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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 15th April 2013

No. 3669—li-1(S)-14/2000 (Pt.)-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 14th November 2012 in I. D. Case No. 24 of 2000 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of Steel Authority of India Ltd., Rourkela Steel Plant, Rourkela and their Workman Shri R. C. Parida 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. 24 OF 2000

Dated the 14th November 2012

Present :

Shri Srikanta Mishra, LL.M.,
Presiding Officer, Labour Court,
Sambalpur.

Between :

The Management of SAIL,
represented by the General Manager (P &A),
Steel Authority of India Limited,
Rourkela Steel Plant, Rourkela.

.. First Party—Management

And

Their Workman,
Shri R. C. Parida,
represented through the
Deputy General Secretary,
Rourkela Mazdoor Sabha,
Bisra Road, Rourkela.

.. Second Party—Workman

Appearances :

Shri L. K. Nayak, Manager (Law)	.. For the First Party—Management
Shri R. N. Acharya, Advocate	.. For the Second Party—Workman

AWARD

This award arises out of a reference under Section 10 (1)(c) of the I. D. Act, made by the Government of Odisha, Labour & Employment Department vide their Notification No. 5605—li-1(S)-14/2000 (Pt.)-LE, dated the 24th April 2000 for adjudication. The schedule of reference is as follows :—

“Whether the action of the management of SAIL, Rourkela Steel Plant, Rourkela in deciding the date of birth of Shri R.C. Parida, Pl. No. 31196 as 31-12-1937 in stead of 3-9-1945 and superannuating him from service with effect from the 7th March 1998 is legal and/or justified ? If not, to what relief Shri Parida is entitled ?”

2. The case of the second party workman as per his statement of claims that he was a permanent workman under the first party and posted in its Fertiliser Plant having been appointed on 3-12-1962 in the regular cadre in the post of Helper. He claims his date of birth to have been accepted as 3-9-1945. While continuing in service, one Shri A. R. Rama Narayan, Senior Manager (Personnel) Fertiliser Plant, issued a show cause notice to him on 6-3-1997 stating therein that he filled up a descriptive roll on 3-12-1962 stating his qualification as Class-VI and date of birth was mentioned as 1937 and basing on erroneous recording of the date of birth, he is continuing in employment although he had to superannuate on 31-12-1995 as per the rules of the Company. The second party submitted his reply on 20-3-1997. Then one Saroj Mahapatra, Senior Manager (Personnel) vide his letter, dated the 3rd December 1997 directed the second party to appear before him to participate in an enquiry through personal hearing. The second party appeared before the concerned officer along with his co-worker and also produced documents in support of his case. The enquiry proceeding was closed on 21-2-1998. On 7-3-1998, Shri R.P. Sahu, Deputy Manger (Personnel) Fertiliser Plant communicated to him that on the basis of the service record and enquiry report his date of birth has been established as 31-12-1997 and that he would have been superannuated from service with effect from the 31st December 1995. The said officer further mentioned in his letter that since the second party had already attained the age of 58 years, he stood released from service immediately. On the said date, the second party was released from service. The second party on 9-3-1998 made representation to the Managing Director against the finding of the Enquiry Committee and his superannuation. On 4-5-1998, a letter was served on the second party under the signature of Shri R. P. Sahu that his representation was duly examined and his request can not be acceded to. According to the second party, the finding of the Enquiry Committee was illegal and erroneous and he was prematurely superannuated on 7-3-1998 without any basis which amounts to adoption of unfair labour practice with such averments, the workman prays to declare his date of birth as 3-9-1945 and direct the first party to reinstate him with all service benefits.

3. The first party management filed written statement challenging the legality of the reference. According to the first party, the reference to a question of determination of date of birth which is an incident of civil right and therefore this Court can not adjudicate the matter. The first party has specifically narrated in the written statement that the second party while joining as Helper on 3-12-1962 submitted a descriptive roll duly filled in by him declaring therein his date of birth to be

