

(1970) 06 OHC CK 0005
In the Orissa High Court
Case No : O.J.C. No. 184 of 1970

Prafulla Kumar Dutta

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 22-06-1970

Acts Referred:

Orissa Service Code, 1939 — Rule 71

Citation : (1971) 1 LLJ 65

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

Bench : Division Bench

Advocate : S.B. Nanda, for the Appellant; D.P. Mohapatra, for the Respondent

Final Decision : Allowed

Judgement

R.N. Misra, J.—This is an application under Article 226 of the Constitution of India by a driver of the State Transport Service.

2. Various contentions were taken in the Writ Petition. But during the hearing of the application, Mr. Nanda, learned counsel for the petitioner, confined his submissions to only one point which is to the following effect. According to him, the State Transport Service which is wholly owned by the State of Orissa, opposite party No. 1 is an industrial undertaking. The petitioner who joined service as a driver on 1-12-58 and has been continuing as such is a "workman" as defined in the Note to Rule 71 (a) of the Orissa Service Code. It is not disputed that the definition itself is a statutory one being a part of the rules framed under Article 309 of the Constitution by the Governor of Orissa. The further submission of Mr. Nanda is that the Petitioner would ordinarily be retained in service upto the age of 60 years and is liable to be retired at any time after his attaining the age of 55 years with a month's notice-only on the ground of impaired health or of being negligent or inefficient in the discharge of his duties.

The petitioner was served with a notice dated 19-12-69 by the District Transport Manager of the State Transport Service at Baripada that as the petitioner would

complete the age of 55 years on 8-2-70 he was directed to retire on superannuation with effect from the afternoon of that day.. Admittedly no action has been contemplated against the petitioner on the footing that he has impaired health or he is negligent or inefficient in the discharge of his duties. Mr. Nanda, therefore, contends that the petitioner is to be retained in service upto the 60th year and he is being prematurely retired. This action in prematurely retiring the petitioner who is a permanent servant under the State Government of Orissa in the State Transport service is sought to be challenged as being contrary to law.

3. Mr. Mohapatra, learned counsel for the Transport Department, appearing for the opposite parties challenges the contention that the petitioner is a workman and as such his case is not covered under Rule 71 (a) of the Orissa Service Code.

4. It would be convenient to extract Rule 71 (a) of the Orissa Service Code:--

"Except as otherwise provided in the other clauses of this rule the date of compulsory retirement of a Government, 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.

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

5. The short point for consideration, therefore, is as to whether the petitioner as a bus driver in the employment of the State Transport Service is a workman. In the Note extracted above a workman has been equated with an artisan. In view of the provision in the Note that a highly skilled or semi-skilled or unskilled artisan would also be a workman the only point for determination is whether the petitioner is an artisan.

6. To determine whether a bus driver is an artisan the learned counsel for both the parties placed certain precedents before us. The learned Counsel for the petitioner relied upon a decision of K. C. Mitter, J., in Khagendra Nath Chatterjee Vs. Kanti Bhushan Banerjee, . The point for examination in the aforesaid case was as to whether a claim by a motor driver for wages would come within the scope of Article 7 of the First Schedule of the Limitation Act of 1908. The learned

Judge held,

"The whole question is whether a bus driver is an artisan within the meaning of that Article. I do not agree in the contention that a bus driver is a household servant. In my judgment, a bus or motor car driver is an artisan. He must know something of the mechanism of a car, must know how to start it, to stop it and to steer it. He is supposed to attend to the car in emergent cases when the mechanism goes a somewhat out of order during a journey. In this view of the matter I hold that he is an artisan"

Reference was made in the aforesaid case to a decision of the Rangoon High Court in AIR 1927 Ran 279, R. Sewaram v. Lachminarayan. The case had also raised the self same question with reference to Article 7 of the First Schedule of the Limitation Act. Maung Ba, J., held,

"A motor car driver is required at least to know how to start the car, how to steer it and how to stop it. For such purposes he must possess some skill in manipulating the different parts of the mechanism. I think he should be included in the category of an artisan."

