

(1969) 09 OHC CK 0035
In the Orissa High Court
Case No : O.J.C. 784 of 1969

Nabin Kishore Ray

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 30-09-1969

Acts Referred:

Constitution of India, 1950 — Article 311(2)
Orissa Service Code, 1939 — Rule 71

Citation : (1970) 36 CLT 720

Hon'ble Judges : G.K. Misra, C.J.; R.N. Misra, J

Bench : Division Bench

Advocate : R.C. Patnaik, P.K. Sengupta and H. Mohapatra, for the Appellant;
A.G., for the Respondent

Final Decision : Allowed

Judgement

G.K. Misra, C.J.—The Plaintiff joined service as a compositor in the Orissa Government Press on 1-10-1936 and was confirmed on 16-6-1942. On 28.2.1963 he was promoted as Assistant section Holder on a temporary basis and continued so until 26.7.1969 when he was served with a notice (Annexure 1) by opposite party No. 2 intimating him that he would attain the age of superannuation and should retire from service with effect from 16-8-1969 forenoon on his attaining the 55th year.

The Plaintiff holds the post of a technician broadly classified under the head "Workman". He was required to sever Government for 8 hours a day like any other industrial employee and was actually being paid overtime allowance.

The Plaintiff was born on 16.8-1914: and claimed to retire on 16-8-1974 on his attaining the 60th year. The notice (Annexure 1) is assailed as being contrary to law and the termination of his services as being in violation of Article 311(2) of the Constitution and is liable to be quashed.

2. No counter has been filed on behalf of the opposite parties. This writ

application must accordingly be disposed of on the footing that the facts narrated therein are correct. In fact, the learned Advocate General was specifically asked whether the Plaintiff was a workman; he conceded that the Plaintiff was a workman.

3. The only question for consideration is whether the Plaintiff is to retire on his attaining the 55th year or 60th year.

4. The Plaintiff's stand is that his age of retirement is governed by the proviso to Sub-rule (a) of Rule 71 of the Orissa Service Code, Volume I, which has not been so far modified by any subsequent rule.

Sub-rules (a) and (b) of Rule 71 run thus:

71(a) Except as otherwise provided in the other clauses of this rule the date of compulsory retirement of a Government servant in superior service other than a ministerial servant who was in permanent Government service on 31st March 1936, is the date on which he attains the age of 55 years. He may be retained in service after the date of compulsory retirement with the sanction of the State Government on public grounds, which must be recorded in writing, but he must not be retained after the age of 60 years except in very special circumstances:

Provided that a workman who is governed by these rules shall ordinarily be retained in service upto the age of 60 years. He may however be required to retire at any time after attaining the age of 55 years after being given a month's notice or a month's pay in lieu thereof, on the ground of impaired health or of being negligent or inefficient in the discharge of his duties. He also may retire at any time after attaining the age of 55 years, by giving one month's notice in writing.

(b) A ministerial servant who was in permanent Government service on the 31st March 1936, may be required to retire at the age of 55 years but should ordinarily be retained in service, if he continues efficient, upto the age of 60 years. He must not be retained after that age, except in very special circumstances, which must be recorded in writing and with the sanction of the State Government.

It is unnecessary to refer to Sub-Rules (0) and (d.)

5. An analysis of Sub-rules (a) and (b) of Rule 71 would show that, ordinarily, the date of compulsory retirement of a Government servant in superior service is the date on which he attains the age of 55 years. This, however, has no application to a ministerial servant who was in permanent Government service on 31-3-1936 whose date of retirement is ordinarily 60 years as prescribed in Sub-rule (b). The proviso to Sub-rule (a) however makes an exception that a Government servant who is a workman shall ordinarily be retained in service upto the age of 60 years which is his normal age of retirement. He may, however, be required to retire at any time after attaining the age of 55 years on fulfilment of any of the conditions mentioned in the proviso. The Plaintiff has not

been required to retire on attainment of the age of 55 years, on any of those grounds, such as his having impaired health, being negligent or inefficient in the discharge of his duties. Under the proviso, therefore, the Plaintiff is entitled to retire on 16-8-1974 and not on 16-8-1969 as per the impugned notice Annexure 1.