1937 and his educational qualification as Class VI. Basing on the particulars furnished on the descriptive roll, his service book was prepared incorporating the particulars supplied in the descriptive roll and the second party signed on the first page of the service book finding particulars to be correct. In the year 1997, it was noticed that some corrections have been made in the first page of service book of the second party but there was no disclosure as to who made the correction and on what basis and under which authority, the corrections were made. The second party ought to have been superannuated on 31-12-1995 as per the particulars furnished in the descriptive roll and as such his continuance in the employment was felt illegal. A show cause notice was given to the second party on 6-3-1997 calling upon him as to why he should not be superannuated with immediate effect. The second party submitted his explanation asserting his date of birth to be 3-9-1945 and that the same has been recorded in different documents of the management. The management decided to go for a personal hearing to afford opportunity to the second party to explain the circumstances. One S. K. Mahapatra, Senior Manager (Personnel Steel) conducted enquiry and submitted his findings holding that the date of birth of second party should be reckoned as 31-12-1937. The management after perusing the proceeding of the personal hearing concurred with the findings of the Enquiry Officer and superannuated the second party with effect from the 7th March 1998 as per the provisions of the standing order applicable to him. According to the first party, the second party can not claim any service benefit on the strength of erroneous and unauthorised correction in his service book regarding his educational qualification and date of birth. The first party disputes the claim of the second party that his date of birth was accepted to be 3-9-1945. The first party asserts that the personal hearing was conducted fairly and properly and there was no violation of the principles of natural justice. The second party participated in the hearing along with his co-worker and no prejudice was caused to him during the enquiry. The first party has specifically submitted that had the date of birth of the second party been accepted on 3-9-1945 then he would not have got employment as he was below 18 years of age at the time of joining his service, i.e. on 3-12-1962. With such averments, the first party management submits to pass a No Dispute Award in this case.

4. The second party after receipt of the copy of the written statement filed a rejoinder wherein he has mentioned that the first party was well aware about the change of date of birth in his service book, his date of birth was recorded as 3-9-1945 on all relevant documents of the first party. His service book was verified regularly but till 1997, no dispute was raised by the first party regarding the correction. He claims that in the seniority list, medical treatment book, list of allotment of quarters, EDP statement etc. prepared by the HRD Section of the first party indicate his date of birth and superannuation as 3-9-1945 and therefore the same should not have been challenged in the year 1997. According to the second party, relevant documents relied upon by him during the enquiry were not called for and the decision of the Committee to reckon his date of birth as 31-12-1937 is not based on any material on record. The second party contend that the first party is disputing its own records to cover up the wrong action taken by them and wants to mislead the Court by placing wrong facts. According to him there was no prescribed age to enter into the service as the Rourkela Steel Plant is a factory and under Factories Act Persons at the age of 16 or 17 had been taken into regular employment. He appends a list of 10 persons who joined in the service in the Rourkela Steel Plant below the age of 18 years.

5. After contested hearing, this Court vide Award, Dt. 23-6-2003 answered the reference in favour of the first party holding that the action of the management in deciding the date of birth of the second party as 31-12-1937 and his superannuations with effect from the 7th March 1998 was

legal and justified. The second party was held not entitled to any relief. The second party filed a writ petition before the Hon'ble High Court of Orissa vide Writ Petition (Civil) No. 11268/2003 and the Hon'ble Court vide Order No. 17, Dt. 5-11-2008 disposed of the petition, setting aside the award and remitted back the matter to this Court for fresh consideration. The Hon'ble Court specifically directed "it is open for the parties to adduce further evidence in support of their case and also pray for medical examination of the workman by the appropriate medical board for determination of his age, which shall be considered by the Labour Court in its proper prospective and in accordance with law." It reveals from the order sheets that the management preferred an appeal against the aforesaid order of the Hon'ble High Court vide Writ Appeal No. 233/2008 which was dismissed vide Order No. 6, Dt. 23-8-2010 of the Hon'ble High Court.

6. On the aforesaid pleadings of the parties, the following issues have been settled for adjudication :—

ISSUES

- (i) "Whether the action of the management of SAIL, Rourkela Steel Plant, Rourkela in deciding the date of birth of Shri R. C. Parida, Pl. No. 31196 as 31-12-1937 instead of 3-9-1945 and superannuating him from service with effect from the 7th March 1998 is legal and/or justified ?
- (ii) To what relief, Shri Parida is entitled ?"

7. The workman (second party) examined himself as W.W. 1 and one retired Head Master of Sidhashram High School as W.W. 2. After the case record was remitted back, the workman further examined himself. On the contrary, the management (first party) examined his Senior Manager (Personnel) as M.W. 1. After remittance of the cases record, it examined one Deputy Manager incharge personnel works as M.W. 2. The workman relied upon several documents which were marked Ext. 1 to Ext. 25. The management also relied upon documents which were marked Ext. A to Ext. N.

