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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 24th December 2010

No. 10847—li/1(S)-11/2007-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 26th August 2010 in I.D. Case No. 25 of 2007 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of the Divisional Forest Officer (Kendu leaf), Rairakhol Division and their workman Shri Harekrushna Pradhan, Checker represented through the Vice-President, Orissa Kendupatra Karmachari Sangha, At/P.O. Charmal, Dist. 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. 25 OF 2007

The 26th August 2010

Present :

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

Between :

The Management of
the Divisional Forest Officer,
(Kendu leaf), Rairakhol Division,
At/P.O. Rairakhol, Dist. Sambalpur.

.. First-party—Management

And

Their workman
Shri Harekrushna Pradhan, Checker,
represented through the Vice-President,
Orissa Kendupatra Karmachari Sangha,
Charmal, At/P.O. Charmal,
Dist. Sambalpur.

.. Second-party—Workman

Appearances :

Shri G. Pradhan, Advocate	.. For the First-party—Management
Shri Niranjan Kar, Advocate	.. For the Second-party—Workman

AWARD

This case arises out of the reference made by the Government of Orissa, Labour and Employment Department under sub-section (5) of Section 12 read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) in Memo. No. 12587 (5), Dt. 19-11-2007 for adjudication of the schedule question :—

“Whether the action of the management of the Divisional Forest Officer (Kendu leaf), Rairakhol Division in denying promotion of Shri Harekrushna Pradhan, Checker to the post of Circle Checker w.e.f. 20-4-2005 is legal and/or justified ? If not, what relief he is entitled to ?”

2. The case of the second-party workman stated as follows :—

The establishment of Divisional Forest Officer (Kendu leaf), Rairakhol Division, Rairakhol, Dist. Sambalpur (first party) is an establishment of Government of Orissa, Forest Department and is entrusted with the work of collecting/producing and selling of Kendu leaf to the business houses with the joint co-operation of the management and labour to satisfy human work, which are not of religious or spiritual nature. Thus the establishment of first party is an industry under Section 2 (j) of the I. D. Act, 1947 (The Industrial Disputes Act, 1947). The second party workman was engaged by the first party management as a daily wages but monthly payment basis in the year 1972 and is continuing at Bahalpadar K. L. Range. The second party has been rendering his service as assigned by the first party in the establishment. The second party workman started his service at Bahalpadar (K. L. Range) as Munshi and was promoted to Checker post by the first party management in the year 1982. There is no existing certified standing orders in the establishment for the workman concerned i.e. right from peon to Head Checker and thus model standing orders is applicable in the establishment. C. C. Rs. of the workman are not maintaining in Orissa State Kendu leaf Division including first party's establishment.

The main duty and responsibility of a Circle Checker is to look after binding work of Kendu leaf perfectly and the workman having such experience is entitled to be designated/promoted as Circle Checker. It is prevalent practices in the establishment to include one of the office bearer of recognised Union in course of selecting forming a committee for promotion if any. The Orissa Kendupatra Karmachari Sangha is a registered Trade Union bearing Registration No. 415 and it is also recognised by the concerned department (Kendu leaf), Government of Orissa, Rairakhol Division is a part of Orissa Kendupatra Karmachari Sangha. The first party management did not intimate the Union about the promotion from Checker to Circle Checker. The second party workman was the Member of the said Union. The first party acted arbitrarily by appointing a Selection Committee for promotion from Checker to Circle Checker without including the office bearer of the Union functioning in the establishment. The second party workman was a senior most Checker working in the first party management. The first party management without considering the seniority and experience of the second party workman has selected and promoted two numbers of Circle Checker namely Shri Umesh Prasad Danta and Shri Bhakatram Sahu which is illegal. The promotion of Shri Harekrushna Pradhan, the second party workman from Checker to Circle Checker is due from the date 20-4-2005 and he is eligible for all monetary benefits with retrospective effect. The

promotional procedure adopted by the first party management is illegal and in contravention to model standing orders as applicable in the first party's establishment. Shri Harekrushna Pradhan the second party workman is an active Member of the Registered and recognised Union i.e. Orissa Kendupatra Karmachari Sangha, Rairakhol and due to his Trade Union activities he was eyesore to the first party and his over due promotion was denied with *mala fide* intention. So the second party workman is unnecessarily dragged to financial hardship and loss of huge money.

