

State of Orissa and Others

Vs

Arnab Kumar Dutta

Civil Appeal No. 2338 of 1996

(G. N. Ray, B. L. Hansaria JJ)

24.01.1996

JUDGMENT

HANSARIA, J. –

1. Leave granted.

2. While ordering for issuance of notice, it was stated that the matter would be disposed of at the notice stage in view of the judgment of this Court delivered on 27-1-1995 in CA No. 1497 of 1993, which has since been reported as State of Orissa v. Adwait Charan Mohanty [1995 Supp (1) SCC 470 : 1995 SCC (L&S) 522 : (1995) 29 ATC 365].

3. Shri Misra who has appeared for the respondent, has, however, taken a stand that the appeal may not be decided on the basis of the aforesaid judgment inasmuch as while deciding the aforesaid case, this Court's attention was not drawn to the Resolution of the State Government dated 21-5-1974 on the subject of age of superannuation of workmen appointed in Architectural and Drawing Branches of PWD, in which draughtsman is one of the categories of the staff of Architectural Branch, who is required to be retained in service till the age of 60 years.

4. In the case in question this Court was called upon to decide the age to retirement of a 'workman' who as per the second proviso to Rule 71(a) of the Orissa Service Code shall ordinarily be retained in service up to the age of 60 years. In the Note appended to the proviso, it has been stated that a 'workman' means a highly skilled, skilled or semi-skilled and unskilled artisan employed on a monthly rate of pay in any Government establishment. After examining the meaning of the word 'artisan' finding place in the different dictionaries, it was held in para 12 that the object of the Rule appears to bring "artisan-workman" on a par with Class IV employees, and he alone is required to retire on the completion of 60 years of age, but not the gazetted or non-gazetted Class III government servants or even Class II or I, which would be the result if all artisans were given benefit of retention of service up to 60 years inasmuch as even a Director of Town Planning or Chief Architect could be considered to be an artisan. It was, therefore, held that among others a draftsman would not be a workman to get the benefit of retention of service up to the age of 60 years.

5. Shri Misra has taken pains to submit that the aforesaid Government Resolution having specifically stated that the draftsman would get the benefit of retention of service up to 60 years, the appeal may not be decided on the basis of the aforementioned judgment, because if the attention of the Court would have been drawn to the Resolution, it is probable that the Court would have taken a different view. We do not agree with the learned counsel because a perusal of the Resolution shows

that the same owes its origin to the decision of the Orissa High Court in OJC No. 632 of 1969 read with the definition of the workman in the Note below the proviso to Rule 71(a). What is the purport of the Note has been explained in the aforesaid decision of this Court. The High Court's judgment in the OJC, cannot now be regarded as good in law. According to us, therefore, the fact that the attention of the Court in Adwait Charan Mohanty case (1995 Supp (1) SCC 470 : 1995 SCC (L&S) 522 : (1995) 29 ATC 365] was not drawn to the Resolution has no significance.

6. The appeal, therefore, has to be allowed, which we hereby do, inasmuch as by the impugned judgment the respondent, who is a draftsman, has been ordered to be retained in service up to the age of 60 years. He has indeed to retire on completion of the age of 58 years. So, the impugned judgment is set aside.

7. Parties to bear their own costs.