FINDINGS

8. *Issue No. (i)*—There is no dispute that the second party is a workman and that he was appointed as Helper under the then Hindustan Steel Limited, Rourkela now known as Rourkela Steel Plant which is an industry within the definition of Industrial Dispute Act. As per the evidence of the second party and as admitted by the first party, the date of appointment of the second party is 3-12-1962. It is the claim of the workman that his date of birth is 3-9-1945 but the management prematurely superannuated him wrongly calculating his date of birth as 31-12-1937. The workman relies upon a xerox copy of transfer certificate, said to have been issued by the Head Master, Sidhashram High School, Amathpur, Cuttack (Ext. 7), a xerox copy of certificate issued by the Head Master, Sidhashrama High School (Marked Ext. 11), his service book (marked Ext. J), Medical treatment book issued by General Administrator, SAIL, Rourkela Steel Plant. Rourkela (Marked Ext. 15) and some other documents. The management on the contrary relies upon the original descriptive roll filled in by the workman at the time of his initial employment (Marked Ext. A) and the original appointment offer (Marked Ext. L). On perusal of Original Service Book of the workman prepared by the first party (Ext. J), I find in the first page vide Column No. 2, the qualification of the workman was earlier mentioned as "read up to Class VI" but the same was subsequently corrected

in a different ink as “read up to Class IV”. As per Column No. 5, his date of birth is mentioned as “November 1937”. The said entry was subsequently corrected as “ 3-9-1945”. The management seriously disputes the authenticity of the corrections in the service book whereas it is the contention of the workman that the service book was all along in the custody of the management and he had no access to the same. His representative advocate submitted that the corrected entry in the service book of the workman are binding upon the first party and therefore, he should have ordinarily retired on 30-9-2003 but the management has wrongfully terminated him from service on 31-12-1995. It reveals from the record that on 6-3-1997, the senior Manager (Personnel) of the Rourkela Fertiliser Plant issued a show cause notice (copy of which is marked as Ext. 1) to the workman Shri Parida directing him to show cause as to why he shall not be superannuated with immediate effect on the basis of his date of birth initially recorded as 1937 as per his own declaration ignoring the erroneous date of birth subsequently entered in the service book. Pursuant to the said notice, the workman submitted a reply (copy of which is marked as Ext. 2) on Dt. 20-3-1997. In the said reply, the workman intimated the Senior Manager that the service book is under custody of personnel department and he has no access to go through the same. He further intimated that his date of birth is 3-9-1945 which has been accepted by the management long back basing on a genuine document. His said date of birth has been recorded in all relevant records of the management such as seniority list, medical treatment book, seniority list for allotment of quarters, EDP statement prepared by the HRD Section, Establishment schedule maintained by the Personnel Department etc. and therefore, he should be superannuated from service on 30-9-2003 on reaching of age of 58 years. The workman further intimated that he should be allowed to verify the service book and descriptive roll to give his comments on the same. After receipt of the reply, the Senior Manager (PL) Steel vide his letter, Dt. 3-12-1997 (copy of which is marked as Ext. 3) advised the workman to appear before him on 11-12-1997 which all documents/evidence in his possession in support of his claim and he was also allowed to avail the assistance of a co-worker of his choice. The workman was further intimated that he shall be shown the documents relating to his date of birth in possession of the management and allowed to inspect the same during his personal hearing. It is further revealed from the record that a proceeding of an enquiry through personal hearing of the workman was conducted by the management on 19-2-1998 (copy of the proceedings of enquiry was marked Ext. 4). The Officer who conducted the personal hearing recorded his findings and conclusion. A copy of the said finding and conclusion has been marked as Ext. E. On a close scrutiny of the Ext. E, I find the management relied upon 3 documents, i.e. the descriptive roll of the workman Shri Parida (Ext. A), Joining report submitted by him (Ext. C) and the Original Service Book (Ext. J). The workman Shri Parida relied upon 7 documents, i.e. Personal Policy Circular No. 603, Dt. 31-12-1990 regarding change of date of birth (Ext. 5) issued by the SAIL, Rourkela Steel Plant, Rourkela, the Circular, Dt. 26-8-1968 in the matter of date of birth of employees (Ext. 6), one transfer certificate No. 55, Dt. 7-7-1961 issued by the Headmaster, Sidheshram High School, Anathapur, Cuttack (Ext. 7), a copy of seniority list of the Production Department, Fertiliser Plant (Ext. 8). Medical treatment book issued on 9-8-1997 (Ext. 15), an application of the workman for inclusion of his name in the seniority list for allotment of quarters (Ext. 10), one letter, Dt. 20-12-1997 issued by Sidheshram High School countersigned by the Account Officer, office of the Inspector of Schools (Ext. 11). During personal hearing, the concerned Officer also recorded the statement of Shri Parida (workman). On scrutiny of the materials placed by the Enquiry Officer on 3-3-1998 concluded as follows :—

