(2010) 02 OHC CK 0005

In the Orissa High Court

Case No : Original Jurisdiction Case No. 14002 of 2001

Jadumani Rout APPELLANT

Vs

M.D. Orissa State Seeds Corporation Ltd. and Another RESPONDENT

Date of Decision : 16-02-2010

Acts Referred:

Constitution of India, 1950 — Article 311
Orissa State Seeds Corporation Service Rules, 1988 — Rule 7

Citation : (2010) 1 ILR (Ori) 312 : (2010) 1 OLR 1038 Supp

Hon'ble Judges : B.N. Mahapatra, J;A.S. Naidu, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.N. Mahapatra, J.—The writ Petitioner calls in question the legality and propriety of the notice dated 15.09.2001 (Annexure-10) issued by Opp. Party No. 2, Company Secretary, Orissa State Seeds Corporation Ltd., Bhubaneswar (for short ''the Corporation'') calling upon him to retire from service on superannuation with effect from 30.11.2001 at the age of 58 and further prays to fix his scale of pay at Rs. 1600-2660/- with four advance increments and to grant him all consequential service benefits in terms of his order of appointment as well as the Rules of the Corporation treating his age of superannuation to be 60 years.

2. Bereft of unnecessary details the facts and circumstances giving rise to the present writ petition are that the Petitioner while continuing as Senior Operator on deputation basis in the Corporation, the Board of Directors (for short, ''the Board'') of the Corporation on 18.7.1995 in the greater interest of the Corporation decided to absorb him on permanent basis in the scale of pay of Rs. 1600-2660/- with four advance increments as per Annexure-6. Pursuant to said decision of the Board, and order dated 16.2.1996 of the Director of Horticulture, the Petitioner was absorbed permanently in the Corporation with the condition as per Annexure-7 that his services will be governed by the Rules of the Corporation. On 15.9.2001, the Company Secretary issued a letter

(Annexure-10) to the Petitioner stating therein that as per the O.S.S.C. Service Rules, 1988 approved by the Board of Directors in their 43rd meeting held on 25.6.1988 the Petitioner was due to retire from the service on superannuation with effect from 30.11.2001 A.N. at the age of 58, his date of birth being 03.11.1943. Hence, the writ petition.

3. Mr. B. Routray, learned Counsel appearing on behalf of the Petitioner vehemently argued that the impugned notice under Annexure-10 asking the Petitioner to retire from service on superannuation at the age of 58 is not sustainable as the same has been issued contrary to the Service Rules of the Corporation in vogue at the relevant time. According to Rule 7(iii) of the Orissa State Seeds Corporation Service Rules, 1988 (for short ''the Rules''), an employee has to retire from service on superannuation at the age of 60 with an exception that in case the efficiency of an employee is found by the Board to have been impaired then he would be asked to retire on completion of 58 years after giving three months'' prior notice. The notice of retirement under Annexure-10 does not reveal that the Petitioner was asked to retire on completion of 58 years on the ground that the Board had found efficiency of the Petitioner to have been impaired. It is clarified in the order dated 08.10.1996 (Annexure-7) that the services of the Petitioner would be governed by OSSC Rules, 1988 in all respects. The performance of the Petitioner was quite satisfactory throughout his incumbency having no adverse entry in the CCR. It is argued that the Board has not taken a decision to retire the Petitioner at the age of 58. There is no such provision under the statute empowering the Board of Directors to delegate the powers of the Board to the Managing Director with regard to the premature retirement. The authorization given to the Managing Director by the Board of Directors under Annexure-A/1 to take a decision in the matter of retirement does not speak about the premature retirement. More so, after enactment of the OSSC Service Rules, 1988 the executive instructions contained in Annexure-A/1 are invalid in the eye of law. Non-service of three months'' prior notice, as required under Rule 7(iii) of the Rules, to the Petitioner vitiates the impugned notice of retirement. No opinion as required under the Rules was formed before issuance of such notice of premature retirement to the Petitioner. Hence, the plea of the opp. parties that a decision was taken by the Managing Director before asking the Petitioner to go on compulsory retirement is an arbitrary and capricious decision, which warrants interference by this Court.

