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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 2nd April 2011

No. 3487-li/1(B)-124/2005-LE.-In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 24th February 2011 in I. D. Case No. 23 of 2006 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s. Aerocom (P) Ltd., Satasankha, Dist. Puri and their Workman represented through the President/General Secretary, Aerocom (P) Ltd. Employees Union was referred to for adjudication is hereby published as in the Schedule below :

### SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 23 OF 2006

The 24th February 2011

Present :

Shri S. K. Dash,  
Presiding Officer, Labour Court,  
Bhubaneswar.

Between :

The Management of M/s. Aerocom (P) Ltd., . . . First-party-Management  
Satasankha, Dist. Puri.

And

Their Workman represented through the . . . Second-party-Workman  
President/General Secretary, Aerocom (P) Ltd.  
Employees Union.

Appearances :

Shri H. K. Panda, Manager . . . For the First-party-Management

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Shri B. P. Bahinipati . . . For the Second-party-Workman himself

## AWARD

The Government of Orissa in exercise of powers conferred by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act have referred the matter in dispute to this Court vide Order No. 1480–li/1 (B) 124/2005–LE., dated the 13th February 2006 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the action of the management of M/s. Aerocom (P) Ltd., Satasankha, Dist. Puri in terminating the service of Shri Laxmidhar Panda, S/o. Late Gopal Panda, At Nalihana, P.O. Saraswatipur, Via Pipili, Dist. Puri on the contention that Shri Panda reached superannuation on 20-2-2005 taking his date of birth as 20-2-1947 was legal and/or justified ? If not, to what relief is he entitled ?”

3. The case of the workman is brief is that basing on his application Dt. 11-2-1979 vide order, Dt. 14-2-1979 he was appointed as temporary workman to work under the management at the wage of Rs. 6 per day and he joined in the service on 15-2-1979. Thereafter, he was appointed as a permanent workman. Prior to his appointment in the management in the year 1979, he has also worked as Peon in Indian Latex Fibre Corporation, now renamed as Aerocom (P) Ltd. (present management) since 13-4-1967. During the service of the workman under the management, his date of birth was wrongly mentioned in the Adult Register violating the Service Rules and Standing Order. On 20-1-2005, the management had issued a notice to the workman indicating therein the age and date of superannuation resulting which the workman strongly protested on 27-1-2005. According to him, as per Nua Santha M.E. School Transfer Certificate, Dt. 23-4-1970, the date of birth of the workman is in the year 1952 but not in the year 1947 as per the Adult Register of the management. By the illegal action of the management regarding superannuation, the workman raised an industrial dispute before the labour authority and in the conciliation proceeding on joint verification, it was found that the date of birth of the workman is 20-2-1952 to which the management acknowledged and accepted to be correct by putting his signature. But thereafter during pendency of the conciliation proceeding, the management without resorting to provision under Section 33 of the Industrial Disputes Act illegally terminated the service of the workman and ultimately the conciliation failed. So the matter was informed to the Government and this reference has been received from the Government and this I.D. Case has been initiated wherein the workman has prayed for his reinstatement in service with full back wages.

4. The management appeared and filed written statement partly admitting and partly denying the plea of the workman. According to the management, the workman was appointed by the management as a temporary worker on 15-2-1979. At that time, the workman has no educational qualification for which he could not produce any document for furnishing his date of birth and other formalities for filling up of the Adult Register maintained by the management. As per his oral submission regarding his date of birth, the management has recorded the date of birth of the workman as 20-2-1947. On attaining the age of 58, years the workman was issued with an office order, Dt. 20-1-2005 wherein the management has intimated his retirement on superannuation as per the Provisions of Company's Standing Order. The workman has served under the management for about 26 years but during his tenure of employment, the workman has never challenged his date of birth as 20-2-1947 recorded in the Adult Register which is neither a classified nor secrete document and had access to all the workers including the workman. According to the settled principle of law, a person cannot be allowed to challenge regarding his date of birth at fag end of his carrier. So in this background, the management has prayed for answering the reference in negative.