3. So the second party workman made a prayer that —

- (a) He may be promoted to the post of Circle Checker with retrospective effect from 20-4-2005.
- (b) The monetary benefits in lieu of such promotion may be allowed to Shri Harekrushna Pradhan with retrospective effect.
- (c) The promotion list may be recasted considering the seniority of Shri Harekrushna Pradhan in staff list of Rairakhol (Kendu leaf) Division.
- (d) And for other reliefs including expenses for prosecution of the case and cost of mental agony, harassment, anxiety, suffering and also for unnecessarily dragged to litigation.

4. The management filed written statement stating that the dispute under the I. D. Act, 1947 is not maintainable. The inception of this case or dispute is vitiated one and should be dismissed as no statement of claim has been filed by the second party workman or through Vice-President, Orissa Kendupatra Karmachari Sangha, Rairakhol within the stipulated period. The application of the second party workman dt. 17-4-2005 for promotion reveals that he was working as Munsif since 1981 and further reveals that he was working in the department since 1-3-1973 whereas his year of birth is 1955. This is the admission of the second party workman in his application for promotion. So, the workman was engaged by the management since in the year 1972 on daily rated monthly payment basis is wrong. The said workman joined as Checker at Bahalpadar (K.L.) Range since 1-3-1987 as per seniority list of the Checkers of Bahalpadar K. L. Range before 19-4-2005. So the workman was designated as Checker by the management from 1982 is inconsistent with the seniority list prepared by the first party management for the post of Checker of Bahalpadar (K.L.) Range.

The Industrial Employment (Standing Order) Central Rules, 1945 is applicable to any workman under I.D. Act, 1947. The Industrial Employment (Standing Order) Central Rules, 1946 is applicable to the workman and the management. Accordingly Model Standing Orders of additional items applicable to all industries as per schedule I.D. the first party management has adopted the model standing orders by asking the workman to submit the record of age, service record, residential address, etc. Almost all workman have submitted their record of age with proof. But the second party workman has not submitted his record of age or proof thereof. It was/is repeatedly persuaded by the management to submit the record of age for smooth running of their management and benefit. Umesh Prasad Danta, Purna Chandra Sahoo, Dillip Kumar Nanda, Golekha Panigrahi, Harekrushna Pradhan (second party workman), Dhaneswar Pradhan, Babaji Pradhan, Bhakataram Sahu, Dasaratha Nanda and Artatran Sahu have filed application with record of age for promotion to the post of Circle Checker. One of the Checker of the said Range namely Sankhanad Pradhan did not file application nor appeared in the examination for promotion. Though the second party workman has applied for promotion but did not file any age proof or record of age. His year of age and statement in Class IV of the application form is not consistent to each other. His entire statement in application form is not consistent to each other. But the management sympathetically accepted

his application for selection to the post of Circle Checker. There is no special agreement with regard to the age of retirement in between the first party and the second party to continue in service more than 60 years. The second party workman Harekrushna Pradhan has already attended the age of 63 years as per the Voter list of Assembly Constituency No. 114, Biramaharajpur against village Mendilipali, Ward No. 8. The second party workman is the resident of village Mendilipali. The said Voter list of the year 2006 notify publicly in the name of Harekrushna Pradhan, S/o Sambani Pradhan, vide House No. 25, aged about 61 years, Voter Sl. list No. 487. So the second party workman is 63 years of age by the year 2008.

5. Further it is alleged from the written statement that the Checkers are seasonal staff as per "Orissa Kendu Leaves Manual, 1973." Each and every year their engagement have been terminated at the end of that season. So each and every year applications are being invited from those engaged workman for the continuity of their engagement. The second party workman mentioned his age is 61 years in his application. He has mentioned in his engagement application in the year 2008 against his age i.e. 61 years. Voter list of the year 2006 discloses his age as 61 years and his application for promotion dt. 17-4-2005 discloses his years of birth is 1955 which are not consistent to each other. He is no more engagement basing on his age on his application of the year 2008. As the workman were working under the management as daily rated, there is no strict principles of maintaining C.C.R. against them. There is no such strict prevalent practices in the management to take office bearer of Trade Union in Promotion Committee for selection, etc. The alleged promotion was not carried arbitrarily on sweet will of the management. There was minutes of discussion with the Members of the Orissa Kendupatra Karmachari Sangha held in the office chamber of the D.F.O. (K.L.), Rairakhol Division on 29-3-2005.