Relying on the decision of the apex Court, in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, it was argued that when a statutory functionary passes an order based on certain grounds its validity must be judged by reasons so mentioned, and cannot be supplemented by fresh reasons by way of affidavit or otherwise. Therefore, the impugned notice asking the Petitioner to retire from service with effect from 30.11.2001 at the age of 58 instead of 60 is bad in law and is liable to be set aside. The Petitioner should be deemed to be in continuous service till the date he attained the age of superannuation, i.e., 60 years.

It was further argued that the Petitioner had not been paid his scale of pay of Rs. 1600-2600/- with four advance increments in terms of the minutes of the 65th Meeting of the Board held on 18.07.1995 (Annexure-6) pursuant to which order under Annexure-7 was passed.

4. Mr. J. Pattnaik, learned Senior Advocate appearing on behalf of the opposite parties submitted that the Managing Director of the Corporation before taking a decision not to allow the Petitioner to continue beyond 58 years made assessment of the performance of the Petitioner in the light of the Resolution dated 06.06.1998 of the Government of Orissa. A comparative statement showing performances of the Petitioner was also prepared and placed before the Managing Director for consideration. On consideration of the same, the Managing Director found the efficiency of the Petitioner to have been impaired. Thereafter, the notice of retirement dated 15.09.2001 was issued to the Petitioner asking him to retire from service with effect from 30.11.2001. Subsequently, on 22.09.2001, the Board of Directors in their 87th meeting considered the matter and approved the decision of the Managing Director. Therefore, there was no violation of Rule 7 (iii) of the Rules, in retiring the Petitioner on superannuation with effect from 30.11.2001 at the age of 58. Under the Regulations of the Corporation, the Managing Director is the competent authority in the matter of retirement of its employees. This power was conferred on the Managing Director by virtue of delegation of powers in the 39th Meeting of the Board of Directors held on 20.06.1987. It was contended that compulsory retirement given to the Petitioner was in accordance with the settled principles of law, and no infirmity can be attributed to the same.

In support of his contention, Mr. Pattnaik relied upon several decisions of the apex Court as well as this Court in Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI), ; Allahabad Bank Officers Association and another Vs. Allahabad Bank and others, ; High Court of Punjab and Haryana Through R.G. Vs. Ishwar Chand Jain and Another, ; The Registrar (Administration), High Court of Orissa, Cuttack Vs. Sisir Kanta Satapathy (Dead) by Lrs. and Another, ; State of Gujarat Vs. Umedbhai M. Patel, ; State of Uttar Pradesh and Others Vs. Vijay Kumar Jain, ; State of Punjab and Ors. v. Balbir Singh, AIR 2004 SC 4655; and Sahadeb Patnaik v. State of Orissa 40(1974) CLT 977.

Mr. Pattnaik, further submitted that law is well settled that if adequate notice is not given to the concerned employee then at best he would be entitled to pay for the said period, but the same cannot invalidate the notice of retirement. In support of his contention, Mr. Pattnaik relied upon the decision of this Court in Shyam Charan Mohanty v. State of Orissa and Ors., 38(1972) CLT 49. It was also submitted that fixation of pay of the Petitioner is pending with the Corporation awaiting clearance of the Government for implementation of the revised scale of pay in respect of employees of the Corporation.

