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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 18th November 2011

No. 10311—li/1 (S)-1/2008-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 28th March 2011 in Industrial Dispute Case No.11 /2008 of the Presiding Officer, Labour Court, Sambalpur, to whom the industrial dispute between the Management of Executive Engineer, Balangir Electrical Division, Balangir and others and the General Secretary, Hirakhanda Bidyut Karmachari Sangha, Sambalpur 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 CASE No. 11 OF 2008

Dated the 28th March 2011

Present :

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

Between :

The Management of
Executive Engineer,
Balangir Electrical Division,
Balangir and others.

. . First Party—Management

And

The General Secretary,
Hirakhanda Bidyut
Karmachari Sangha,
Sambalpur.

. . Second Party—Workman

Appearances :

Shri M. Pati, . . . For the First Party–Management
Advocate

Shri A. C. Misra, . . . For the Second Party–Workman
Advocate

AWARD

1. This award arises out of the reference made by the Government of Orissa, Labour & Employment Department conferred by sub-section (5) of Section 12 read with Clause (c) of sub-Section (1) of section 10 of the Industrial Dispute Act, 1947 (14 of 1947) in Memo No. 8791 (4), dated the 16th August 2008 to adjudicate the Schedule question :—

“Whether the demand of Hirakhanda Bidyut Karmachari Sangha, Sambalpur for correction of the date of birth of Shri Srikar Pradhan, Lineman-B of Balangir Electrical Division, Balangir from 1-7-1950 recorded in his School Leaving Certificate is legal and/or justified ? If so, what should be the direction on this score ?”

2. The second party workman Shri Srikar Pradhan through the Hirakhanda Bidyut Karmachari Sangha, Sambalpur has filed petition on Dt. 13-6-2005 before the Chief Ececutive Officer, WESCO, Burla, Dist. Sambalpur with an endorsement to the Deputy Labour Commissioner, Sambalpur wherein the General Secretary of the Union requested for rectification of the date of birth of Shri Srikar Pradhan.

The case of the second party workman stated as follows :

The establishment of the Executive Engineer, Balangir Electrical Divison, WESCO, Balangir entrusted with the work of supplying electricity, selling electricity to different consumers including industries and collected electricity charges with the joint co-operation of the management and the employees. The first party management is an Industry under Section 2 (j) of the I.D. Act, 1947. The second party-workman Shri Srikar Pradhan was appointed by the first party management as helper on monthly payment basis in the year 1975 under the first party management and continuing as such at Balangir Electrical Division, Balangir. The second party workman was an active memembr of the Hirakhanda Bidyut Karmachari Sangha, Registered Trade Union. As per OSEB letter No. 14936, Dt. 15-10-1971 and letter No. 9886, Dt. 7-5-1979 the date of birth supported by documentary evidence, such as Matriculation Certificate or any other School Leaving Certificate, Muncipal Birth Certificate shall be entered in his service book record and an attested copy of age proof of certificate must be pasted in the service roll book. But the management made an entry in the service book hap-hazardly violating the rules and regulations. Shri K.N. Naik was the Executive Engineer, Balangir Electrical Division, Balangir at the time of joining of the second party in the said establishment. But the service book opened four years after joining during the tenure of Shri G. Gopal Krishna as Executive Engineer. The service roll bears signature of G. Gopal Krishna but not bears the signature of Shri K.K. Naik or his predecessor Shri P. Jena, Executive Engineer. As per rules the service book should have opened within one year of the appointment. As per the School Leaving Certificate, his date of birth is 1-10-1955 but the management has mentioned in the service

book, his age as 25 years without following any documents. As per rule, duplicate service book should be provided to the second party workman. The management has also never followed the provisions of rules nor re-attested the first page of the service book nor obtained the signature of the workman on the service book. The service book should be re-attested in every five years. The first party management kept the second party in darkness depriving him to know regarding the errors recorded in the original service roll in time. The first party management mentioned the date of birth of the second party in the service roll as 1-7-1950. But the actual date of birth of the second party-workman is 1-10-1955. The second party workman was never given opportunity to produce his age proof certificate i.e. School Leaving Certificate. The management has never sent the second party for medical examination to ascertain his age, date of birth. So, the entry made in the service roll as 25 years as per the medical report is baseless and fabricated. Management also failed to produce the medical report regarding the date of birth of the second party workman before the Conciliation Officer/Assistant Labour Officer, Balangir.

