

The Odisha Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 276 CUTTACK, MONDAY, FEBRUARY 10, 2014 / MAGHA 21, 1935

LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 28th January 2014

No. 669—IR-(ID)-9/2013-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 31st December 2013 in I. D. Case No. 31 of 2013 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of M/s TRL Krosaki Refractories Ltd., Belpahar, Dist. Jharsuguda and its workman Shri Haribola Dash, Master Technician 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. 31 OF 2013

Dated the 31st December 2013

Present :

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

Between :

The Management of
M/s TRL Krosaki Refractories Ltd.,
Belpahar, Dist. Jharsuguda.

.. First Party—Management

And

Their workman
Shri Haribola Dash, Master Technician,
Basic Department, At Bagainala,
P.O. Dalgaon, P.S. Kumbharbandh,
Dist. Jharsuguda (Odisha).

.. Second Party—Workman

Appearances :

Shri Sibaram Sahoo, .. For the First Party—Management
Auth. Representative.

Self .. For the Second Party—Workman

AWARD

This award arises out of a reference made by the Government of Odisha, Labour & E.S.I. Department under the 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, 1947 (14 of 1947) (for short the “Act”) vide order under Memo. No. 4447 (4), dated the 7th May 2013. The dispute involved under the schedule of reference is as follows :—

“Whether the termination of services of Shri Haribola Dash, workman by way of retirement with effect from the 1st August 2012 by the management of M/s TRL Krosaki Refractories Limited, Belpahar, Dist. Jharsuguda is legal and/or justified ?
If not, what relief the workman is entitled to ?”

2. The case of the second party workman in brief is that he joined under the first party management on 6-7-1978 and was retired with effect from the 1st August 2012. It is the specific case of the workman that his date of birth is 7-2-1954 which is reflected in his School Leaving Certificate. He claims that he would have retired on 28-2-2014 but the management prematurely retired him from service at the age of 58 years 5 months 24 days. In his statement of claim, the workman has stated that the management by a letter No.HRM/P/489, Dt. 17-2-2012 informed him that his retirement will take effect from the 1st August 2012 and his last working day will be 31st July 2012. He submitted a reply to the letter by his application, Dt. 25-2-2012 intimating his date of birth as 7-2-1954 and his date of retirement as 28-2-2014 but the same was not considered by the first party. The workman has further narrated that after termination of his service, a service certificate was issued to him on 6-8-2012 in which his date of birth is noted as 7-2-1954. The workman alleges that he has been victimised by the pressure of rival leadership of the Worker’s Union. He raised an industrial dispute on 1-9-2012 claiming reinstatement with back wages from 1-8-2012 and then approached the Hon’ble High Court of Orissa in W.P. (C) No. 20901/2012 and the Hon’ble Court vide Order, Dt. 12-11-2012 issued direction to the Conciliation Officer-*cum*-Assistant Labour Commissioner, Sambalpur to take up the matter and conclude the same within 3 months. the conciliation proceeding failed and the said Officer submitted failure report under Section 12 (4) of the I.D. Act, 1947. The workman again moved the Hon’ble Court against the delay in the reference and the Hon’ble Court passed order for issuance of notice. In the meantime, the reference order was passed. According to the workman, the action of the first party in terminating his service is arbitrary, illegal and unjustified and he deserves reinstatement in service with full back wages with effect from the 1st August 2012.

3. The management submitted written statement in which they narrated that the second party was appointed as unskilled labourer on temporary basis vide Order No. PW/1984, Dt. 6-7-1978. At that time, he did not produce any proof regarding his date of birth and a medical report was obtained from the Company Doctor. In the said report, his age was mentioned to be 26 years as on 3-7-1978. Accordingly, his date of birth was recorded as 3-7-1952 and he was allowed to continue in service till the year 2012. During this period, he was promoted to the Grade of Master Technician. Before his superannuation date, i.e., 31-7-2012 the management issued a letter on 17-2-2012 intimating about his date of retirement on completion of around 34 years of service in order to facilitate smooth clearance of his dues. It is the further case of the management that the second party in the Declaration Nomination form of Provident Fund mentioned his date of birth as 3-7-1952 which was countersigned by the Manager, Personnel of the first party on 30-11-1988. He continued with the said date of birth and after superannuation applied for monthly pension under the Employees Pension Scheme 1955 on 24-7-2012, mentioning his date of birth as 3-7-1952. The management has further mentioned in the written statement that the Company was originally named as Belpahar Refractories Limited which was subsequently changed to TATA Refractories Limited. An Identity-*cum*-Punching Card was issued by the Company to the workman in which his date of birth was mentioned as 3-7-1952 which he used daily on all working days but never approached the first party to change the date of birth. The name of the Company was again changed to TRL Krosaki Refractories Limited (present name) and a fresh identity card was issued to the workman in which his date of birth was mentioned as 3-7-1952 which was used by him without any approach for correction. It is the case of the management that it acted as per the records as to date of birth of the workman and therefore the termination of his service on superannuation was legal and justified. It is also the case of the management that the workman has received full and final disbursement of all his claims including retirement gift and therefore, he is not entitled to any reinstatement or back wages.