“..... I, find that the date of birth of Shri Parida, PI. No. 31196, Senior Operative, Fertiliser Plant, Rourkela Steel Plant should be reckoned as 31-12-1937 for the purpose of

determination of his service record on the basis of his declaration in his descriptive roll at the time of his joining service in the Company i.e. 3-12-1962, as he has availed all the benefit of joining service in the Company on the basis of the said declaration." On the basis of the findings, Dt. 3-3-1998 on the personal hearing the management vide their letter, Dt. 7-3-1998 (a copy of which is marked as Ext. 12) communicated to the workman that on the basis of the records and enquiry report his date of birth has been established as 31-12-1937 and he should have been superannuated from his service with effect from the 31st December 1995. Since he had already attained the age of superannuation i.e. 58 years he shall stand released from the service of the Company with immediate effect. The workman thereafter, on 9-3-1998 preferred an appeal before the Managing Director, SAIL, Rourkela Steel Plant, Rourkela, praying to recall him to service and allowed to continue in his service till 31-9-2003 basing upon his actual date of birth, (Dt. 3-9-1945). The workman was intimated by the SAIL, Rourkeala Fertiliser Plant by letter, Dt. 4-5-1998 that his representation, Dt. 9-3-1998 after due examination could not be acceded to. A copy of the said letter has been marked as Ext. 17."

9. The core question under the present reference is to determine whether the decision of the Management of SAIL, Rourkela Steel Plant, Rourkela in deciding the date of birth of the workman Shri Parida as 31-12-1937 is legal and if the actual date of birth of the workman is 3-9-1945 as claimed by him. The question as to the actual date of superannuation of the workman, we follow from the findings on his date of birth. The workman has clearly admitted during the course of his cross-examination that at the time of joining the job he submitted descriptive roll in prescribed *pro forma* of the Rourkela Steel Plant disclosing the detailed particulars including his educational qualification and date of birth. The original descriptive roll was shown to him and marked as Ext. A. He admitted to have put signature thereon which was marked as Ext. A/1. In Ext. A as against the column date of birth there is an entry "1937 (NV)". As against the column regarding details of educational qualification the entry is "read up to Class VI". The Ext. A was prepared on 3-12-1962 i.e. the date when the workman joined in the service under the management. On the same day the workman has also filed a joining report. The original joining report has been marked as Ext. C. The signatures of the workman appearing on Ext. A and Ext. C are identical. The workman used to sign in English and therefore it is reasonably presumed that he must have been aware about the contents of the Ext. A regarding description of his year of birth and educational qualification. Though he faced an enquiry and personal hearing in the matter of his date of birth before the Enquiry Officer appointed by the management, he did not disclose anything in the statement of claim filed on 20-6-2000 as to under what circumstances his year of birth was mentioned as 1937 and his qualification was mentioned as Class VI in the descriptive roll. In his rejoinder filed on 14-2-2001, also he has not described any circumstance under which his year of birth and qualification was not correctly mentioned in the descriptive roll. For the first time while leading additional evidence by way of affidavit on 18-9-2011 he disclosed that his elder brother Govinda Prasad Parida wrongly mentioned his date of birth in the descriptive roll in Columns (3) and (5) which is purely non-application of mind. He further mentioned in the affidavit that his said brother was required to be examined to know the real fact. He however, has not examined his brother to substantiate such evidence. The workman has given different reply on this point during cross-examination. He stated that he can not say the recitals mentioned in the descriptive roll. He does not remember as to who has filled in the

Form vide Ext. A. He has specifically stated “ it is not a fact that my elder brother Govinda Prasad Parida has filled in the descriptive roll”. Therefore the workman disowns his own statement in the affidavit that his brother filled up the descriptive roll form. When the workman takes different stand at different stage of proceeding his evidence loses confidence. In view of the prevaricating statement of the workman regarding the author of the contents of the descriptive roll, I am constrained to hold that he was well aware of all the contents of Ext. A, more particularly regarding his year of birth i.e. 1937 and his educational qualification i.e. Class VI. It is true that the particular date of birth of the workman was not noted in the descriptive roll and as against the said column there is an entry 1937 (NV) but such entry indicate that while accepting the descriptive roll no document relating to the date of birth of the workman was verified. But that does not mean that the person who prepared the descriptive roll filled in the form arbitrarily. Even if it is believed for a moment that the workman Shri Parida did not himself filled up the entries in Ext. A then also it can not be reasonably expected that the person who filled up the form mentioned the year of birth and qualification of the workman without collecting information from him. In the case of *Union of India Vrs. C. Ramaswami* (Civil Appeal No. 12087 of 1996, decided on 9-4-1997) the Hon’ble Apex Court found an employee while filing application form for the purpose of taking competitive examination mentioned his date of birth which was incorporated in the descriptive roll kept in the service record duly signed by the employee. When the employee subsequently wanted correction of his date of birth in the Service Book, his authorities denied to correct the entry. While the matter came before the Hon’ble Apex Court it was observed” once having secured entry into service, possibly in preference to other candidates, then the principles of estoppel applies and relief of change of date of birth can be legitimately denied (Paragraphs 22 and 26 of the Judgment). In the present case, the descriptive roll was the first document prepared on the date the workman entered into service and therefore the entries therein are very much relevant. The workman being conversant with English language and having put his signature in English Script, he is estopped to challenge the correctness of the entries in Ext. A.