Further it is alleged in the claim statement of the second party workman that the original service roll and the duplicate service roll are not similar. The second party after knowing about the wrong entry filed application before the management. On receipt of the complaint from the second party regarding the erroneous entries in the service roll, the first party-management referred this matter to the Headmaster to the concerned School where the second party workman was prosecuting his studies, for confirmation of date of birth of the second party. The Headmaster, Padiabahal Government Primary School confirmed the date of birth of the second party and furnished the xerox copy of the Admission Register of the School containing the date of birth of the second party as 1-10-1955 recorded at the time of admission. The Chief Executive Officer, WESCO, Burla being the Head of the Corporate Office of the WESCO, Burla referred the said issue to the Head Master, Padiabahal Government School for confirmation regarding the date of birth of the second party. In response, the Headmaster of the said School confirmed by issuing a letter Dt. 28-11-2007 that the date of birth of the second party workman is 1-10-1955. The management has not corrected the date of birth in the service roll of the second party as 1-10-1955. The date of birth of one Lineman-B named Shri Chaitanya Behera was corrected from 16-3-1934 to 13-3-1939 on the basis of the School Leaving Certificate of the office Order No. 1454, Dt. 8-7-1992 of the Executive Engineer, Deogarh Electrical Division, Deogarh. The management superannuated the second party workman from service with effect from 31-7-2008 basing on the date of birth as 1-7-1950. So, the second party-workman made a prayer for an order in favour of the second party workman directing the first party management to rectify the wrong date of birth recorded in the service roll and record the correct date of birth as 1-10-1955 as mentioned in the School Leaving Certificate and to reinstate the second party workman in service with all service benefits till he attains the age of 58 years with full back wages.

3. The first party management contested in this case and as per the case of the first party management, the second party reised dispute regarding his date of birth in the Service Roll on some false grounds without any basis upon false documents. The first party management WESCO is functioning from 26-11-1998. In view of the statutory provisions, employees are enjoying the similar benifits and service conditions under WESCO in which they were enjoying under OSEB and GRIDCO. The functions were earlier undertaken by the Orissa State Electricity Board and then GRIDCO and now by WESCO. As per the decision of the Board of Directors in its fifth meeting held

on 24-10-1998, the service regulation of GRIDCO concerning executives and non-executives including those of circle and divisions were approved for adoption in the first party company till such time the company framed its own regulation for employees and that the service regulations so adopted shall apply *mutatis mutandis* to all employees who will be transferred from GRIDCO to WESCO in pursuance of transfer arrangement agreed between GRIDCO and WESCO. It was further decided that the practices and procedure on followed by GRIDCO on the basis of various Government Codes, Orders, Circulars as well as the practices and procedures prescribed by the Board of GRIDCO together with the general condition of supply regulation. As per the office Order, Dt. 7-5-1979 of Secretary, OSEB, it has been categorically mentioned that as per Rule 65 and 66 OGFR Vol. I, the date of birth once recorded cannot be altered except in case of clerical error without the order of the State Government. Basing on the above order the date of birth of an employee once recorded in the service book, service roll should not be altered without the approval of the Board. As per the provisions of Odisha Service Code read with Rules 65 and 66 of OGFR, submission of representation after 27 years of service of the second party i.e at the fag end of the service is not maintainable. The service book of the second party workman was properly opened and maintained by the management as per the rules and regulations and guidelines as prescribed. The name of the second party, father's name, residence, his date of birth, date of entry in service, etc. have been mentioned in the service book of the second party at the time of his appointment and after acceptance of the second party the Executive Engineer of the first party management has given his endorsement therein.

