

The Odisha Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 1896 CUTTACK, TUESDAY, OCTOBER 1, 2013/ASWINA 9, 1935

LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 17th September 2013

No. 11384—I.D.-53/2010-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 16th August 2013 in Industrial Dispute Case No. 09 of 2009 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the management of Odisha Power Transmission Corporation Ltd., Civil Works Division, Cuttack and their workman Shri Narendra Chandra Bariki @ Narendra Kumar Pattanaik @ Narendra Bariki was referred to for adjudication is hereby published as in the Schedule below :—

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 09 OF 2009

The 16th August 2013

Present :

Shri P. K. Ray, o.s.j.s. (Sr. Branch),
Presiding Officer,
Industrial Tribunal, Bhubaneswar.

Between :

The Management of .. First Party—Management
Odisha Power Transmission Corporation Ltd.,
Civil Works Division, Cuttack.

And

Their Workman .. Second Party—Workman
Shri Narendra Chandra Bariki @
Narendra Kumar Pattnaik @
Narendra Bariki, S/o Alekha Bariki,
Vill Khurtang, P.O. Nrutang
Via Kuanpal, P.S. Mahanga, Dist. Cuttack.

Appearances :

For the First Party—Management	..	Shri Banoj Kumar Patnaik, Advocate
For the Second Party—Workman	..	Shri Sushant Kumar Dash, Advocate

AWARD

This case has been instituted u/s 10(1) (d) of the Industrial Disputes Act, 1947 (for short, the Act) on a reference made by the Labour & ESI Department of the Government of Odisha u/s 12 (5) of the Act vide its letter No. 3840—ID-53/2010-LE., dated the 12th May 2010 with the following Schedule :—

“Whether the action of the management of M/s. Odisha Power Transmission Corporation Ltd., Bhubaneswar in terminating the employment of Shri Narendra Chandra Bariki @ Narendra Kumar Pattnaik @ Narendra Bariki with effect from the 31st September 2007 in the guise of retirement on attaining the age of superannuation is legal and/or justified ? If not, what relief the workman is entitled to ?”

2. The claim of the second party workman is that initially he joined as a Watchman in the erstwhile Odisha State Electricity Board on the 4th January 2007, then he became a Helper and finally worked as a Peon under the Subdivisional Officer, Odisha Power Transmission Corporation, Badambadi, Cuttack till termination of his service with effect from the 30th September 2007 on the pretext of retirement on superannuation. It is stated that the date of birth of the second party workman is 12th September 1953 which is also evident from the Transfer Certificate issued by the Headmaster, Nrutang M.E. School on the 25th September 1967. On the 21st January 2001 when copy of the Service Book was supplied to him for the first time the date of birth of the workman has been changed from the 12th September 1947 to the 12th September 1953. On being asked to produce his original certificate vide Memo, No. 1365, dated the 17th November 1995 he could not produce the same which was stolen including some ornaments. On the query made by the first party management the concerned Clerk Shri Gagan Behari Mohanty admitted to have made such correction to rectify the mistake committed by him by recording a wrong date of birth earlier but the first party management was not satisfied with the said report and entrusted the Chief Security and Chief Vigilance Officer to cause an enquiry into the so-called suspected correction in the date of birth of the workman who after enquiry have come to the conclusion that the date of birth recorded earlier was a correct one and the subsequent correction is an interpolation with *mala fide* intention to help the workman. Basing on the said enquiry report the workman was asked to retire on superannuation taking into consideration “12-09-1947” as his date birth. Being aggrieved by such action the second party workman approached the Hon’ble High Court in W.P. (C) No. 4819 of 2002 which was disposed of on the 22nd August 2007 with a direction to approach the appropriate forum. As per the said direction the second party workman applied before the District Labour Officer, Cuttack who after having failed in conciliation submitted a report to the State Government who ultimately referred the matter to this Tribunal for adjudication.

3. The first party management in its written statement admitting the appointment of the workman as a Watchman in the erstwhile Odisha State Electricity Board on the 4th January 1972 has stated that subsequently he was brought to the regular establishment as a Helper and then as a Peon. It is stated that as per the documents disclosed by the workman his date of birth was recorded as the 12th September 1947 in his Service Book along with other entries. The workman on being aware of

the entries put his signature in the Service Book. As per the said entry the workman was to retire on superannuation on the 30th September 2007. But during verification of the Service Book it was found that the date of birth recorded in the Service Book has been tampered with and on enquiry it was found that one Shri Gagan Behari Mohanty, Head Clerk has changed the date of birth tampering the entry in the Service Book of the Workman for which he was departmentally prosecuted and penalized. In course of enquiry on such tampering the second party workman submitted a xerox copy of his Transfer Certificate of Nrutang M.E. School in support of his age. When the said xerox copy was forwarded to the Headmaster of the concerned School he returned the same expressing his inability to say about its genuineness due to non-availability of records for the said period. Besides there are some other discrepancies which speak against the credibility of the certificate which the workman produced subsequently. Hence, the claim of the workman that his date of birth is the 12th September 1953 instead of the 12th September 1947 is not correct and he has got no case.