10. It is the claim of the workman that his actual date of birth is 3-9-1945. The management contended that the workman was offered appointment being sponsored by the employment exchange and if his date of birth was accepted as 3-9-1945 then his name could not have been sponsored by the concerned Employment Officer. The management has proved the original appointment offer, Dt. 5-11-1962/7-11-1962 in respect of the workman which was marked as Ext. E. As per this document the workman was assigned Regn. No. 2764/62 from the office of the Employment Officer. During cross-examination vide Paragraph 26 the workman has admitted that he was selected for the job after his name was sponsored by the Employment Exchange, Rourkela. He further admitted that he had registered his name in the said employment exchange. It is well known that a person below the age of 18 years can not be registered for employment in an Employment Exchange. The management during course of evidence has proved one letter, Dt. 8-11-2022 sent by the District Employment Officer, Rourkela to the Chief Law Officer, Rourkela which was marked Ext. F. This document reveals that on a query regarding the particulars of date of birth of Shri R. C. Parida (workman) bearing Regn. No. 2764/62, the District Employment Officer informed that since the matter is 30 years old the connecting documents are not readily available and the information regarding date of birth and educational qualification of Shri Parida could not be supplied. However, it was further informed that the employment exchange never sponsored the name of candidates those are below 18 years of age for appointment against any vacancies as the minimum age for

Government service is 18 years. The workman was well aware about the fact that his name was sponsored for appointment in the Rourkela Steel Plant by the Employment Exchange, Rourkela and therefore while registering his name in the employment exchange in the year 1962, he must have disclosed to have attained at least the age of 18 years. On a bare calculation of 18 years of age preceding to his date of joining in the Rourkela Steel Plant, i.e. 3-12-1962 it can be said that his date of birth was sometime prior to 3-12-1944. Therefore, his claim that he was born on Dt.3-9-1945 is proved to be a false statement. At a very belated stage that is while filing additional evidence by way of affidavit the workman took a stand that he was 17 years 3 months old at the time of joining in the service and according to him, the Rourkela Steel Plant was coming under the definition of factory and as per the provisions of Factories Act, the service age is not less than 16 years. Such hypothetical calculation as against the positive evidence adduced by the management cannot be considered as a basis to accept the claim of the workman.

11. Admittedly in the Service Book Ext. J the date of birth of the workman was initially entered as November 1937. The same has been subsequently struck down and another date, i.e. 3-9-1945 has been incorporated. There is also correction in the entries regarding qualification in the Service Book. The qualification appears to have been originally written as "read up to Class VI". Subsequently the expression "read up to has been struck down and below the entry Class VI there is another entry" read up to Class IX. It is clear to the bare eye that the person who struck down the entries in the Service Book relating to the qualification of the workman made entries in black ink and put a signature against the said entry. But the correction in date of birth was made by using blue ink though the initial of the maker is in black ink. While making corrections in the first page of the Service Book of the workman the maker has put a date "5/8" without noting the year. He has not entered anything showing the basis of making the correction. There does not appear to have been any office order for correcting the Service Book which is a vital document for the employer and employee. The learned advocate appearing for the workman submitted that the signature/initial appearing against the corrected entries reasonable to that of the Assistant Personnel Officer who was the Head of Office under which the workman was employed and since the Service Book was all along in custody of the employer the corrections should be deemed to be authorised. He further submitted that the workman could not have any access to the Service Book and therefore, the corrections in the Service Book regarding date of birth of the workman should be believed as genuine. On the contrary it is the submission of the representative of the management that the signature/initial as against the corrected entries are not genuine and the same has been manipulated by someway or other. On a close scrutiny of the evidence on record I find the workman deposed in his additional evidence that while continuing in the post of Helper, a circular, Dt. 26-8-1968 was circulated by the Steel Plant Authority to all the departments with direction to submit documents in support of the date of birth of all temporary or casual employees for preparation of Service Book and regularisation of their services. According to the said instruction, he submitted his School Leaving Certificate of Sidheshram High School before his Department Authority for opening of Service Book and regularisation of his service. Therefore, he want to say that in the year 1968 for the first time he submitted his School Leaving Certificate Ext. 7 and on that basis there was correction to his date of birth in the Service Book. During cross-examination also he voluntarily asserted that in the year 1968 he produced Ext. 7 before the management. The workman also relies upon a copy of the concerned circular, Dt. 26-8-1968 marked Ext. 6. As per the said circular in case of the