In the said discussion the then D.F.O. (K.L.) Division, Rairakhol Mr. M. M. Panigrahi, Sub-Divisional Forest Officer (S.D.F.O.), Rairakhol K. L. Subdivision, Shri I. Jena, S.D.F.O., Charmal (K.L.) Subdivision, Mr. A. C. Samal, Mr. Chhabila Kumar Tripathy, Vice-President, Orissa Kendupatra Karmachari Sangha, Charmal and the Secretary of the said Sangha and all the Range Officers of Division and Head Checker of the Division were present and participated in the minute of discussion. In the said minute of discussion, nine Members of proposals have been approved unanimously. Chhabila Kumar Tripathy, the Vice-President, Orissa Kendupatra Karmachari Sangha, Charmal raised the question of promotion of Munsis, Checkers and to the post of Circle Checkers respectively. The Orissa Kendupatra Karmachari Sangha, Charmal further demanded if the promotion will not be taken up before commencement of K. L. year 2005, then they will go on hunger strike and stop the purchase of Kendu leaf. Then the management assured them to fill up the vacancies of Checker and Circle Checker within a reasonable time. The Committee was formed with S.D.F.O. as Chairman. Range Officers and Head Checker as Members from Orissa Kendupatra Karmachari Sangha and Additional Range Officer of other K. L. Subdivision. The said Committee was headed by Chairman,. The applications were invited from the candidates for promotion. As per the amendment in Rule 13 of Orissa Kendu leaves Manual 1973, the Selected Committee decided to conduct written test and interview to be held on 19-4-2005. There was criteria such as written test (full marks 20), interview (full marks 10), Seniority (full marks 10), Qualification (full marks 10), Patda efficiency (full marks 10) for the crop year 2004 and C.C.R. (full marks 10). The Selection Committee issued notice to the applicants to appear for written test and interview to be held on 19-4-2005. The Committee including Chairman for Bahalpadar K. L. Range was constituted vide Management Division Office Order No. 143, dt. 11-4-2005. The second party workman and other applicants Checker have been attended the interview held on 19-4-2005. The interview system has been adopted in view of the responsibility of Circle Checker as per amendment Rule 13 Clauses I, XIV of

Orissa Kendu leave Manual, 1973. The management relied upon the work chart of the Selection Committee headed by the Chairman, Seniority list of the Checkers of Bahalpadar K.L. Range before Dt. 19-4-2005, Mark sheet of Checkers (Candidates) attended the interview duly signed by the Chairman and other members with the application form of second party Harekrushna Pradhan and application of selected Checkers for promotion to the rank of Circle Checker. Shri Umesh Prasad Danta and Shri Bhaktaram Sahu, Umesh Prasad Danta and Bhaktaram Sahu are not party to this case. The above members also active members of the Orissa Kendupatra Karmachari Sangha for Rairakhol K. L. Division.

6. Further it is alleged in the written statement that on merit two persons have been promoted to the post of Circle Checker. Umesh Prasad Danta is the senior member than the second party workman. Harekrushna Pradhan the second-party workman joined as Checker at Bahalpadar K. L. Range on Dt. 1-3-1987 whereas Umesh Prasad Danta joined in the said post on Dt. 15-3-1983. Promotee Bhaktaram Sahu though joined on Dt. 1-3-1989 but he has qualified in the interview on merit by passing other senior members namely Dasaratha Nanda (date of joining 1-4-1981), Artatrana Sahu (date of joining 1-3-1982) and Checker Dhaneswar Pradhan (date of joining 11-3-1973) and others. So the entire selection procedure for promotion conducted in a fair manner. The procedure for selection and interview was fair and proper. The allegation made by the second-party workman is false. Hence the first-party management prayed to dismiss the case with cost.

7. Rejoinder filed by the second-party workman. The written statement as laid by the first-party management is wholly misconceived and unfounded on fact and law otherwise bad and not tenable, seniority list prepared by the management is not according to rules. Voter list is not authentic which should not be taken to know the point of age. In the Voter list in the year 2009 of village Mendilpali, the age of the second-party shown as 54 years. The promotion has not taken basing on the procedure of the experience, efficiency and seniority. The second-party workman was not only a senior man but also efficiency. No such document has filed by the management to show that he (second-party) was less competent than others. So the selection to the post of Circle Checker is neither fair nor proper.

