
(1971) 11 OHC CK 0022
In the Orissa High Court
Case No : O.J.C. No. 380 of 1970

Madhusudan Pani

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-11-1971

Acts Referred:

Bihar and Orissa Service Code, 1929 — Rule 71(80), 75

Citation : (1971) 37 CLT 1234

Hon'ble Judges : G.K. Misra, C.J.; S. Acharya, J

Bench : Division Bench

Advocate : G. Rath, for the Appellant; Government Advocate, for the Respondent

Judgement

G.K. Misra, C.J.—The Petitioner is an employee under the State of Orissa. As his services had been placed under the Accountant-General of Orissa, initially he claimed to be a servant under the Union of India. That stand he has abandoned now and he accepts the position that he is a servant under the State of Orissa. His date of birth is 1st May, 1915. He entered service as a clerk on 4-7-1938. There is no dispute that he still continues as a ministerial servant and has not been promoted to any gazetted rank. On the undisputed facts the position is that the Petitioner entered Orissa Government Service on 4.7.1938 and continued to be a ministerial servant when he was retired on attainment of his fifty-fifth year on 1-5-1970. On these facts the principle enunciated in *Bhagirathi Shaw v. Member, Board of Revenue and Anr.* 1971 (1) C.W.R. 750, applies with full force. Rule 75(b) of the Bihar and Orissa Service Code would govern his retirement. Under that rule he is to continue in service till he attains his 60th year unless the competent appointing authority requires him to retire at any age in between 55 and 60 years. Under a misconception that Rule 71(80) of the Orissa Service Code applies to his case he was made to retire. The view that we had taken in the aforesaid decision has now been crystallized into a circular issued by the Government in Finance Department Memo No. Pen-12/71/29229 (28)/F. dated 24-7-1971.

2. The result therefore is that the writ application is allowed. The impugned order retiring the Petitioner is quashed. He shall be deemed to be continuing in service until he attains his 60th year unless the competent appointing authority requires him to retire earlier. In the circumstances, there will be no order as to costs.

S. Acharya, J.

3. I agree.