

State of Orissa & Ors.

Vs

Sadhu Charan Pradhan

(Sujata V. Manohar, D.P. Wadhwa JJ)

17.09.1997

JUDGMENT

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D.P.WADHWA, J.

1. Leave granted.

2. This appeal by the State of Orissa is directed against the judgment of the Orissa Administrative Tribunal (for short 'the Tribunal,') dated January 9, 1995 allowing Original Application No. 2056 of 1994 of the respondent holding that the respondent, who was a mason in the Government Department, would retire at the age of 60 years and not 58 years as per the service rules applicable in the State.

3. The respondent joined service in the workcharged establishment of the Executive Engineer, Roads and Buildings, Bhubaneswar on November 16, 1961 as a meson. On February 17, 1978 he was brought over to the regular establishment thus begin in the Government Department. The respondent was to retire on September 30, 1994 on attaining the age of 58 years. The respondent, however, filed original application in the Tribunal claiming that he was entitled to continue in service upto the age of 60 years. His claim was based on the 'Note' below second proviso to Rule 71 (a) of the Orissa Service Code. His further claim was that the Work Department of the State Government should be treated as "industry" relying upon a decision of the Supreme Court in the case of Des Raj and others Vs. State of Punjab and others 1988 (2) SLR 789.

4. The Tribunal noticed that the State Government did not file any counter and that note on which the respondent relied was incorporated as per Finance Department Notification dated October 13, 1989 which reads as follows:

"Workman" means a highly skilled, skilled, semi-skilled or unskilled artisan employed on a monthly rate of pay in any industrial or workcharged establishment."

5. The Tribunal then held that an artisan was functionary whose nature of work was manual and that mason would come within that category. It also noticed that in a certain communication of the Works Department a post of the mason was categorised as "workman". The Tribunal then referred to various others OAS filed by employees of the Works Department was an industry. The Tribunal, therefore, concluded that the respondent was to be treated as workman and he was entitled to continue in service till he attained the age of 60 years. The State Government filed a review application before the Tribunal bringing to its notice a judgment of this Court in State of Orissa and others Vs. Adwait Charan Mohanty and others Civil Appeal No. 1497 of 1993 decided on January

27,1995 (since reported as 1995 Supp (1) SCC 470) pointing out that in a similar case the Supreme Court had held that a government employee like the respondent would retire at the age of 58 years. This application was dismissed by the Tribunal on July 8, 1996 without referring to the judgment of this Court and merely noting that the State Government only wanted to record that counter affidavit had been filed which according to the Tribunal was filed one day after it had announced the judgment.

6. It was submitted before us that the present case was fully covered by the aforesaid decision in Adwait Mohanty's case. Prior to the amendment of the note below the second proviso to Rule 71 (a) which has been reproduced above, the note reads as under:

"Note:- For this purpose workman means a highly skilled, semi-skilled and un-skilled artisan employed on a monthly rate of pay in any govt. establishment."

7. It is significant to note that the "Government establishment" has been omitted after amendment of the Note as it existed now would apply only to those employees on monthly rate of pay in any industrial or workcharged establishment and not those employees working in any Government establishment. Admittedly, the respondent is working in the Government establishment and the Note on which the Tribunal relied would be inapplicable to his case. The very note was subject matter of interpretation in the case of Adwait Mohanty where also the question was if an artisan in the Government establishment would retire at the age of 58 years or on his attaining the age of 60 years. This Court after considering the relevant rules came to the conclusion that an artisan in the circumstances being a Government employee would retire on his completion of 58 years of age. Statement of law by this Court in the case of Adwait Mohanty fully covers the facts of this case and the relevant rules on the subject.

8. Accordingly, the appeal is allowed, the impugned judgment of the Tribunal is set aside and the DA filed by the respondent is dismissed. There will be no order as to costs.