8. Additional rejoinder filed by the second-party workman stated as follows :—

The first-party management has emphasised on the age of the second-party workman at the time of taking the promotional matter to the post of Circle Checker-*cum*-Binding Moharir as substituted vide *Orissa Gazettee* part III No. 22/14-6-1991, Order No. 8949 K. L. (P-6/91-F & E., Dt. 7-5-1991) which is not permissible in law. Determination of age of employee is considered at the time of his first appointment but not at the time of promotion. The first-party management has not produced any document in support of their contention although he was working under the first-party management since 1981 as Munsif. The management cannot be permitted to change the date of birth unilaterally without giving any opportunity to the employee of being heard. The Hon'ble Supreme Court of India has given a decision in the Binapani Dei-v-State of Orissa 1967 SC 1269. As per the decision of the Hon'ble Supreme Court of India in the case 1977 SCR 1037, Seniority is the manifestation of official experience the process of metabolism of service over the years of Civil servant by the Administration. The Government of Orissa is in G.O. No. 6064, Dt. 7-2-1944 have accepted a principle of seniority, where there is no specific direction in the rules for recruitment issued for the respective service. They have adopted the wrong procedure for promotion. The certified copy of Voter list Sl. No. 503 (Ghara No. 25) Bhaga No. 17 of Birmaharajpur Constituency No. 114 for the year 2008 shows that the second party workman is aged about 53 years. Moreover the medical certificate shows that the workman is about 52 years old.

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

ISSUES

- (i) “Whether the action of the management of the Divisional Forest Officer (Kenduleaf), Rairakhol Division in denying promotion of Shri Harekrushna Pradhan, Checker to the post of Circle Checker w.e.f. 20-4-2005 is legal and/or justified ?
- (ii) If not what relief he is entitled to ?”

10. Both the parties filed their documents in support of their respective cases.

On behalf of the first-party management, one witness has been examined M.W. 1 Shri Bikramdev Pattanaik, Range Officer, Maniguda, Dist. Rayagada. In the year 2005 he was attached as Range Officer (K. L.) Rairakhol Range under D.F.O., Rairakhol Division.

On behalf of the workman, two witnesses have been examined, W.W. 1 Chhabila Tripathy, Vice President of Orissa Kendupatra Karmachari Sangha, W.W. 2 Harekrushna Pradhan the second party workman.

FINDINGS

11. *Issue No. i*—The establishment of Divisional Forest Office (Kendu leaf), Rairakhol Division, Rairakhol, Dist. Sambalpur (first party) is a establishment of Government of Orissa, Forest Department. The management is a wings of the State Government under the Ministry of Forest & Environment Department of State of Orissa. As alleged, the first party management is not policy making authority nor having power to frame laws. The office of the management consists of Forest Guard, Forester, Deputy Ranger, Range Officer, Assistant Conservator of Forest-*cum*-Subdivisional Forest Officer, Establishment Junior Clerks, Senior Clerks, Stenographer, Accountant, Head Clerk headed by Divisional Forest Officer are the Government servants and are under the direct control of the Government.

As per the case of the second-party workman, he was engaged by the first-party management as daily rated workman on monthly payment basis in the year 1972 and continuing at Bahalpadar K. L. Range. The second-party workman started his service at Bahalpadar K. L. Range with the designation of Munsif and due to his sincere service he was promoted as Checker by the first party in the year 1981. Admittedly the dispute raised between the second-party workman and the first party management for promotional matter. So the specific reference laid “whether the action of the management of the Divisional Forest Officer (K. L.), Rairakhol Division is denying promotion of Shri Harekrushna Pradhan, Checker to the post of Circle Checker with effect from 20-4-2005 is legal and/or justified”. In this regard the second party workman relied on some documents and adduced evidence which should be scrutinised in a careful manner. Ext. W-1 is the xerox copy of superannuation letter Dt. 2-3-2009. Ext. W-2 is the copy of letter No. 669, Dt. 31-3-2009. Ext. W-3 is the copy of letter No. 93, Dt. 18-3-2009. Ext. W-4 is the copy of Voter list for the year 2008. Ext. W-5 is the signature of the xerox copy of Voter list of Shri S. C. Dhal, Bahalpadar station in Ext. W-4, which has been filed with objection. Ext. W-6 is the copy of certificate. Ext. W-7 is the copy of Kendu leaf Manual. Ext. W-8 is the application of Shri Ranka Pradhan Dt. 12-5-2009.