4. Further, it is alleged that the second party workman was working as Lineman 'B' under Balangir Electrical Division, Balangir. He was appointed under OSEB on 1-7-1975. At the time of appointment as Helper, his date of birth was recorded as 25 years on the basis of medical report which was duly signed and accepted by the second party workman in the first page of the service roll. Subsequently, the date of birth is also recorded as 1st July 1950 in the service roll (Christian Era in words). The second party applied for correction of his date of birth in December 2001 i.e. after 27 years of his service. As per Rule 65 of OGFR Vol.I as amended in Finance Department vide No. 42151, Dt. 28-9-1992, no alteration of date of birth shall be made except in case of clerical error and an application for effecting a change in the date of birth shall be summarily rejected, if filed after five years entry into service. As per the OER Transfer Scheme Rules, 1998 the case of correction of date of birth of second party workman was referred to the WESCO, Corporate Office. It was communicated that the correction of date of birth cannot be accepted as per Rule 52 of Odisha Code read with Rule 65 of the OGFR and the same was communicated to E.E.,BED, Balangir vide Order No. WESCO/HR. Estt./Conf./1840 (3), Dt. 21-2-2001. The School Leaving Certificate issued by the Headmaster, Padiabahal Government Primary School, Dist. Balangir is not appears to be a genuine certificate. There is no *mala fide* intention nor any mischief played by the management in maintaining the service record. The second party workman retired from his service on 31-7-2008. The second party workman is availing Provisional Pension after his retirement. He has submitted an application in Form No. 1 under OCS (Commutation of Pension) for release of final pension wherein the second party has mentioned his date of birth as 1st July 1950. So, as per his own admission the date of birth is 1st July 1950. So the first party management prayed for dismissal of this case.

5. The second party workman has filed rejoinder through the General Secretary of Hirakhanda Bidyut Karmachari Sangha, Sambalpur denying the case of the first party management.

6. Out of the pleadings of the parties, the following issues have been framed for adjudication :—

ISSUES

- (i) “Whether the demand of Hirakhanda Bidyut Karmachari Sangha, Sambalpur for correction of the date of birth of Shri Srikar Pradhan, Lineman -B of Balangir Electrical Division, Balangir from 1-7-1950 recorded in his School Leaving Certificate is legal and/or justified ?
- (ii) If so, what should be the direction on this score ?”

7. On behalf of the second party workman, four witnesses including the second party are examined. W.W. 1 Shri Srikar Pradhan (the second party workman), W.W. 2 Sushil Chandra Behera, Junior Accountant, WESCO, Balangir, W.W. 3 Nepal Chandra Das, Incharge Headmaster, Padiabahal New Upper Primary School, W.W. 4 Narendra Prakash Raiguru, General Secretary of Hirakhanda Bidyut Karmachari Sangha and Junior Accountant.

The second party workman relied on some documents in support of his case marked as Ext. W. 1 to Ext.W. 10

8. On behalf of the first party management, two witnesses are examined. M.W.1 Nitu Priya Devi, Deputy Manager (HRD), WESCO, M.W. 2 Alok Kumar Satpathy, Executive Engineer, WESCO, In-charge of Balangir Electrical Division, Balangir.

The management relied on some documents which are marked as Ext. M.1 to Ext. M. 8.

FINDINGS

9. *Issue No. (i)*— Admittedly Shri Srikar Pradhan, the second party workman joined in service on 1-7-1975. His date of birth as 1st July 1950 as per service record report mentioned in Ext.W. 3 service book. The second party workman retired from WESCO service (management) with effect from 31-7-2008 A.N. on attaining the age of superannuation at the age of 58 years as his date of birth in service roll is 1st July 1950. The second party challenged on the date of birth recorded in the service book /service roll and claimed that his date of birth recorded in his School Leaving Certificate as 1-10-1955. As such, unless a clear case on the basis of clinching materials which can be held to be conclusive in nature is made out by workman and that too within a reasonable time as provided in the rules governing the service. It should not take a declaration on the basis of materials which makes such claim only plausible. Before any such declaration made the Court must fully satisfy that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed and within the time fixed by any rule or order. If no rule or order has been framed or made prescribing the period within which such application has to be filed, then such application must be within at least a reasonable time. The applicant must produce evidence in support of such claim which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the second party workman to prove about the wrong recording of his date of birth in his service book.