5. To resolve the controversies involved, it is felt necessary to examine the order of permanent absorption of the Petitioner under Annexure-6, the notice of

retirement dated 15.09.2001 under Annexure-10 as well as the provisions of Rule 7(iii) of OSSCS Rules, which are as follows:

Annexure-6 EXTRACT OF THE MINUTES OF THE 65TH MEETING OF THE BOARD OF DIRECTORS OF OSSC LTD. HELD ON 18.07.1995 XX XX XX Item No. 12 PERMANENT ABSORPTION OF SHRI JADUMANI ROUT, SENIOR OPERATOR IN THE O.S.S.C. LIMITED: The Board considered the proposal for absorption of Shri Jadumani Rout, Senior Operator on permanent basis and decided to absorb him as Supervisor in the scale of pay of Rs. 1600-2660/- with four advance increments over and above the pay being drawn by him in greater interest of the Corporation.

XX XX XX

(Emphasis supplied)

Annexure-10 To Sri Jadumani Rout, Supervisor, D.R. Seed Store, Chandaka, BBSR. Sub: Issue of retirement notice.Sir, As per OSSC Service Rules, 1988 approved by the Board of Directors in their 43rd meeting held on 25.6.88, you are due to retire from the service of the Corporation on 30.11.2001 AN on attaining the age of superannuation of 58 years being your date of birth is 3.11.1943 as recorded in your Service Book. So you are desired to clear all the Corporation dues if any outstanding with you and the pensionary documents may please be submitted at the earliest for taking further action in the matter and you keep yourself ready to handover the charges. Yours faithfully Sd/- Company Secretary

Rule-7(III) of Orissa State Seed Corporation Service Rules, 1988

After an employee has reached an age of 58 years he may be retired after giving him three months notice in writing in case his efficiency is found by the Board to have been impaired. Subject to this an employee shall retire in completion of 60 (Sixty) years.

(Emphasis supplied)

6. In Polestar Electronic (Pvt.) Ltd. Vs. Additional Commissioner, Sales Tax and Another, , the apex Court held that the well settled principle of law of interpretation is that a statutory enactment must ordinarily be construed according to the plain natural meaning of its language and that no words should be added, altered or modified unless it is necessary to do so in order to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statue.

A plain reading of Rule 7(iii) makes it amply clear that in normal course an employee has to retire on superannuation at the age of 60 years. However, in case efficiency of an employee is found by the Board to have been impaired, he can be retired on superannuation at the age of 58 years with three months'' prior notice in writing. The impugned notice of retirement reveals that as per the

OSSC Rules, 1988 approved by Board of Directors on 25.06.1988, the Petitioner was made to retire on attaining the age of superannuation from the Corporation service with effect from 30.11.2001 AN at the age of 58, his date of birth being 03.11.1943. The said notice does not indicate any reason as to why the Petitioner was asked to retire at the age of 58 instead of 60.

7. The order dated 08.10.1996 (Annexure-7) reveals that the Petitioner was absorbed permanently in the Corporation and his service has to be governed by the Rules of the Corporation. So far as the retirement of the Petitioner is concerned, Rule 7(iii) of the Rules contains the provision for retirement which were in force at the time of permanent absorption of the Petitioner and also at the time when the impugned notice of retirement was issued.

8. The main thrust of contention of the opp. parties is that on review of performance of the Petitioner it was found by the Managing Director that efficiency of the Petitioner had been impaired for which he was asked to retire on superannuation on completion of 58 years.

9. Needless to say that if an employee is appointed permanently to a post, right accrues in his favour in terms of the order of his appointment and the Rules prevailed at the relevant date. For any reason, if the employer decides to take away such right(s) of the employee, the reason should be intimated to the employee. The reason should not rest in the minds of the employer. The same should be translated into words so as to enable the employee to know the reason for which any right accrues in his favour, in terms of order of his appointment and the prevalent Rule is taken away.

Law is well settled that the requirement to record reason can be regarded as one of the principles of natural justice and should govern exercise of powers by administrative authorities. The apex Court in S.N. Mukherjee Vs. Union of India, , held that the recording of reasons by an administrative authority serves a salutary purpose namely; it excludes chances of arbitrariness and ensures a degree of fairness in the process of decision-making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. The need for recording of reasons is greater in a case where the order is passed at the original stage.

Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same it becomes lifeless. [See Raj Kishore Jha Vs. State of Bihar and Others,].

Even in respect of administrative orders Lord Denning, M.R. in Breen v. Amalgamated Engg. Union (1971) 1 All ER 1148, observed: The giving of reasons is one of the fundamentals of good administration." In Alexander Machinery (Dudley) Ltd. v. Crabtree (1974) ICR 120 (NIRC) it was observed: "Failure to give reasons amounts to denial of justice.

In Vasant D. Bhavsar Vs. Bar Council of India and Others, , the apex Court held that an authority must pass a speaking and reasoned order indicating the material on which its conclusions are based.

In the instant case, the impugned order does not say anything about the reason as to why the Petitioner was made to retire from service at the age of 58, though the normal age of retirement on superannuation is 60 years.

10. Law is also well settled that validity of an order is to be judged by the reasons mentioned therein and it cannot be developed either by oral submission or by filing affidavit.

The apex Court, in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , held as follows:

The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Commissioner of Police, Bombay Vs. Gordhandas Bhanji, (at p. 18):

Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older.

Admittedly, the notice of retirement does not say that the Petitioner was made to retire compulsorily as his efficiency was found by the Board to have been impaired. A fresh reason cannot be assigned by way of affidavit to validate the earlier order.

11. This Court in Sahadeb Pattnaik (supra), while dealing with a case of compulsory retirement placed reliance on T.G. Shivacharana Singh and Others Vs. The State of Mysore, ; Union of India (UOI) Vs. Col. J.N. Sinha and Another, ; and Benudhar Das v. Union of India and Anr. ILR 1973 CTC. 387 and held that the criteria and procedure indicated in the administrative instructions are to be followed rigidly and only in case of doubtful integrity and lack of physical and mental efficiency, the proviso is to be applied. A high-power committee is to be constituted to review the case of each individual officer. It is for the State Government to determine whether the Petitioner''s retirement was in public interest. If the authority with bona fide intension forms an opinion, its correctness cannot be challenged before courts. It is open to an aggrieved party to contend that the requisite opinion has not been formed or that the decision is

based on collateral grounds or that it is an arbitrary or capricious decision. When such a dispute is raised by an employee, it is open to the Government to place relevant material before the Court to establish that the impugned action was not arbitrary or based on collateral grounds. If there are some materials germane to the issue in supporting the action taken by the Government, then the High Court cannot sit in appeal and declare that the action is invalid as being based on insufficient materials or on the ground that it could come to a different conclusion on the same materials. The High Court can, however, interfere if the decision of the government is based on no materials or on materials on which a reasonable person cannot come to that conclusion.

12. Challenging that the impugned order is arbitrary and capricious one, Mr. Routray referred to paragraph 15 of the writ petition, and submitted that the performance of the Petitioner was quite satisfactory and there was no adverse remark as regards efficiency of the Petitioner during his incumbency. In reply to the said averment, the opp. parties, in paragraph 10 of the counter affidavit stated that the Corporation was in great financial crisis and the Government of Orissa vide Resolution dated 06.06.1998 decided and directed all Public Sector Undertakings to reduce their staff strength and also to prepare a Scheme for voluntary retirement of the employees. In such circumstance, comparative assessment of CC Rs/ performances of the Petitioner was made. On such assessment, when the M.D. found the performance of the Petitioner unsatisfactory, he decided to issue the impugned notice of retirement to the Petitioner.

13. Merely saying that the CCR of an employee is not satisfactory is not enough. Nothing has been brought by the opp. party to the notice of the Court to substantiate the stand of un-satisfactory performance of the Petitioner till 15.09.2001 when the impugned notice of retirement was issued. On the other hand, the entries made in CCR of the Petitioner give a different picture. On being asked, learned Counsel for opp. parties produced the original CCR of the Petitioner, relevant portions of which are extracted below.