4. This workman submitted a rejoinder wherein he stated that at the time of joining in service his age was 24 years and he submitted a School Leaving Certificate wherein his date of birth was recorded as 7-2-1954. In his letter, Dt. 17-2-2012 he explained everything regarding his date of birth but he was terminated from service without any hearing. He has further narrated that his EPF paper prepared for pension are in dispute and P.F. dues are not paid to him due to discrepancy of his date of birth as provided by the first party. It is his further stand that his signature has been taken by the first party on several papers just as formality without informing him the contents. He claims that he has never admitted his date of birth to be 3-7-1952 and the first party has never asked any clarification from him. As regards the payment received, the workman states that the same do not mean acceptance of superannuation and all the receipts are under protest. The workman in his rejoinder prayed for early adjudication of the case as his actual date of retirement is 28-2-2014.

5. On the basis of the pleadings of the parties, the following issues are settled.

ISSUES

- (i) "Whether the termination of services of Shri Haribola Dash, workman by way of retirement with effect from the 1st August 2012 by the management of M/s TRL Krosaki Refractories Limited, Belpahar, Dist. Jharsuguda is legal and/or justified ?
- (ii) If not, what relief the workman is entitled to ?"

6. The workman examined himself and two other retired workman of the first party. He also proved several documents which are marked as Ext. 1 to Ext. 18. The first party management on the contrary, examined its General Manager (HRM & Adm.) and Manager (HRM) as witnesses. The documents proved on behalf of management were marked as Ext. A to Ext. AA/1.

FINDINGS

7. *Issue No. (i)*—Their is no dispute on the fact that the second party was employed as unskilled labourer under the first party with effect from 6-7-1978. He was promoted to the grade of Master Technician and was retired from service on 31-7-2012. According to the first party, the second party was terminated from service on completion of 60 years of age taking into consideration, his date of birth as 3-7-1952 as entered in his service records whereas it is the case of the workman that his date of birth is 7-2-1954 and therefore, he was illegally terminated from service at prematuers stage. It is admitted by both parties that prior to retirement the first party issued letter No. 489, Dt. 17-2-2012 to the second party intimating that he is due to retire on 31-7-2012 (a copy of the said notice has been marked as Ext. 5) and in response to the said notice, the second party made a representation, Dt. 25-2-2012 (copy of the said letter has been marked as Ext. 6) without objection from the side of the management. In his representation, the workman intimated that in all his documents such as Driving Licence and School record, his date of birth is noted as 7-2-1954 and therefore his retirement date should be 28-2-2014. As per the Ext. 6, the workman annexed xerox copy of his Driving Licence and Transfer Certificate in support of his real date of birth. He also expected some mistakes in the records maintained by the management. During course of his evidence, the second party proved the copy of a Transfer Certificate issued by the Headmaster, Dalagaon M.E. School on Dt. 25-7-1978 and the said documents has been marked as Ext. 3. In Ext. 3 it is clearly mentioned that the date of birth of the second party is 7-2-1954. This document is not alleged to be a forged one by the management. The genuineness of issuance of the Transfer Certificate is not at all challenged by the management. The Ext. 3 reveals that the second party was reading in Class VII when he left the School on 9-8-1967. It appears that soon after getting appointment under the first party in the year 1978, he obtained the Transfer Certificate from the School in which he was reading. Since the Transfer Certificate (also usually known as School Leaving Certificate is not challenged by the management, I am inclined to hold that the Ext. 3 is a