Let us discuss regarding the evidence led by W.W. 1 and W.W. 2. As per the evidence of W. W. 1, the first-party management is entrusted with the work of producing, collecting and selling of Kendu leaf to the business houses with joint co-operation of the second party and the workers employed by it to satisfy the human wants. Further he stated that the second party was engaged by the first-party as daily rated workman as Munsif on monthly payment basis in the year 1981. In the

year 1982 he was promoted to the post of Checker and was working at Badamal Kendu leaf Range. He was transferred to Bahalpadar Range as Checker from the year 1987 and continued till Dt. 15-3-2009. On Dt. 16-3-2009 the second party has been illegally retrenched from the employment by the first party with the plea that he has exceeded the age of 60 years. The second party has worked as Checker under the first party for the period from 1982 to Dt. 15-3-2009. In this respect the second party workman stated that he was engaged by the first party management as daily rated worker as Munsif with effect from the year 1981 and promoted as Checker and continued to work as Checker at Badmal Range from the year 1982 till 1986. He was also transferred to Bahalpadar Range from the year 1987 and worked as Checker till Dt. 15-3-2009. Here the dispute raised in between the second party workman and the first party management regarding promotion of the second party workman as well as regarding the superannuation age of the workman. Admittedly Orissa Kendupatra Karmachari Sangha is a registered Union. It is the specific evidence of W.W. 1 that some seasonal staff of the management consist of the Orissa Kendupatra Karmachari Sangha up to the post of Head Checker. The second party claims that he was working as Checker and an active member of registered Trade Union, Orissa Kendupatra Karmachari Sangha. He was very sincere and efficient worker and was senior most Checker working under the Rairakhol Division. The first party without considering the seniority, experience of the second party selected and promoted Umesh Prasad Danta and Bhaktaram Sahu to the post of Circle Checker who are junior to the second party Harekrushna Pradhan. So the second party workman and W. W. 1 Vice-President of the said Union made objection and claimed that the first party is unjust and illegally in giving promotion to the above workers violating the labour laws. W. W. 1 categorically stated in his evidence that the workman is the senior most Checker in the Bahalpadar Range. The Union claimed before the Government for promotion and for other benefits of the seasonal staff like this workman basing on their service career. During the tenure of W. W. 1 the Government has not adopted such policy which was raised by the Orissa Kendupatra Kamachari Sangha. Admittedly there was discussion regarding promotional matter of the employees along with the other matters for the benefit of the employees. In this regard the second party workman stated in his evidence that as per practice followed by the first party management the post of Circle Checkers are filled up by way of promotion from among the Checkers on the basis of their seniority. He claims that he was senior most Checker working under the first party management. The first party management never prepared gradation list/seniority list of the Checkers. The second party workman has grievance on the first-party management who has given promotion to Umesh Prasad Danta and Bhaktaram Sahu illegally to the post of Circle Checker with effect from 20-4-2005 who are junior to the second-party in service under the management. The second-party workman admitted in his evidence that he was working as seasonal worker under the management for three months in the calendar year which started from 16/3 to 15/6 in each year. He has already received his daily rated wages monthly of Rs. 3,276 from the management including all the allowances. Here, two questions arise whether the second-party workman is entitled to get promotion from Checker to Circle Checker, (2) whether he has rightly terminated/superannuated from his employment at the age of 60 years. He filed the certified copy of Voter list Ext. W-4, Sl. No. 503 of Biramaharajpur Constituency No. 114 for the year 2008 which disclosed that his age is 53 years. He obtained one certificate from the Medical Officer, Biramaharajpur, Dist. Subarnpur in a slip of simple paper from which it is written that he is aged about 52 years in the year 2007. This, the medical certificate issued by the Doctor in the year 2007 discloses the age of the second-party is 52 years whereas the Voter list in the year 2008 discloses that the workman is aged about 53 years.

12. The second-party workman relied on the reported decisions of the Hon'ble Supreme Court Service Rulings Vol. 4, P. 424 "Date of birth of an employee can not be changed without inquiry principles of natural justice. Supreme Court Service Rulings Vol. 5, P. 275 "When conflict in records for date of birth, Medical Board to examine and determine date of birth. The workman also relied upon the decisions, 2000 Supreme Court Cases (L & S) P. 832 "Order retiring an employee on disputed date of birth without notice to him is illegal.

So far as the promotional matter is concerned the second party workman relied on the reported decisions Supreme Court Service Rulings Vol. 25. P. 401 (2) "Challenge to illegality in selection process. Notice to persons who are selected not in accordance with law and affected not required". Supreme Court Service Rulings Vol. 4 P. 34 "Promotion by seniority merit takes 2nd place and promotion by selection merit takes 1st place".