4. On the aforesaid premises, the issues framed in this proceeding are as under :

ISSUES

- (i) Whether the reference is maintainable inasmuch as the date of birth of the second party is in dispute.
- (ii) Whether the action of the management of M/s. Odisha Power Transmission Corporation Ltd., Bhubaneswar in terminating the employment of Shri Narendra Chandra Bariki @ Narendra Kumar Pattnaik @ Narendra Bariki with effect from the 31st September 2007 in the guise of retirement on attaining the age of superannuation in legal and/or justified ?
- (iii) If not, what relief the workman is entitled to ?
- (iv) Whether the date of birth of the second party is the 12th September 1953 or the 12th September 1947 ?

5. In support of their respective case while the second party workman examined himself and produced documents marked Exts. 1 to 7, on behalf of the first party management besides examination of two witnesses the documents filed have been marked as Exts. A, B, C, D, E, F, G, H, J, K & L.

FINDINGS

6. *Issue Nos. (ii), (iii) and (iv)*—The fact remains that the workman who was serving under the Odisha State Electricity Board with effect from the 4th January 1972 was given retirement on superannuation taking into his date of birth as the 12th September 1947 which had been entered in his Service Book earlier. The case of the second party workman is that the said date of birth, i.e., the 12th September 1947 is a mistake and after it has come to his knowledge he brought it to the notice of the Authority and accordingly basing on the records produced by him his date of birth was corrected as the 12th September 1953. Though initially during the enquiry relating to such interpolation it was found that the document basing on which the Service Book of the workman opened was missing from the office and the second party workman when asked to produce the same initially took the plea of theft of the said document, later on produced one document with the date of birth as the 12th September 1953 with other inconsistency relating to his residence. When the xerox copy of the Service Book filed by the management marked as Ext. J reveals that the second party

workman is a resident of village Nrutang, Thana Mahanga, Dist. Cuttack but the xerox copy of the Transfer Certificate, Ext. 6 produced by the second party workman reflects his village as Khurtang. Obviously the Service Book of the workman was initially opened basing upon the documents produced by the second party workman in support of his date of birth and residence. Leaving apart the controversy of the date of birth, it is found that the residence recorded in the Service Book is different than that of Ext. 6 produced by the workman subsequently. This goes to show that the document in support of his date of birth and residence produced earlier at the time of entry into the service is different than that of Ext. 6. The aforesaid factor is sufficient enough to come to a conclusion that the document, Ext. 6 produced by the second party workman is not the one basing on which he entered into the service. Besides the document Ext. 6 also disqualify him to enter into the service with the age stipulation prescribed for the same. Therefore, the subsequent document produced by the second party workman in support of his age is a fabrication with an intention to gain some years of service. Further, the document Ext. 6 reveals his date of entry into the said School in the year 1965 which is obviously in Class III but the evidence does not disclose his earlier School where he read Class I & II wherefrom the date of birth of the workman could also have been ascertained.

In the aforesaid background, the interpolation on the date of birth of the second party workman is found to be a manipulation and consequently he is not entitled to any relief in the present proceeding.

The issues are answered accordingly.

ISSUE No. 1

7. The first party management challenges the maintainability of the case. This is a dispute relating to service of the second party workman. There is no dispute that the first party is an 'industry' and the dispute in question is an 'industrial dispute'. Therefore, the averment of the first party management that the case is not maintainable is not tenable.

8. In the result, the reference is answered in the following manner :

The action of the management, in the circumstances narrated above, cannot be said to be termination of employment of the second party workman. Rather it is found that the second party workman has been retired from service on attaining the age of superannuation. Hence, he is not entitled to any relief in the present proceeding.

Dictated and corrected by me.

P. K. RAY
16-8-2013
Presiding Officer
Industrial Tribunal, Bhubaneswar

P. K. RAY
16-8-2013
Presiding Officer
Industrial Tribunal, Bhubaneswar

By order of the Governor
J. DALANAYAK
Under-Secretary to Government