2000-2001 Sl. HEADING REMARKS No. 1. REPORT ON HEALTH QUALITIES : Good health. Possesses administrative and AND ABILITIES technical ability. Have zeal to work. Can take responsibility. Takes good decision. Noting & drafting good. Very popular among the staff for his amiable nature. 2. REPORT ON KNOWLEDGE AND : Aware of rules, regulations and procedure. PERFORMANCE Capable of acquiring knowledge and apply the same. Capable of dealing and disposing the case smoothly. A good Supervisor to look after the work. Technically sound. 3. DEFECTS, IF ANY NOTICED, POINTED OUT AND RESULTS THERE OF : Not noticed 4. INTEGRITY : Beyond doubt 5. GRADING : Very Good 1999-2000, 1998-1999 & 1997-1998 1. a. State of health : Sound b. Attendance & : Punctual and quite disciplined discipline c. Clearance of : Very good routine d. Noting : Does not arise e. Drafting : Does not arise f. Disposal : Quick g. Knowledge of : Very much sound rules and regulations h.

Ability to deal : Dealing with technical cases is outstanding with cases i. Integrity : Beyond doubt 2. Steps taken to : No defects noticed point out defects if any with result 3. General remarks (Officer) : Being a sincere, responsible and experienced conduct, fitness for promotion person, adequately equipped with technical or other assignment over knowledge, worked with determination and all rating etc. shouldered responsibility. Capable of providing effective results being a competent technical personnel. In view of his good performance in all respects during the period under report, I ranked him outstanding. Deserves promotion to higher post.

Almost similar remarks have been given in the preceding years. Remarks in the Character Roll for the year 2000-01 were given by the M.D., O.S.S.C. and for the years 1999-2000, 1998-99, 1997-98 and 1996-97 by the Manager, Cold Storage and was confirmed by the Chief Processing Manager of the Corporation.

Comparison of the remarks entered in the CCR of the Petitioner for the above years does not at all indicate that the Petitioner''s efficiency was found to have been impaired in any way. There was no adverse entry in the character roll nor the integrity was doubted at any point of time. On the other hand, entries in the character roll reveal that the Petitioner possessed administrative and technical ability having zeal to work; could take responsibility and good decision; noting and drafting was good; he was aware of rules, regulations and procedure; capable of dealing and disposing of the cases smoothly; he was a good supervisor to look after the work; technically sound and no defect was noticed in his work. Even outstanding rank has been given to him.

Moreover, it appears from the original record produced before the Court that the name of the Petitioner was recommended for continuance in service beyond the age of 58 years to meet the shortage of staff strength and to utilize the long service experience of the Petitioner for benefit of the Corporation. Even the office note dated 14.09.2001 speaks of such recommendation. But all of a sudden on 15.09.2001, the decision was taken by the Managing Director to serve the notice of retirement on the Petitioner.

The stand that a comparative chart showing performance of the Petitioner had been prepared keeping in view the Government Resolution dated 06.06.1998 for the purpose of taking a decision in the matter of compulsory retirement of the Petitioner is not relevant as Rule 7(iii) does not provide for such consideration. Executive instruction cannot supersede the statutory provision. Therefore, action of the opp. parties taking the same into consideration vitiates the decision making process.

Law is well settled that when the statute provides for a particular procedure to be followed to do a certain thing, the same should be done in that manner or not at all and other modes of performance are necessarily forbidden. (See: Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of

Clause II. Officers, Shyam Lal, Industrial Finance Corporation, ; Hukam Chand Shyam Lal Vs. Union of India (UOI) and Others, ; Sangeeta Singh Vs. Union of India (UOI) and Others, ; Hira Cement Workers Union v. State of Orissa and Ors., 92 (2001) CLT 184; Krushna Chandra Sahoo Vs. Bank of India and Others, and Rabindranath Das v. State of Orissa and Ors. in O.J.C. No. 8913 of 1997 decided on 10.12.2009)

Further, nothing was noticed from the office notes made prior to 15.09.2001 including 14.09.2001 that a comparative statement showing performance of the Petitioner was prepared for consideration by the M.D. 14. Extracts of the minutes of the 87th Meeting of the Board of Directors of OSSC Ltd. held on 22.09.2001, furnished by opp. parties, reveals that after due deliberation, the notice on Sri Jadumani Rout, Supervisor for retirement from Corporation service on attaining the age of superannuation at 58 years with effect from 30.11.2001 A.N. was approved by the Board. The minutes do not say that on review of the performance of the Petitioner, the Managing Director found the efficiency of the Petitioner has been impaired.