13. As per the case of the first party management the promotional matter of the alleged employees has taken in a legal manner with the knowledge of the Union. M. W. 1 was working as Range Officer, (K. L.) Rairakhol Range under Divisional Forest Officer, Rairakhol K. L. Division in the year 2005. He was the member to select seasonal staff for promotion in respect of Bahalpadar K. L. Range. M. W. 1 is acquainted with the selection procedure of seasonal staff for promotion in the said Selection Committee. The then Range Officer, K. L. Bahalpadar was the Convenor-cum-Member and S.D.F.O., Charmal K. L. Subdivision or the Chairman, M.W. 1 and Head Checker of Bahalpadar K. L. Range are the members of the said Selection Committee. Being the member M.W. 1 was present in the meeting held on 29-3-2005 in Division Office for promotion of seasonal staff. In the alleged meeting Shri Chhabila Tripathy, Vice-President, Orissa Kendupatra Karmachari Sangha (W.W. 1) demanded and gave emphasis on promotional matter of seasonal staff from Munsif to Checker, Checker to Circle Checker, Rangewise. He further placed their grievances before the said meeting that if promotion will not be taken before commencement of K. L. season they will go for hunger strike and will stop the purchase of Kenduleaf. Accordingly, the Divisional Forest Officer, Rairakhol K. L. Division formed a Committee and filled up the vacancies. Members present on behalf of the Orissa Kendupatra Karmachari Sangha co-operated the selection procedure adopted in the year 2003. It is crystal clear from the evidence of M. W. 1 that none of the members of the Orissa Kendupatra Karmachari Sangha opposed on the above procedure. However, as per minutes of discussion passed on Dt. 29-3-2005 the Chairman-cum-S.D.F.O., Charmal (K. L.) Subdivision of the Committee placed notice among the Checkers of Bahalpadar (K. L.) Range and invited application form for promotion from the interested Checkers by Dt. 19-4-2005 for the purpose of written test and viva voce scheduled to be held on Dt. 19-4-2005 at 10-00 A.M. in the Range office, Bahalpadar (K. L.) Range.

14. At the stage the documents relied on by the first party management should be scrutinised in a careful manner. Ext. M. 1 is the letter, Dt. 23-3-2005 by the Orissa Kendupatra Karmachari Sangha, Rairakhol Division. Ext. M-2 is the letter, Dt. 24-3-2005 issued by the D.F.O., Rairakhol, K. L. Division addressing to the Chhabila Tripathy, Vice-President, Orissa Kendupatra Karmachari Sangha, Charmal for co-ordination meeting. Ext. M-3 is the attendance register. Ext. M-4-3/3 is the signature of M.W. 1 in the attendance register. D.F.O., Shri M. M. Panigrahi convened the meeting on Dt. 29-3-2005 and the decision taken in the meeting was reduced to writing in the memorandum (i.e. Minutes of Discussion) which is marked as Ext. M-6. Ext. M-1 to Ext. M-3/2 are marked with objection from the side of the workman. As alleged the said minutes of discussion copy was issued to Shri Chhabila Kumar Tripathy, Vice-President, Orissa Kendupatra Karmachari Sangha, Charmal, Dist. Sambalpur. The copy of the said minutes of discussion were sent to all the Divisional Forest Officers, all Range Officers, Rairakhol K. L. Division for their information. As per the memorandum