employees who are not matriculate, the documents like certificate from educational institution where he might have studied, Birth Certificate from Gram Panchayat/Police Station/Hospital/Municipality/ Corporation/N.A.C./Baptist Certificate from Church could be considered as evidence for determination of age. It was further specified that in case no such document was available an affidavit accompanied by a Medical Officer of the Company should be accepted as proof of age. In the present case, the workman claims that pursuant to such notification he furnished the School Transfer Certificate marked Ext. 7 and accordingly his date of birth was incorporated in the Service Book. According to the workman, the person who opens his Service Book has put initial as against corrected date of birth and therefore the correction is genuine. I have carefully perused the entry in the Service Book of the workman which was marked as Ext. J. As per the evidence of the management witness No. 1 elicited from his cross-examination, one M.N. Rao who was the Assistant Personnel Officer of the Hindustan Steel Limited, Fertiliser Plant has signed in the Column (9) of the first page of the Service Book meant for signature of Head of Office. The initial (short signature) of Shri M. N. Rao appears to have been there in several places under Column (14) of the Service Book. The management witness has further deposed during cross-examination that he is acquainted with the signature of M. N. Rao and that his signature is there in the Service Book till the year 1966. While perusing other entries in the Service Book I also find that the signature of the aforesaid person is available as against the entries that were made till 24-6-1966. From 6-8-1966 onwards some other person has verified the Service Book and put signature in Column (14). Therefore, it is crystal clear that since 6-8-1966 Shri M. N. Rao was no more Assistant Personnel Officer and Head of Office of the Department in which the workman was rendering service. From the said date he was not the custodian of the Service Book and the Service Book could not have been produced before him for correction in the year 1968 as claimed by the workman. The management disputes the signature of the Assistant Personnel Officer appearing against the corrected entries in the Service Book. No step was taken by the workman to examine the said person. However even if it is believed that Shri M. N. Rao made correction to the entries and put his signatures, then such correction by him is proved to be unauthorised particularly because he was no more the Head of Office where the workman was working by the date of correction. Besides there is no mention as to on the basis of which document, the correction was made.

12. The workman relies upon several documents, most of which were issued by the Rourkela Steel Plant authorities. All those documents were based upon the unauthorised correction in the date of birth and qualification of the workman and therefore there is no necessity to scrutinise those documents in details. It is submitted by the learned advocate appearing for the workman that the elder brother of the second party namely Govinda Prasad Parida born on 10-5-1937 was released from service as Senior Operative of the Coal Chemicals Department, Rourkela Steel Plant, Rourkela with effect from the 31st May 1995 consequent upon his attaining the age of superannuation, i.e. 58 years on 10-5-1995, and therefore, the present workman could not have been born on 31-12-1937. He relies upon the Office Order No. 379, Dt. 10-4-1995 in respect of Shri G. P. Parida which has been marked as Ext. 24. As per this document G. P. Parida attained 58 years on 10-5-1995 and therefore his date of birth may be 10-5-1937. The second party claims that he is 8 years younger to Shri G. P. Parida. But he has not adduced any independent evidence in support of such fact. For no reason he failed to examine his own brother G. P. Parida to substantiate his claim that he is 8 years younger to him. Besides, there is no independent evidence that the actual date of birth of

Shri G. P. Parida is 10-5-1937 as calculated on the basis of Ext. 24. The workman further relies upon one L. I. C. acceptance letter-*cum*-first premium receipt in which his date of birth is entered as 3-9-1945. The said document has been marked as Ext. 25 with objection from the side of the management. Since this document was prepared on the basis of information supplied by the Policy Holder and there was no verification of age by the L.I.C. authorities, the same cannot have any binding effect upon the management nor this document can be accepted as a good piece of evidence for determination of the age of the workman.