Further, it appears that two lines have been inserted into the note sheet entry on 15.9.2001. The relevant note sheet entry dated 15.9.2001 runs as follows:

Discussed with M.D. with reference to orders at page 180/c to 180E/C

The notice to be served for retirement immediately on Sri Rout.

(emphasis supplied)

As it appears, originally the entry was only the subsequent two lines, i.e., "the notice be served for retirement immediately on Shri Rout." The previous two lines, i.e., "Discussed with M.D. with reference to orders at page 180/C to 180E/C" appears to be subsequent insertion. Such conclusion of us gets fortified from the following noting made on the same day prior to the above notings.

15/9

A draft three month notice to Sri Jadumani Rout, Supervisor is put up below for approval since he is due to retire from Corporation service w.e.f. 30.11.01.

Sd/- 15.9.01

S.O.(ESTT)

Notes above.

As desired draft retire notice of Shri Jadumani Rout, Supervisor is put up below for kind approval.

D Fa Sd/- 15.9.2001

These two notings clearly show that three-month''s retirement notice was drafted and put up for approval on 15.09.2001. Thereafter, there was no need to discuss the matter with M.D. further for the purpose of taking a decision with regard to compulsory retirement of Shri Rout on giving reference to order at page 180/C to 180E/C.

The matter can also be considered from another angle. If the three different notings of 15.09.2001 excluding the noting "Discussed with M.D. with reference to order at page 180/C to 180E/C" are read together, the sequence is maintained. When the above two lines are inserted the sequence breaks.

Our impression is further strengthened from the following facts:

(i) The stand of the opposite party is that the Managing Director before taking a decision not to allow the Petitioner to continue beyond 58 years made assessment of the performance of the Petitioner. Keeping in view the resolution dated 6.6.1998 of the Government of Orissa a comparative assessment of performance of the Petitioner was made and was placed before the Managing Director for consideration. On consideration of the same, the Managing Director found the efficiency of the Petitioner to have been impaired. Thereafter the notice of retirement dated 15.9.2001 was issued to the Petitioner. Subsequently, on 22.9.2001 the Board of Directors in its 87th meeting considered the matter and approved the decision of the managing Director. But the said proceeding of the 87th Meeting of the Board of Directors dated 22.09.2001 does not support this contention of the opposite parties. At this juncture for better appreciation, the proceeding of the said meeting contained in pages 224-225 of the original record are extracted below.

Page- 224 ORISSA STATE SEEDS CORPORATION LIMITED (87th Board meeting) Item No. 8.

CONTINUANCE OF SHRI JADUMANI ROUT, SUPERVISOR BEYOND ATTAINING THE AGE OF SUPERANNUATION OF 58 YEARS.

Shri jaduani Rout was initially working in this corporation as Senior Operator since 27.08.84 on deputation basis from the Directorate of Horticulture, Orissa, Bhubaneswar. Later on, in pursuance of the decision taken by the board in their 65th Meeting held on 18.07.95 and in pursuance of Order No. ID NG (1+3)1/85-3/1179/Hort. Dt. 16.02.96 of the Director of Horticulture, Sri Roiut has been permanently absorbed in the services of the Orissa State Seeds Corporation Ltd. with effect from 08.10.96 vide Order No. 7846 dt 08.10.96 as Supervisor in the scale of pay of Rs. 1600-50-2300-EB-60-2660/-. Now being the date of birth of Sri Rout is 03.11.1943, he is due to be retired from the services of the OSSC Ltd. on 30.11.2001 on attaining the age of superannuation of 58 years.