5. In view of the above pleadings of the parties, the following issues are settled :–

#### ISSUES

- (i) “Whether the action of the management of M/s. Aerocom (P) Ltd., Satasankha, Dist. Puri in terminating the service of Shri Laxmidhar Panda, S/o. Late Gopal Panda, At Nalihana, P.O. Saraswatipur, Via Pipili, Dist. Puri on the contention that Shri Panda reached superannuation on 20-2-2005 taking his date of birth as 20-2-1947 was legal and/or justified ?
- (ii) If not, to what relief is he entitled ?”

6. In order to substantiate his plea, the workman has examined to witnesses altogether including himself. Out of the witnesses examined W.W. 1 is the workman himself and W.W. 2 is his co-worker. The workman has also proved the documents marked as Exts. 1 to 10. Similarly, the management has examined his Manager as M.W. 1 and proved the document marked as Ext. A.

#### FINDINGS

7. *Issue No. (i) and (ii)*–Both the issues are taken up together for discussion for convenience.

According to the admitted fact of both the parties, the workman joined in the management on 15-2-1979 as a temporary worker and subsequently his service was regularised. It has been argued on behalf of the workman that without considering his correct date of birth, the management issued a notice to the workman for his retirement on superannuation and accordingly, the management terminated his service on 20-2-2005 by way of superannuation on attaining the age of 58 years as per his service record and such superannuation is a premature one. In the Adult Register of the management, the date of birth of the workman has been mentioned as 20-2-1947 though his actual date of birth is 29-7-1952. The xerox copy of the Adult Register has been marked as Ext. A. Perused the same. On the other hand, it has been argued on behalf of the management that at the time of joining of the workman, he has no educational qualifications for which he could not produce any document for furnishing his date of birth and other formalities for filling up of the Adult Register maintained by the management. As per his oral submission in regards to his date of birth, the management has recorded the date of birth of the workman as 20-2-1947. So the management had never made anything out of its own accord and contrary to law. On attaining the age of 58 years, the workman was issued with an office Order, dt. 20-1-2005 wherein the management has intimated his retirement on 20-2-2005 on attaining the age of superannuation as per the provisions of the Company’s Standing Order. The workman has never submitted any document in support of his age before receiving the letter, dt. 20-2-2005. During the tenure of his employment, the workman has never challenged his date of birth as 20-2-1947 as recorded in the Adult Register which is neither a classified nor secret document and had access to all concern including the workman. Further, it is argued that at the fag end of his service career giving the new date of birth is neither acceptable nor believable. Perused the documents marked as exhibits on behalf of the workman. Ext. 1 is the xerox copy of transfer certificate wherein the date of birth of the workman has been mentioned as 29-7-1952. But while deposing in the Court, the workman has stated his date of birth is 29-8-1952 and in the claim statement it has been mentioned to be 20-2-1952. So basing on the contrary evidence of the workman, the management has argued that the School Leaving Certificate marked as Ext. 1 is a forged one and not genuine and it does not bear any issue number and the original of Ext. 1 has not been produced. But nowhere the management has prayed to the Court to direct the workman to produce the original of Ext. 1. According to the settled principle of law, documentary evidence is to be given more importance than oral evidence. Though in the oral

evidence, the workman has been stated as 29-8-1952 but Ext. 1 discloses to be 29-7-1952. But the Adult Register Ext. A discloses to be 20-2-1947. Before coming to the correct date of birth, let us go through the relevant provision of the Certified Standing Order regarding age proof of the workman Ext. 3 is the xerox copy of the Certified Standing Order. Sl. No. 18 of Ext. 3 reads as follows :

“Record of Age (a) A workman who is unable to produce satisfactory documentary evidence in support of his age shall state his age and make a written declaration that the age as stated by him is correct. In case of doubt, such workman shall be sent to C.D.M.O. and A.D.M.O., Puri for examination and the opinion of the C.D.M.O. and A.D.M.O., Puri as regards to the workman’s age shall be binding on the workman. However, giving false declaration or producing false or forged certificate regarding one’s age shall make him liable to forfeit his job.”