6. The learned Advocate-General justifies the validity of the notice on the strength of Resolution No. 3642-Gen., dated 19th/20th February, 1968, issued by the Government of Orissa in the Political and Services Department (hereinafter referred to as the 1968 Resolution). The relevant portion of the Resolution may be extracted:

The State Government have had under consideration for some time past the question of reviewing" their decision contained in the Political and Services Department Resolution No. 17187-2R/1-2/65 dated 15th September. 1965, raising the age of superannuation of the State Government servants from 55 to 58 years. After careful consideration and in supersession of the above Resolution and all other resolutions, orders and instructions on the subject, Government do hereby direct, as follows:

I. The age of compulsory retirement of the State Government servants, excluding Class IV servants, shall be fixed at 55 years instead of 58 years, with effect from 1st August, 1968:

Provided that the above decision of Government shall not affect the retention in service of those ministerial Government servants who are governed by Sub-rule (b) of Rule 71 of the Orissa Service Code, Volume 1.

It would thus appear that the 1969 Resolution purported to review the decision contained in the Resolution of the Government of Orissa in the Political and Services Department, No. 17187-2R/1.2/65 dated 10.9.1965 (hereinafter referred to as the 1965 Resolution) raising the age of superannuation of the State Government servants from 55 to 58 years. The relevant portion of the 1965 Resolution runs thus:

The question of raising the age of compulsory retirement of the State Government servants and the procedure to be followed in cases of grant of re-employment and extension of service to Government servants has been under consideration of Government for some time past. After careful consideration, the State Government have decided as follows in supersession of all orders and instructions on the subject.

The age of compulsory retirement for the State Government servants should be raised from 55 to 58 years with effect from the 1st December 1962. In other words, Government servants who attained or attain the age of 55 years on or after 1st December 1962, would be entitled to the above benefit.

Under the 1965 Resolution a benefit was conferred on these classes of Government servants whose date of compulsory retirement would occur on their

completing the 55th year. But a workman governed by the proviso to Sub-rule (a) of Rule 71 of the Orissa Service Code Volume 1, continued thereunder to be retained in service till his attaining the 60th year. The 1965 resolution did not confer any special benefit on such workman and did not affect, alter or amend the age of retirement which was fixed at the 60th year.

7. It was however contended by the learned Advocate-General that paragraph (1) of the 1968 Resolution specifically provides that the decision of Government in 1968 did not affect the retention in service of those ministerial Government servants who were governed by Sub-rule (b) of Rule 71 of the Orissa Service Code, and the absence of a specific reference in the said Resolution to the proviso to Sub-rule (a) or Rule 71 indicates that the workmen coming within the ambit of the proviso should retire on attaining the 55th year. We are unable to accept this contention. It was not necessary to refer to the proviso inasmuch as no benefit had been conferred by the 1965 Resolution on this class of Government servants; even when the 1965 Resolution was in force, a workman could not be retired at the age of 58 years, inasmuch as that Resolution did not alter or modify the proviso to Rule 71(a). No specific reference was therefore necessary to be made in the 1968 Resolution, to protect the cases of workmen falling within the proviso.

We are therefore clearly of opinion that so far as workmen are concerned the proviso to Rule 71(a) still stands. Their date of retirement continues to be 60 years unless of course they are made to retire, after the completion of the 55th year, on any of the grounds specified therein.

8. On the aforesaid analysis, we hold that the impugned notice is contrary to the proviso to Rule 71(0.) of the Orissa Service Code, Volume I which is still in force and the services of the Plaintiff could not be terminated by the said notice.

9. We accordingly allow this writ application with costs, and quash the impugned notice by issuing a writ of certiorari. The Plaintiff shall be deemed to be continuing in service. Hearing fee is assessed at Rs. 100/- (Rupees one hundred only).

R.N. Misra, J.

10. I agree.