At the stage the document filed by both the parties should be scrutinised in a careful manner. The second party workman relied on some documents such as Ext.W.1 Original School Leaving Certificate, Ext.W.2 Original Appointment Order, Ext.W.3 Duplicate Service Book, Ext. W. 4 Letter Dt. 17-1-2008 regarding the superannuation of the second party workman, Ext. W. 5 is the letter Dt. 18-3-2008, Ext. W.6 is the office order Dt. 30-6-2008, Ext. W.7 is the School Admission Register, Ext. W.8 is Promotion Register, Ext. W.9 is the School Leaving Certificate Book, Ext. W.10 is the xerox copy of office order Dt. 26-4-2010. Ext. W.1 to Ext. W.6 are marked on admission. Ext. W.7 to Ext. W.10 are marked with objection. Let us scrutinise the evidence of W.W.1 relating to his claim. Ext. W.1 to School Leaving Certificate shows that the entry of the workman in the School is 1-4-1962 and the second party left the School on 22-5-1978. The second party workman stated in his evidence that he read up to Class III continuously and obtained the School Leaving Certificate. As per School Leaving Certificate his date of birth is 1-10-1955. But it is an admitted fact that the second party workman joined in his service in the management on 1-7-1975. So Ext.W 1 is not clear, how the second party workman left the School on 22-5-1978 and joined in service on 1-7-1975. It is also mention in Ext. W.1 that the entry of the workman in the School is on 1-4-1962 and School Leaving on 22-5-1978. So, the learned Advocate on behalf of the first party management submitted that Ext. W.1 the School Leaving Certificate is a forged document. Admittedly, the second party workman joined in the service on 1-7-1975. The second party workman has stated in his evidence that he was engaged in the service as Helper in the year 1-7-1975. He was also working in the same department temporarily as N.M.R. since 1974. Being instructed by the Sectional Officer, he attended the interview in the year 1975 and on 1-7-1975 he started his work as Temporary Helper. He admitted in his evidence that he has not filed any document prior to his engagement in the service. He claims that he had left School on 22-5-1978 but the School Leaving Certificate Ext.W.1 discloses that the School Leaving date is 22-5-1978. During his service period he got his promotion as Limeman -B after facing interview conducted by the management. It is further alleged from his cross-examination that the date of birth mentioned in Ext.W.3 (Service Book) has been wrongly recorded as 1st July 1950. The second party workman admitted in his cross-examination that he had never filed any document during his service career regarding his date of birth but he took the stand that he was never called for by the management to file any document or he knew the entry of date of birth in the year 2001 is wrong. It is a fact that 27 years after service the second party workman has applied for correction of date of birth. The responsibility lies on the second party workman during course of employment to come across his date of birth or to provide the correct date of birth as he claims. W.W.2 is an employee joined in the year 1975 as N.M.R. in the establishment and admitted in his cross-examination that he had faced the interview and filed all the documents during selection of clerk on 26-9-1979 in O.S.E.B., Balangir. W.W.2 admitted that the duplicate service book was handed over to the workman in the year 2000. During cross-examination W.W. 3 Nepal Chandra Das, Incharge Headmaster of Padiabahal New Upper School has filed Ext.W.7 School Admission Register, Ext. W.7/1 is the relevant entry in support of admission of the workman in the School. Ext. W. 8 is the promotion register of the said School. Ext. W.8/1 is the relevant entry. Ext. W.9 is the School Leaving Certificate Book. Ext. W9/1 is the relevant entry. As per his evidence Ext.W.1 the School Leaving Certificate was written by the then Headmaster Balaram Swain. The management challenged that the entry made in Ext. W.8/1 is not the handwriting of the then Head master Rabi Chandra Sarangi. There is overwriting in the specific

entry in the name of Shri Srikar Pradhan in Ext.W.8/1. The relevant entry in Ext. W.9/1 in EXt. W.9 is similar in Ext.W.1 from which it is apparent that the entry in School is 1-4-1962, his date of birth is 1-10-1955 and School Leaving is 22-5-1978 and the second party workman read up to Class-III i.e Ext. W.9/1 issued on 9-3-2000. Here the question arises the School Leaving date is 22-5-1978 but the second party workman joined in service on 1-7-1975. However, the second party -workman also relied on the relevant entry which is marked Ext. W.7/1 from which it is clear that there is double writing on the said relevant entry. Ext.W.8 discloses that the date of birth of Shri Srikar Pradhan (No detailed entry appears in this relevant entry) is 1-10-1955. W.W.4 is the General Secretary of Bidyut Karmachari Sangha working at Electricity Board since 3-7-1976 at Sambalpur as Clerk after attending in the interview in the said department. As per his evidence, some relevant documents were called for at the time of his interview and accordingly he has produced the same before the authority. Six month after his joining the Service Book was opened.