13. When it is proved that initial disclosure of the workman regarding his year of birth is 1937 and he was sponsored by the Employment Exchange for appointment in the Rourkela Steel Plant, the burden heavily lies upon him to establish the fact that his actual date of birth is 3-9-1945 by adducing convincing evidence. The workman mostly relies upon a transfer certificate said to have been issued in his favour on 7-1-1961. The said document is a xerox copy marked Ext. 7. He also relies upon one xerox copy of certificate of date of birth issued in his favour on 20-12-1997 which was marked as Ext. 11. The original of these two documents have not been furnished by the workman during the hearing of this case. The workman has not given any explanation regarding the whereabouts of the original documents. It is faintly submitted by the learned advocate appearing for the workman that the documents were produced before the management which were not returned to him. The workman himself has not deposed about such fact and therefore I am not inclined to accept such submission of the learned advocate. In such circumstances the oral evidence of the workman needs careful scrutiny. During the course of evidence the workman deposed that from Class I to VII he was reading in Gopabandhu Bidyapitha, Barakpur in Calcutta and after obtaining S.L.C. from that School he got admitted in Sidhashram High School in the year 1958. He further deposed that he read Class VIII and Class IX in the said School in the year 1958 and 1959. He claims to have obtained the School Transfer Certificate on 7-7-1961 i.e. before joining the service. He further specified that he was last reading in Sidhashram High School, Anathapur of Jajpur District. A xerox copy of the transfer certificate marked Ext. 7 reveals that the workman was admitted in the Sidhashrama High School at Anathpur in the district of Cuttack on 16-7-1958. He left the School on 27-11-1959 for the purpose of service. In this document his date of birth is recorded to be 3-9-1945 as recorded in the admission register. When the workman disputes the descriptive roll wherein he described his year of birth as 1937 and he relies upon the transfer certificate it was incumbent upon him to prove the concerned admission register on the basis of which the transfer certificate was issued. Since the original transfer certificate is not produced, the counterfoil of the said document could be produced from the concerned School. It is submitted by the learned advocate representing the workman that the School where the workman was reading was completely damaged in the Super cyclone and the concerned register is not available. In this context he relies the evidence of W.W. 2, a retired Headmaster of Sidhashrama High School, Anathpur. This witness deposed that he was the Headmaster of the said School from 1-7-1968 to 31-8-1999. He deposed that in the Super cyclone of the October 29, 1999, the School has been fully damaged and the same has been notified by the Government of Odisha. He filed a xerox copy of Government Notification No. 12041, Dt. 27-4-2000 which was marked as Ext. 22. The notification is annexed with a list of High Schools with note regarding the status. As per Column No. 54 of the list Sidhashram High School at Anathpur was found to have been fully damaged and required reconstruction. The W.W. No. 2 has further deposed in course of evidence that he cannot produce admission register

in the Court as it has been damaged in the Super cyclone. This witness admitted that he retired from service on 31-8-1999 and therefore, he was not the Head Master of the School by the time of Super cyclone that occurred on October 29, 1999. He has no personal knowledge about the damage of the registers of the School. During cross-examination he deposed that he ascertained from the than Headmaster that all the records of the School were damaged in the Super cyclone. He further admitted that the Ext. 22 does not reveal that the records of the School were damaged. The workman took no pain in examining the Headmaster or any custodian of the records of the Sidhashram High School to prove the fact that actually records and registers of the School were damaged and not available for verification. The W.W. 2 during course of evidence deposed that on 20-12-1997 he issued a certificate of date of birth in favour of the workman. A xerox copy of the said document has been marked as Ext. 11. In this document, the W.W. 2 certified that the workman Shri Rama Chandra Parida was a *bona fide* student of Sidhashram High School and as recorded in the admission register, his date of birth is 3-9-1945. The document appears to have been issued on 20-12-1997. The document appears to have been countersigned by the Accounts Officer of the office of the Inspector of Schools, Jajpur Circle. The workman was called upon to show cause by the management vide their letter, Dt. 6-3-1997 marked Ext. 1 and the workman submitted his show cause on 20-3-1997. In the show cause he did not state about his recording of date of birth in the School admission register nor he indicated that the transfer certificate showing his date of birth as 3-9-1945 was issued in his favour. It is only during the course of personal hearing the workman disclosed that in the transfer certificate and School admission register his date of birth is shown to be 3-9-1945. The notice for personal hearing was issued to the workman by the management vide their letter, Dt. 3-12-1997 vide Ext. 3. Therefore, the workman procured the certificate of birth (Ext. 11) much after the management disputed the corrections regarding the date of birth of the workman in the Service Book. A certificate regarding date of birth issued on the application of a person is not required to be counter signed by any official of the Inspector of Schools but in the present case it appears that the workman to strengthen his stand has managed to procure the signature of one Accounts Officer in the certificate marked Ext. 11. There is no direct evidence that the School Admission register and other records of Sidhashram High School are no more available due to damage of the School in the Super cyclone, 1999. Even if it is believed that the admission register of Sidhashram High School has been destroyed, the workman could have called for the admission register of Gopabandhu Bidyapitha where he studied from Class I to Class VII. He has admitted in Paragraph-29 of the deposition that after obtaining S.L.C. from Gopabandhu Bidyapitha he got admitted in the Sidhashram School. He further admitted that he cannot produce any document relating to his study in Gopabandhu Bidyapitha. It is true that the dispute regarding his date of birth arose in the year 1997 and he need not produce any document regarding his study but there was no difficulty for him to examine any teacher or staff of Gopabandhu Bidyapitha where he read for 5 years and obtained School Leaving Certificate. The workman has not filed any document such a Voter list or Photo Identity Card issued by the Election Commission prior to 1997 to establish the fact that his year of birth was later than 1937 which is recorded in the descriptive roll and Service Book. He has not examined any of his relatives to prove his approximate age and year of birth. Since the basis of the entry in Ext. 7 and Ext. 11 i.e. School Admission Register is not produced and the same is not available according to the evidence of the workman, he was obliged to produce more authenticate evidence for determination of his age. The workman relied upon medical treatment book marked Ext. 15 which was issued on 9-8-1997, i.e. after the show cause notice was issued to him.