good piece of evidence in favour of the workman to determine his date of birth. The woman relies upon the Identity Card No. 1314 issued on 1-11-1981 by the management of Belpahar Refractories Limited (Original name and style of the management company) which has been marked as Ext. 2. In this document the date of birth of the second party has been mentioned as 7-2-1954 and his date of appointment as 6-7-1978. The Identity Card was issued before any dispute arose between the parties. The Ext. 2 being issued by the management itself, it can safely be said that the entry therein regarding the date of birth of the workman is admitted by the then management of the first party. The management mostly relies upon the service roll of the workman which is maintained by the Company. The Ext. A is a copy of the service record of the second party. In this document, the name and address of the workman has been mentioned and his qualification has been noted as literate and Class VI passed. As against Column date of birth there are two entries which are scored through. One entry is dated the 3rd July 1952 and the other entry is Dt. 7-2-1954. It reveals from Ext. A that one official of the HRM Department of the Management Company scored both the entries and he himself made another entry, i.e., 3-7-1952 as the date of birth of the workman. The management witness No. 2 who is working as Manager, HRM of the first party deposed in Court that he made correction of date of birth in the service record of the second party about 10 years back on the basis of medical certificate prepared during the first employment of the second party. He has clearly admitted that neither on the date of correction nor subsequent to the said date, the fact of correction was informed to the workman. He admitted that the second party was not called upon or asked to remain present or to have his say in the matter of correction. Therefore, the correction of date of birth in the service record of the workman was made long after his appointment and the said fact was not intimated to him in any manner. It is the specific case of the workman that he produced his school leaving certificate before the management on which basis his date of birth was entered in the service records. The identity card vide Ext. 2 issued in the year 1981 is consistent with the Transfer Certificate marked Ext. 3. It is therefore, clear that the date of birth of the workman was entered as 7-2-1954 on the basis of the Transfer Certificate submitted by the workman.

8. The second party further relies upon a copy of Driving Licence issued by the OMV Department, Sambalpur in his favour which has been marked as Ext. 4. In this document, his date of birth is noted as 7-2-1954. The Driving Licence was issued in his favour on 11-10-1999. This document also supports the claim of the second party particularly when the document is not challenged by the first party. After retirement of the second party, the first party issued a service certificate in his favour on 6-8-2012, a copy of the said document has been marked as Ext. 7. In this document the date of birth of the second party has been noted as 7-2-1954, if at all, the service record of the second party was corrected by the M.W. 1 about 10 years back, then the service certificate would not have mentioned his date of birth as 7-2-1954. Therefore, it clearly reveals that the M.W. 2 at the instance of the first party made correction in the service record of the second party behind the back of the second party. The oral and documentary evidence relied upon by the

second party more specifically the Transfer Certificate (Ext. 3), Service Certificate (Ext. 7), entry in the service record (Ext. A) and Identity Card prepared by the management (Ext. 2) establish the fact that the actual date of birth of the second party is Dt. 7-2-1954.

9. The first party terminated the services of the second party taking the date of birth of the second party as 3-7-1952. In this regard, they mostly relies upon a medical report prepared by a Doctor on 3-7-1978 for employment of the second party. The original medical report has been filed and marked as Ext. B. In this document, the Medical Examiner has not noted the date of birth of the second party may be due to the fact that no document regarding date of birth was produced by the second party. The Company's standing order has been marked Ext. AA. The specific entry vide Section 7 (b) marked Ext. AA/1 states "as per the Company's standing order (Marked Ext. AA) if a workman does not produce any documentary proof such as birth certificate, school leaving certificate or insurance policy, his age will be assessed by the Medical Officer of the Company and the same will be recorded". As per Section 7 (c), the age of workman as recorded with the Company at the time of his employment shall not thereafter be questioned by the workman. It is submitted on behalf of the management that in the Ext. B, the Medical Examiner recorded the age of the second party as 26 years as on 3-7-1978 and on that basis his date of birth was calculated as 3-7-1952. On a close scrutiny of Ext. B, I find there is some correction regarding the age of the second party. It is clear that the Doctor who examined the second party mentioned that the age of the second party was 24 years as per his statement as against the column meant for date of birth. As against the column age assessed by the Doctor, it is mentioned " about 26 years" (twenty-six). However, the figure "6" appears to have been overwritten on the initial figure "4". It is not known why the Doctor would differ on the question as to age of the workman who disclosed his age to be 24 years and assess the same to be 26 years. The correction of the figure 26 in the Ext. B is not initialled by the concerned Doctor and therefore, the possibility that the age of the workman has been subsequently changed from 24 years to 26 years can not be ruled out.