10. On behalf of the first party management Nitupriya Devi, Deputy Manager, H.R.D. under first party management as M.W.1 and Shri Alok Kumar Satapathy, Executive Engineer, WESCO M.W.2 have been examined. The management relied on some documents Ext. M.1 xerox copy of service roll from which it is apparent that the second party workman Shri Srikar Pradhan joined in the service on 1-7-1975 F.N. and his date of birth appears in the first page of the Service Book is 25 years as per the medical report. The writing 25 years subsequently was out and it is written as 1st July 1950. Ext. M.2 the xerox copy of order, Dt. 18-12-2001. Ext M.3 the xerox copy of the Orissa Service Code page 109. As per the Ext.M.3 "Every person on entering Government service shall declare his date of birth which shall not differ from any such declaration expressed or implied for any public purpose before entering service. The date of birth shall be supported by documentary evidence as Matriculation Certificate, Municipal Birth Certificate and entered in his or her service record. No alteration of the date of birth of Government servant shall be made except in case of clerical error without prior approval of the State Government. An application for effecting a change in the date of birth shall be summarily rejected if,— (a) filed after five years of entry into Government service, or (b) the change would so lower the applicant age that he/she would have been in eligible to appear in any of the academic or recruitment examination in which he/she had appeared or for consideration for appointment to any service or post under the Government." Ext.M.4 is the order, Dt. 6-3-1992. Ext.M.5 is order, Dt. 23-7-2008. Ext.M.6 is the service roll of Budu Kabat. Ext.M.7 is the Medical Certificate. Ext.M.8 workman's permit. It is appears from the documents that the date of birth of the workman is 1st July 1950 as per medical report (Ext.W.3 Service Book). He joined the service on 1-7-1975. However Ext.W.4 shows that the second party workman retired from WESCO service with effect from the 30th June 2008 A.N. on attaining the age of superannuation at the age of 58 years as per his date of birth in service roll as 1st July 1950.

11. The plea taken by the workman showing the case of other employees is not helpful to his case merely because it is clear that his date of birth is 1st July 1950 which reflected in Ext.W.3. Besides that the second party workman is availing provisional pension after his retirement. He has submitted application in Form No.1 under O.C.S. (Commutation of Pension) for release of final pension wherein the second party has declared his date of birth as 1st July 1950. So as per his own admission his date of birth is 1st July 1950. The second party workman also retired from his service with effect from 31st July 2008 A.N. on attaining the age of superannuation at the age of 58

as his date of birth as per in the service roll is 1st July 1950 as per Ext.W 3. The management relied on the reported decisions 2005 S.C. cases P.794 “Normally, in public service with entering into the service even the date of exit, which is said as the date of superannuation or retirement, is also fixed. That is why the date of birth is recorded in the relevant register or Service Book, relating to the individual concerned. This is the practice prevalent in all services, because every service has fixed the age of retirement, and it is necessary to maintain the date of birth in the service records. Most of the States have framed statutory rules or in absence thereof issued administrative instructions as to how a claim made by a public servant in respect of correction of his date of birth in the service record is to be dealt with and what procedure is to be followed. In many such rules a period has been prescribed within which if any public servant makes any grievance in respect of error in the recording of his date of birth, the application for that purpose can be entertained. The sole object of such rules being that any such claim regarding correction of the date of birth should not be made or entertained after decades, especially on the eve of superannuation of such public servant”.

12. So, in view of such facts and circumstances, there is no merit in the case of the second party- workman. Accordingly, the first issue is answered.

13. *Issue No. (ii)*—In view of such facts and circumstances according to the relevant documents it is clear that the date of birth of the second party workman is 1st July 1950 and he retired from his service with effect from the 31st July 2008 rightly by the management. So, the demand of Hirakhanda Bidyut Karmachari Sangha, Sambalpur for correction of date birth of Shri Srikar Pradhan, Lineman ‘B’ of Balangir Electrical Division, Balangir is not legal nor justified. His actual date of birth of the second party workman Shri Srikar Pradhan is 1-7-1950. Accordingly, he was rightly superannuated by the management. Hence the following Award.

AWARD

That the reference is answered on contest but without any cost. The correct date of birth of the second party workman Shri Srikar Pradhan is 1-7-1950. Accordingly, he was rightly retired from service with effect from 31st July 2008 by the management as he attained the age of superannuation.

Dictated and corrected by me.

S. MAHAPATRA
28-3-2011
Presiding Officer
Labour Court
Sambalpur

S. MAHAPATRA
28-3-2011
Presiding Officer
Labour Court
Sambalpur

By order of the Governor

T. K. PANDA
Under-Secretary to Government