of discussion on Dt. 29-3-2005 and the office Order No. 143, Dt. 11-4-2005, the Selection Committee constituted Rangewise for promotion of the seasonal staff in the existing vacancy during 2005 K. L. Operation. Ext. M-7 is the office Order No. 143, Dt. 11-4-2005. It is further alleged that the office order communicated to Subdivisional Forest Officer, to all the Range Officers and Head Checker on Dt. 11-4-2005. The Head Checker is the member of the Orissa Kendupatra Karmachari Sangha. Abhasha Chandra Samanta was the Chairman of the seasonal staff selection committee, S.D.F.O., Charmal K. L. Subdivision. He issued notice Ext. M-5 inviting applications from the workers/employees who wanted to appear in the written and *viva voce* test. Ext. M-5/1 is the signature of the workman Shri Harekrushna Pradhan. Ext. M-5/2 is the signature of the Chairman, Seasonal Staff Selection Committee-*cum*-Subdivisional Forest Officer, Charmal K. L. Subdivision. It is alleged from the evidence of M.W. 1 that the Chairman received ten applications from different Checkers for the same post. Being the member of Selection Committee M.W. 1 also verified all the applications which are marked as Ext. M-8 series including the application of the workman Shri Harekrushna Pradhan. The applicants namely Artatran Sahu, Dasaratha Nanda, Dillip Kumar Nanda, Umesh Prasad Danta, Bhaktaram Sahu have filed their applications alongwith their educational career certificate to prove their date of birth. Besides them other applicants have not filed any applications to prove their date of birth. As alleged from the case of the management in the year 2005, 11 (eleven) members of Checkers were engaged in Bahalpadar K. L. Range. Out of them Sankhananda Pradhan has not filed any application for promotion. However keeping in view all the minutes of memorandum, the seniority list was prepared on Dt. 19-4-2005 by D.F.O., K. L. Rairakhol Division. Ext. M-9 is the seniority list of the Checkers of Bahalpadar K. L. Range. Ext. M-9/1 is the signature of D.F.O., Rairakhol K. L. Division (Ext. M-9 to Ext. M-9/1 marked with objection). The S.D.F.O., Charmal set up the question papers for written test for the applicant. After written examination of the applicants M.W. 1 evaluated the answer papers of the applicants. Ext. M-10 series are the answer papers of the applicants including the answer paper of the second party workman. Each of the answer sheet contains the signature of the concerned applicant as well as the signature of M.W. 1. The S.D.F.O., Charmal has submitted the report of entire selection procedure alongwith the evaluation sheet to D.F.O., K. L. Division, Rairakhol. The evaluation sheet consists of the name of Checker, Written test, interview qualification, seniority, efficiency/padata, C.C.R. of the applicants and the same also contains the signature of the Chairman. M.W. 1 and the member of the Sangha, Head Checker Gopal Mishra as well as Member-*cum*-Range Officer of Bahalpadar K. L. Range Shri Dharanidhar Pradhan have given their signature on the alleged documents. Ext. M-11 series is the report. Ext. M-11/1 is the evaluation sheet. As per the instruction of the D.F.O. the notice regarding selected candidates was published and the same was fixed on the notice board of the Bahalpadar Range Office which disclosed the name of the selected Circle Checker and Checkers. M.W. 1, Gopal Mishra, Chairman and the member of the staff Selection Committee put their signatures on the said notice. Ext. M-12 is the notice. As per the evaluation sheet and the merit list. Umesh Prasad Danta and Bhakataram Sahu were promoted to Circle Checker from the post of Checker. Ext. M-13 is the engagement order No. 110, Dt. 22-5-2005 of Shri Umesh Prasad Danta. Ext. M-14 is the engagement order No. 111, Dt. 22-5-2005 in favour of Shri Bhakataram Sahu. The Assistant Conservator of Forest, K. L. Charmal/S.D.F.O. received this letter alongwith the copy of the representation of Orissa Kendupatra Karmachari Sangha, Charmal alleging illegal promotion to Umesh Prasad Danta as Circle Checker of Bahalpadar K. L. Range, Rairakhol K. L. Division from D. L. O., Subarnpur. Ext. M-15 is the letters sent by D.L.O., Subarnpur. Ext. M-17 is the points raised by the Union. Ext. M-17/1 is the views of the S.D.F.O. Ext. M-18 is the letter No. 2897, Dt. 8-9-2006. Ext. M-18/1 is the signature of D.F.O. Duryodhan Behera. The office of the D.F.O., Rairakhol Division has received the reference letter from Labour & Employment Department, Government of Orissa on Dt. 24-11-2007 which is marked as Ext. M-19. The D.F.O., K.L. Division,

Rairakhol in office letter No. 3347, Dt. 20-12-2008 requested the Sub-Collector, Biramaharajpur to supply the Voter list of 2006 which is marked as Ext. M-20. The Sub-Collector, Biramaharajpur sent the true copy of the Voter list for the year 2006 to D.F.O., Rairakhol K. L. Division. Ext. M-21 is the said Voter list filed with objection.

As alleged the second party workman Harekrushna Pradhan was Checker in the year 2008 and on every year he has filed an application for engagement. Ext. M-4 is the said application. Shri Trilochan Sahu, the Range Officer, Bahalpadar Range gave his endorsement and signature which is marked as Ext. M-4/2. The endorsement and signature of S.D.F.O., Charnal Subdivision which is marked Ext. M-4/3. As per the application Ext. M-4 the age of Harekrushna Pradhan is written as 61 years in English language. Ext. M-22 is the original voter list for Subarnapur district of village Laturpanka G. P. for the year 2007. Ext. M-22/1 is the relevant page which discloses that village Mendilipali situated within Laturpanka G. P. The house number of Shri Harekrushna Pradhan (the second party workman), S/o. Samaru Pradhan is 25 and his age appears in the voter list is 61 years vide Sl. No. 487.