10. The management relies upon several other documents in support of his assertion that the date of birth of the second party workman was 3-7-1952. But all those documents are prepared on the basis of Ext. A and Ext. B. Therefore, the said documents can not be relied upon to ascertain the actual date of birth of the second party. It is submitted by the representative of the first party that the second party has accepted all monetary benefits due on his retirement including gratuity and retirement gifts and therefore it should be held that he admitted his date of birth as 3-7-1952 and his claim of date of birth as 7-2-1954 should not be believed. It is true that an admission is best piece of evidence but the same is not conclusive when other acceptable evidence proved a different fact. In the present case, the unchallenged Transfer Certificate of the second party and the documents prepared by the management itself, as disclosed earlier, establish the fact that the actual date of

birth of the second party is 7-2-1954 and therefore his receipt of retiral benefits and signing on several forms indicating his date of birth as 3-7-1952 can not be said to be sufficient to disprove the actual date of birth. On a careful perusal of the evidence available on record and the discussion made above I am constrained to hold that the actual date of birth of the second party both on the basis of his service records and independent document is 7-2-1954 as claimed by him and not 3-7-1952 as assessed by the management. Consequently the date of retirement of the second party would have been 28-2-2014.

11. The workman by oral and documentary evidence establish the fact that soon after he received the notice of the management, Dt. 17-2-2012, vide Ext. 5, he made a representation to the management on Dt. 25-2-2012, vide Ext. 6 intimating that his date of retirement should be 28-2-2014. He also filed copies of documents relied upon by him. Although the representation of the workman was made more than 5 months prior to his proposed date of retirement, the management took no action on the representation. The management is silent in the matter of taking any action or making any communication to the workman on his representation, Dt. 25-2-2012. Shortly after retirement the workman, i.e., on 25-9-2012 the workman submitted a grievance before the District Labour Officer, Jharsuguda alleging that he was illegally superannuated/terminated from service by the management. He then moved the Hon'ble High Court of Orissa in writ petition (C) No. 20901/2012 and the Hon'ble Court vide Order, Dt. 12-11-2012 directed the DLO, Jharsuguda to conclude the conciliation proceeding within 3 months and submit report to the Government. The notice in the conciliation proceeding was there after issued and ultimately the Conciliation Officer-cum-A.L.C., Sambalpur came to a conclusion that there was no way of settlement of dispute and accordingly he submitted a failure report on 19-2-2013. It appears from the failure report submitted by the Conciliation Officer that the management was never sympathetic to the workman who had rendered unblemished service for about 34 years under him. They never wanted to rely upon the workman's statement at the time of appointment that he was aged 24 years but they relied upon the interpolated entry to his age recorded in the Medical report. The Company even made corrections in the service record of the workman behind his back. From the conducts of the management as discussed above it is crystal clear that the management took a bold view to retire the workman prematurely. Had there been any consideration to the representation of the workman, he would have served for about one year 8 months after the calculated date of his retirement. Although the first party retired the workman on their assessed age of retirement, I feel the same is illegal and unjustified as there was ample material for the management to hold that the actual date of birth of the workman was 7-2-1954 and he was due to retire on 28-2-2014. In such view of the matter, the termination of service of the second party by way of retirement with effect from the 1st August 2012 by the management is held to be illegal and unjustified. The issue No. (i) is accordingly answered in favour of the workman.

12. *Issue No. (ii)*—As already discussed, the second party was due to retire on 28-2-2014 and he was prematurely retired with effect from the 1st August 2012 on a wrong assessment of his date of birth. In such circumstances, the second party is entitled to reinstatement in service and he should be allowed to continue in service till 28-2-2014. Since there is no enough time for the management to get service of the second party, the reinstatement should be instantly made to the second party. It is further held that the second party is entitled to all his back wages, regular increment and other service benefits. His retirement date should be refixed by the management as 28-2-2014. The issue No. (ii) is accordingly answered.

13. In view of the determination of the issues in the manner aforesaid the reference needs be answered in favour of the second party workman. Hence the following award :

AWARD

The reference is answered on contest without any cost. The termination of services of Shri Haribola Dash, workman by way of retirement with effect from the 1st August 2012 by the management of M/s TRL Krosaki Refractories Limited, Belpahar, Dist. Jharsuguda is held to be illegal and unjustified. The second party is entitled to reinstatement in service with full back wages and other service benefits. The management is directed to reinstate the second party in service immediately and reflex his date of retirement as 28-2-2014. The first party management is further directed to pay full back wages to the second party with effect from the 1st August 2012 including his regular increment and all other service benefit within a period of two months hence.

Dictated and corrected by me.

SRIKANTA MISHRA
31-12-2013
Presiding Officer
Labour Court
Sambalpur

SRIKANTA MISHRA
31-12-2013
Presiding Officer
Labour Court
Sambalpur

By order of the Governor
N. BEHERA
Under-Secretary to Government