As per the Service Rules, 1998 approved by the board of Directors in their 43rd Meeting held on 25.06.88 "an employee may be retired from the services of the Corporation after reaching an age of 58 years in giving him 3(three) months notice in writing in case his efficiency is found by the board to have been impaired subject to this an employee shall retire on completion of 60 years.

The Notice for retirement has already been served on Shri Jadumani Rout.

Page-225 EXTRACT OF THE MINUTES OF THE 87TH MEETING OF THE BOARD OF DIRECTORS OF O.S.S.C. LIMITED HELD ON 22.09.2001 XX XX XX Item No. 8. CONTINUANCE OF SRI JADUMANI ROUT, SUPERVISOR BEYOND ATTAINING THE AGE OF SUPERANNUATION After due deliberation, the notice served on Sri Jadumani Rout, Supervisor for retirement from Corporation service on attaining the age of superannuation of 58 years on 30.11.2001(A.N.) was approved by the Board.

XX XX XX XX XX Sd/- Alka Panda, IAS CHAIRPERSON

In the above extracted two pages neither any reference is made with regard to Managing Director''s consideration of the performance of the Petitioner nor consideration of the comparative CCR/performance of the Petitioner prepared keeping in view the Resolution dated 6.6.1998 issued by the Government of Orissa, even though such a consideration of the Managing Director has been claimed to have been made on 15.9.2001. This clearly indicates that when the matter relating to retirement of Sri Rout was placed before the Board on 22.09.2001 for approval, no decision was taken by the M.D. on the basis of study of the performance of the Petitioner with reference to page 180C to 180E/C, as claimed. Had there been any such decision of the M.D. and existence of page 180/C to 180E/C containing the comparative analysis of Petitioner''s performance, the same must have been placed before the Board on 22.09.2001 and reflected in the resolution.

Further, the entry in the Petitioner''s character roll for the year 2000-2001 reflects the grading of the Petitioner as ''very good'' on 04.05.2001. Thereafter, in the month of August 2001, recommendation has been made in office note for continuance of the Petitioner in service beyond 58 years and this continued till 14.09.2001 to meet the shortage of staff strength and to utilize the long service experience of the Petitioner for the benefit of the Corporation. During these periods, the Company Secretary all along remained silent, but all of a sudden on 15.09.2001, he woke up and prepared a comparative chart showing performance of the Petitioner and placed the same before the M.D. for his consideration for the purpose of compulsory retirement. That too, after a draft retirement notice was prepared and put up for approval. This creates clouds of suspicion in the conduct of opp. parties.

It may be relevant to note that the present writ petition has been filed on 15.10.2001 challenging the impugned order of retirement on the ground that the Petitioner was asked to retire from service on attaining the age of 58 years instead of 60 years without indicating any reason in the notice of retirement and in contravention of Rule 7(iii) of the Rules.

Perusal of the records reveals that initially it was decided to give retirement to the Petitioner at the age of 58 years without any rhyme and reason and accordingly notings were made. As it appears, subsequently, when the same was challenged in the Court, two more lines, i.e., "Discussed with M.D. with reference to orders at page 180/C to 180E/C" have been inserted to justify the action of authorities to be in consonance with Rule-7 (iii). This action of opp. parties gives an impression that the original records have been manipulated to give a colour of legitimacy to the apparently illegal action.

15. In view of the above, we have no hesitation to hold that the requirement of Rule 7(iii) has not been satisfied while asking the Petitioner to take premature retirement in terms of the said Rule at the age of 58.

