by this Tribunal from the Award passd in I.D. case No. 31 of 1991 has not been expressly omitted by the Central Government. Under a similar situation that arose in O.J.C. No. 1001 of 1989 their Lordships while considering the effect of non-omission of paragaph-3.40 of the Recommendations of the Wage Board for Working Journalists observed that the Central Government while omitting paragaph-4.34 did not intend not to give effect to the recommendation contained in Paragraph-3.40 of the Report. Therefore, on the basis of the recommendation in Paragraph-3.40 of the said Report their Lordships upheld this Tribunal's decision finding that a Working Journalist would be continued in service up to the age of 60 years if his fitness is certified by the District Medical Officer.

A comparison of Paragraph-3.40 of the Wage Board Report for Working Journalists with the recommendation of the Wage Board for Non-journalist employees, quoted above from the Award in I.D. Case No.31 of 1991 (Ext.6), will clearly reveal that one is in pari-material with the other. It is found that the recommendation made by the Wage Board for Non-journalist employees also contained the some recommendation on the age of superannuation in two different Paragraphs but only one out of the two was not accepted by the Central Government as reflected in Ext.E and the recommendation in other Paragraph was accepted by the Central Government. Therefore, applying the ratio in O.J.C. No. 1001 of 1989, this Tribunal comes to a conclusion that for Non-journalist employees the Wage Board had decided that the age of retirement should be 58 years but a Non-journalist employee shall be continued in service up to the age of 60 years if he produces certificate of fitness from a Registered Medical Practitioner.

11. Now, it is to be considered as to whether the superannuation of the deceased on completion of 58 years of age is justified. Ext. C is the Certified Standing Order of the first party which prescribes the age of superannuation to be 58 years. As per the Wage Board Recommendation the deceased being a Non-journalist employee, ordinarily his age of retirement is 58 years but he should have been continued in service up to the age of 60 years if he produced a certificate of fitness from a Registered Medical Practitioner. As per the entry in his Service Book, the deceased's date of birth is 14-2-1929. So, he completed the age of 58 on 14-2-1987. But, admittedly, he was superannuated on 6-6-1987. According to the Wage Board Recommendation continuance of a Non-journalist employee beyond the age of 58 is conditional inasmuch as for such continuation the concerned employee is required to produce a certificate of fitness from a Registered Medical Practitioner. For the second party it is argued that the deceased had furnished a fitness certificate but the management without taking the same into consideration superannuated him on 6-6-1987. On behalf of the management it is argued that the deceased did not furnish any certificate of fitness on or before the date he was superannuated. According to the second party, the enclosure to Ext.12 is the fitness certificate which the deceased had furnished alongwith Ext.12 in support of his prayer to continue him up to the age of 60. Ext.12 is a representation made by the deceased on 20-8-1987 making a prayer to the management to continue him till the age of 60. The enclosure to Ext.12 is a copy of medical certificate purportedly issued by the Head & Professor, Department of Clinical Haematology, S.C.B. Medical College, Cuttack. The certificate purports to have been issued on 20-8-1987. As already stated, the deceased completed his 58th years on 14-2-1987. In order to avail the Wage Board recommendation the deceased ought to have furnished the fitness certificate prior to or on his completing the age of 58. The management continued him beyond 14-2-1987 as evident from the fact that he was superannuated on 6-6-1987. Even during this period the deceased did not submit a fitness certificate. It was only after he was superannuated he made a representation to allow him to continue till the age of 60 years and at that time he submitted the certificate. Since the continuation beyond 58 years is not automatic and an employee is required to produce a fitness certificate from any Registered Medical Practitioner, there is no explanation from the side of the deceased, who had filed the claim statement in this case, as to why he did not furnish the fitness certificate well in time. It is submitted on behalf of the management that no such representation as Ext.12 accompanied by a fitness certificate was received from the deceased. Ext.12 purports to have been sent by registered post with A.D. but neither the postal receipt nor A.D. card has been

exhibited by the second party to show that the representation was actually received by the management. But, it appears, the management would not have taken the deceased back in job had it receive the representation alongwith the medical certificate marked Ext. 12, because within two months of purported sending of Ext. 12 the deceased had made another representation which is marked Ext.L praying for his extension up to the age of 60 years but the management did not respond. Be that as it may, the question arises as to whether the management should have recalled the order of superannuation and allowed the deceased to work up to 60 years only because the deceased had furnished fitness certificate much after he was superannuated. In my considered view the management was under no legal obligation to take the deceased back in job the moment the deceased furnished the fitness certificate much after his superannuation. Therefore, the management's action in superannuating the deceased on 6-6-1987 is neither illegal nor unjust.

The issue is answered accordingly.

12. *Issue No. (iv)* —In view of the discussion held above, the second party is not entitled to any benefit on account of alleged premature retirement.

The reference is disposed of accordingly.

Dictated and corrected by me.

RAGHUBIR DASH
31-3-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

RAGHUBIR DASH
31-3-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

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