14. On careful perusal of the materials available on record and the discussion made above, I am constrained to hold that the xerox copies of the documents marked Exts. 7 and 11 cannot be regarded as conclusive evidence to determine the date of birth of the workman Shri Parida. The workman's original descriptive roll marked Ext. A and the initial entry in the Service Book marked Ext. J whereon he signed, coupled with the fact that he was appointed on sponsorship of the employment exchange where he was registered in the 1962 after attaining the age of 18 years. I am inclined to believe that his actual year of birth is 1937 and not 1945 as claimed by him. On perusal of the proceeding of the personal hearing I find the workman actively participated in the personal hearing and after careful consideration of the materials placed before the Enquiry Officer, he arrived at a right conclusion that the actual year of birth of the workman is 1937. Since no particular date of birth was mentioned in the descriptive roll and the Service Book at the time of their preparation, the management took a reasonable view in reckoning the date of birth of the workman as 31-12-1937. In such view of the matter the workman should have been superannuated on 31-12-1995. Admittedly, the management superannuated the workman from service with effect from the 7th March 1998 after issuing due show cause notice, giving adequate opportunity to him to prove his case and after completing all required stages of enquiry on his personal hearing. In such circumstances the action of the management of SAIL, Rourkela Steel Plant, Rourkel in deciding the date of birth of Shri R. C. Parida (workman) as 31-12-1937 and superannuating him with effect from the 7th March 1998 is in my considered opinion legal and justified.

Issue No. (i) is accordingly answered in the affirmative.

15. *Issue No. (ii)*—In view of my finding that the workman took birth in the year 1937 and that he should have been superannuated with effect from the 31st December 1995 (though he was actually superannuated on 7-3-1998, he is not entitled to reinstatement in the service. His all retirement benefits should be calculated with effect from the 7th March 1998. During course of argument it is submitted on behalf of the workman that the management issued notice asking him to refund some amount on the basis of the fact that he was allowed to continue in service, for a long period after their calculated date of superannuation. He contends that no claim of refund can be made from an employee who rendered service for longer period than the age of superannuation. The learned advocate relies upon a decision of the Hon'ble Apex Court reported in (2009) 1 SCC (L & S) 589 (*State of Bihar Vrs. Pandey Jagdishwar Prasad*). In this decision the Hon'ble Supreme Court observed "even if by mistake, higher pay scale was given to the employee without there being misrepresentation or fraud, no recovery can be effected from the retiral dues in the monetary benefit available to the employee. It was unfair to make recovery of the salary at a later stage because the respondent might have expected that the second date of birth shown in the Service Book was accepted by the authorities and for that reason he was allowed to continue in service and paid salary. However, respondent's retirement benefits may be worked out with reference to his correct retirement date, i.e. 28-2-2002". In the present case, therefore, the retirement benefits of the workman Shri Parida should be worked out with reference to his date of retirement, i.e. 31-12-1995 but he cannot be asked to refund the excess payment of salary, if any, for the extended period of his service for the period from 1-1-1996 to 7-3-1998. The issue is accordingly answered. Hence the following award.

AWARD

The reference is answered on contest but without any cost. The action of the management of SAIL, Rourkela Steel Plant, Rourkela in deciding the date of birth of Shri R. C. Parida, PI. No. 31196 as 31-12-1937 instead of 3-9-1945 and superannuating him from service with effect from the 7th March 1998 is legal and justified. The workman Shri Parida is entitled to all retiral benefits taking his date of superannuation as 31-12-1995. However, the management is not entitled to recover any excess payment made to the workman for the period from 1-1-1996 to 7-3-1998, i.e. his date of actual retirement.

Dictated and corrected by me.

SRIKANTA MISHRA
14-11-2012
Presiding Officer
Labour Court
Sambalpur

SRIKANTA MISHRA
14-11-2012
Presiding Officer
Labour Court
Sambalpur

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