According to the management, the workman was failed to produce any document in support of his age and as per his oral submission, the date of birth was recorded as 20-2-1947. But according to the Certified Standing Order when the workman was unable to produce satisfactory documentary evidence in support of his age, he should state his age and should make a written declaration in this regard. But in this case, no written declaration has been obtained from the workman by the management regarding his age proof. The workman was also never sent to the C.D.M.O. and A.D.M.O., Puri for examination and opinion regarding the age of the workman. So entry of the date of birth in the Adult Register by the management in respect of the workman has no base and is a clear violation of the Certified Standing Order. The workman relies upon the Ext. 1 regarding his age to be 29-7-1952. It has been argued by the management that if such document Ext. 1 was with the workman earlier, why he has not produced the same before the management to know his correct date of birth though the Ext. 1 was issued on 23-4-1970. In such certificate, Ext. 1 the educational qualification of the workman has been mentioned as Class VI. It has been argued by the management that such document is not a conclusive proof in support of the age of the workman and in the fag end of his service career, the workman cannot claim regarding change of his date of birth. In support of his argument, the management has relied upon the authority reported in AIR 2001 Supreme Court 72. In such authority it has been held that entries made in the certificates issued by the School authorities and employer is a question of fact and question depends on evidence either oral or documentary. However, the facts and circumstances of that case is not similar to the present case in hand. In the instant case, the entry of the date of birth of the workman in Ext. A is contrary to the provision made in the Certified Standing Order. The management has no explanation regarding non-obtaining of any written declaration from the workman about his date of birth and regarding non-sending the workman to C.D.M.O. and A.D.M.O., Puri for his medical examination in support of his age proof. On the contrary, the workman has relied upon Ext. 1 which is a School Leaving Certificate which has a more presumptive value comparison to Ext. A. So now on careful consideration of all the materials available in the case record, I came to the finding that the date of birth of the workman as mentioned in Ext. 1 as 29-7-1952 is presumed to be correct in comparison to Ext. A where the date of birth of the workman has been mentioned as 20-2-1947. So the action of the management in terminating the service of the workman on the contention that the workman reached superannuation on 20-2-2005 taking his date of birth as 20-2-1947 is neither legal nor justified.

8. Regarding reinstatement and back wages, the workman has already completed 58 years of age at present. So the question of reinstatement in the service does not arise. According to the settled principle of law full back wages would not be granted automatically only because it would be

lawful to do so. For the said purpose, several factors are required to be taken into consideration. Admittedly, the workman has not worked under the management after his termination from service. Further, according to the settled principle of law as reported in 2004 (Supp.) O.L.R. 694. When the workman had not worked for the management during the period in question and he had not proved by cogent evidence that he was not gainfully employed elsewhere, payment of back wages is not justified. However, on careful consideration of all the materials available in the case record I am of the opinion that instead of granting back wages a lump sum amount of Rs. 55,000 to the workman by the management will meet the ends of justice in this case.

9. Hence Ordered :

That the action of the management of M/s. Aerocom (P) Ltd., Satasankh, Dist. Puri in terminating the service of Shri Laxmidhar Panda, S/o Late Gopal Panda, At Nalihana, P.O. Saraswatipur, Via Pipili, Dist. Puri on the contention that Shri Panda reached superannuation on 20-2-2005 taking his date of birth as 20-2-1947 was illegal and unjustified. The workman is entitled to get a lump sum amount of Rs. 55,000 (Rupees fifty-five thousand) only in lieu of back wages. The management is directed to implement this Award within a period of one month from the date of its publication in the Official Gazette failing which the amount shall carry interest at the rate of 9% (Nine per cent) per annum till its realisation.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. DASH  
24-2-2011  
Presiding Officer  
Labour Court  
Bhubaneswar.

S. K.. DASH  
24-2-2011  
Presiding Officer  
Labour Court  
Bhubaneswar.

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