15. The Government established the Kendu leaf Division throughout the State for production of Kenduleaves and handing over the same to Orissa Forest Development Corporation Limited for the purpose of marketing. Some seasonal staff were being utilised in the post of Chaparasi, Munsif, Checker, Circle Checker and Head Checker for production of Kenduleaves. Their terms of engagement are for short period in each year (engagement period is not equal for the above post). Some responsibilities are given to the seasonal staff for their seasonal period. From the evidence on record it is seen that as there is no specific terms and conditions of service of the seasonal staff, no promotion was taken up till 2002. So on the demands of the Orissa Kenupatra Karmachari Sangha the Selection procedure of the seasonal staff was taken up by the management in the year 2003 with the participation of the W.W. 1 and others. W.W. 2 the second-party workman has filed application Ext. M-4 and he admitted his signature. Ext. M-4/1 therein. Ext. M-4 discloses that his age is 61 years at the time of filing such application Ext. M-4. So, the second party workman has filed this application Ext. M-4 i.e. with his knowledge regarding the contents of such application. Moreover, he has not filed any documents towards his education although he has stated that he read up to Class-IV in village Chatasali. The second party workman has mentioned in the affidavit evidence that his age is 54 years. It is clear in Ext. W-6 that the age of the second party workman is 52 years. Ext. W-4 discloses his age is 53 years. The voter list of the year 2006 discloses the age of the second party is 61 years vide Ext. M-21. The evidence and documents adduced by the second party workman shown the different age of the second party workman. There is no consistent age in the above documents regarding the age of the second party workman. Besides that the second party workman relied on the documents i.e. the Doctors report which is marked as Ext. W-6 (in a plain paper) and it appears his age is 52 years. The said doctor has not been examined by the workman. So Ext. W-6 is not the relevant document as the concerned doctor who has issued the certificate Ext. W-6 is not examined in this case. Moreover, the second-party workman has not provided the exact date of his birth. So the age of the second-party workman proved by the management basing on the documents is correct. The evidence and documents filed by the management in this respect is acceptable as trustworthy. Moreover the second party workman has suppressed his photo identity card issued by Election Commissioner of India. His explanation to this effect that the identity card destroyed due to his house burn is not believable as he has not filed other documents towards house burn. Ext. M-8 series (application filed by the second party workman) application form filed by the workman without indicating any age proof. M.W. 1 was examined by the workman at length but there is no substantial point has been elicited from him.

The second party workman did not pass in the examination conducted by the management which is clear in Ext. M-11/1 i.e. mark sheet of the Checkers of promotion to Circle Checkers in Bahalpadar K. L. Range. Moreover the promotional matter was taken over by the management with the co-ordination of the members of Orissa Kendupatra Karmachari Sangha. The Head Checker of the concerned Range was member of a seasonal Staff Selection Committee. So it is clear from the evidence on record as well as the documents that the management has not conducted the examination in arbitrary manner. The management has relied upon the decision of the Hon'ble High Court of Orissa in 2010 CLT Vol. 110 P. 7 "Age of retirement of an employee is not a service condition". Both the learned counsels submitted in respect of the case of both parties in a vivid manner basing on their facts and circumstances. So in view of the above facts and circumstances the management has taken the views in a positive manner basing on the relevant documents regarding the age factor of the second party workman as well as promotional matter from Checker to Circle Checker. So the second party workman is not entitled to get any relief in this case. Hence, the issue No. i is answered.

16. *Issue No. ii*—In view of such above facts and circumstances the management has proved the case with its relevant documents regarding the age factor of the second party workman and the promotional matter from Checker to Circle Checker. So the second party workman is not entitled to get any relief in this case. Hence the following award.

AWARD

The reference is answered on contest but in the circumstances without any cost. The action of the management of the Divisional Forest Officer (Kenduleaf), Rairakhol Division in denying promotion of Shri Harekrushna Pradhan, Checker to the post of Circle Checker w.e.f. Dt. 20-4-2005 is legal and justified and the workman is not entitled to get any relief.

Dictated and corrected by me.

SAROJINI MAHAPATRA
26-8-2010
Presiding Officer
Labour Court, Sambalpur

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26-8-2010
Presiding Officer
Labour Court, Sambalpur

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