16. Placing strong reliance on the decision of this Court in the case of Sahadeb Patnaik v. State of Orissa, 40(1974) C.L.T. 977 and the decision of the apex court in the case of Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI), , Mr. Pattnaik contended that compulsory retirement does not amount to dismissal or removal even though misconduct in the shape of inefficiency is a factor taken into account while ordering compulsory retirement. In such case they merely furnish the background and not the basis. The decisions in the above two cases are of no help to the opposite parties since the Petitioner''s case is that the criteria and procedure indicated in Rule 7(iii) of the Corporation Rules have to be strictly followed. The decision of the Managing Director which has been subsequently approved by the Board it appears is an arbitrary and capricious decision contrary to Rule 7(iii). The case of Sahadeb Pattnaik (supra) on the other hand supports the case of the Petitioner.

The decisions of the apex Court in Allahabad Bank Officers Association and another Vs. Allahabad Bank and others, and, High Court of Punjab and Haryana Through R.G. Vs. Ishwar Chand Jain and Another, , have no application to the case of the Petitioner in which the issue was whether the compulsory retirement can be treated as an order of punishment.

The apex Court in The Registrar (Administration), High Court of Orissa, Cuttack Vs. Sisir Kanta Satapathy (Dead) by Lrs. and Another, , held that the High Court itself cannot pass an order compulsorily retiring a judicial officer without getting formal approval from the Governor on the recommendations made by the High Court in that regard. This decision is no way relevant for the present case and, therefore, is of no help to the opposite parties. The decision of the apex court in State of Gujarat Vs. Umedbhai M. Patel, is also of no help to the opposite parties as in the said case the apex Court held that when the service of a public servant is no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest, and ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution. Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order. Compulsory retirement shall not be imposed as a punitive measure. On the other hand, this decision of the apex court will help the case of the Petitioner wherein it is held that for better administration, it is necessary to chop off dead-wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer. In the present case, the service record of the Petitioner does not contain any adverse remark against the Petitioner. The facts in the case of State of Uttar Pradesh and Others Vs. Vijay Kumar Jain, is completely different from the case at hand and the principles decided in that case have no application to the case of the Petitioner.

17. So far as payment of scale of pay is concerned, admittedly, the Petitioner was permanently absorbed in the Corporation in the scale of pay of Rs. 1600-2660/- with four advance increments as per Annexures-6 & 7. Annexure-8 is a clearance by the Director of Horticulture to absorb the Petitioner in the Corporation in the scale of pay of Rs. 1600-2660/- The grievance of the Petitioner is that his case was not considered for payment of scale of Rs. 1600-2660/- with effect from the date of joining in the Corporation with four increments, which is violative of the terms and conditions of the appointment. Annexure-11 is a representation dated 06.04.2001 made by the Petitioner bringing to the notice of the opposite parties about the revised scale of pay in terms of 65th resolution of the meeting of the Board as well as in terms of the order of appointment, but till date no such financial benefit has been provided to the Petitioner. In paragraph-14 of the counter affidavit it is stated that the matter regarding fixation of pay is pending with the Corporation awaiting Government clearance for implementation of the revised scale of pay in respect of Corporation employees and that after 08.10.1996 the Petitioner is ceased to be an employee of the Government of Orissa by exercising necessary option to be absorbed in the Corporation. The reply of the opposite parties is really unfortunate. When an employee is given appointment on particular terms and conditions indicating the salary structure, the employer is duty bound to pay such salary and should not avoid on some plea or other. In the instant case, the Petitioner was permanently absorbed in service with effect from 18.7.1995 in the scale of pay of Rs. 1600-2660/- with four advance increments. Though notice of retirement was issued on 15.1.2001 his salary in terms of the order of appointment has not been paid by the opposite parties.

18. In the above circumstances and in the ends of justice, we have no hesitation in reaching the conclusion that the Petitioner is deemed to have retired from service on superannuation at the age of 60. We, accordingly, set aside impugned order dated 15.09.2001 under Annexure-10 and direct the opp. parties to pay the salary/differential salary to the Petitioner along with normal annual increments, and other consequential service and financial benefits expeditiously, preferably within a period of two months from the date of receipt of this judgment.