A similar view has also been taken by Jai Lal, J., in AIR 1936 Lah 661, Sita Ram v. Jagan Nath, Reference was also made by Mr. Nanda to a decision of the Allahabad High Court in Noor Ali Vs. Kanpur Omnibus Service Ltd., ., Mehrotra, J., as he then was, stated,

"The contention of the applicant is that he was employed as a bus driver. He can neither be regarded as a household servant nor an artisan or labourer and consequently Article 7 does not apply to his case. It is contended that an artisan is one who is engaged in some productive work. A bus driver who has only to operate upon a bus and is to observe rules of traffic cannot be regarded as one engaged in productive activities. In Oxford Dictionary the word "artisan" has been defined to mean a mechanic also. A driver has not only to operate upon a bus, but in the event of breakdown, he has to repair the bus and has to be a mechanic also. In the modern age when the industries have considerably advanced any person who participates in industrial activities or is a mechanic can be classed as artisan. The word "artisan" is not confined to an artist who carries" on activities in fine arts only".

On a reference to the Shorter Oxford Dictionary we find an artisan is said to be one occupied in any industrial art, a mechanic, handicraftsman, artificer.

7. Mr. Mohapatra for the opposite parties placed reliance mainly on a Division Bench decision of the Calcutta High Court in Maniklal Upadhyaya Vs. Ramesh Chandra Acharya, . The aforesaid Calcutta decision noticed the decision of the Rangoon High Court as also the earlier Single Judge decision of the Calcutta High Court already referred to. They also referred to an English decision in the case of Palmer v. Snow (1900) 1 Q. B. 725. Delivering the judgment of the Bench, K. C. Das Gupta, J. as he then was, stated,

"I therefore respectfully agree with Maung Ba and Mitter JJ. That the word "artisan" as used in Article 7 of the First Schedule to the Limitation Act includes a mechanic. I am unable to agree, however, that a motor driver is necessarily a mechanic. In my judgment when we say of some person that he is a mechanic, we mean that he has such special knowledge of some mechanism as to enable him to operate it and to set it right when it goes wrong. I do not think that the mere fact that a man can start a machine or control it is enough to give him the name of mechanic. An electric fan is an intricate mechanism; almost every body can set it in motion, can control its motion by operating the regulator and can stop it. Will a man who can do these things be called a mechanic? The answer must be an emphatic "No." When the fan goes out of order we send for a "mechanic," That makes it clear that it is only the person who understands sufficiently of the working of the mechanism as to handle its parts properly in order to set it right when it goes wrong, that can be called a mechanic.

The driver of a motor car is not, in these respects, essentially different from the man who switches on an electric fan. He can start the engine, put it into gear, steer it, stop it and part it. Ordinarily, he can also change a damaged tyre or tube. Suppose however the carburettor goes wrong or the pistons have refused to work. Many, if not most, driver of motor cars will be able to do nothing in such emergencies. One particular driver may happen to have sufficient skill to be able to repair a defect in the mechanism but most will not have the requisite knowledge or skill. These persons will not, because of such lack of knowledge or skill, cease to be drivers of motor cars but they are clearly not mechanics. It is reasonable to hold that while the driver of a motor car may also happen to be a mechanic, such a driver is not necessarily a mechanic.

My conclusion therefore is that the driver of a motor car is not an "artisan" within the meaning of Article 7 of the First Schedule to the Act of Limitation."

It is difficult to equate in our view a motor driver with a person who can put a fan into motion by putting on the switch. The person who is at the wheel of a motor car is certainly one who knows many more things than one who merely puts his hand on the switch of a fan and puts it into motion. The activity involved in putting a fan into motion is very simple while a lot of knowledge is necessary for putting a car into motion after starting it. A number of processes are involved which have to be simultaneously done. Then only can the car be in motion. Similarly to stop a car in motion and to drive it on the public road while various other vehicles as also pedestrians would be walking involves some amount of dexterity without which driving would not be possible. A man who has never handled a fan or set it in motion on any previous occasion can do so when asked to put on the switch. But a person who has never been at the wheel of a motor car can never put the car into motion and drive it.

8. Mr. Mohapatra thereafter relied upon a decision of the Patna High Court in *Satya Kinkar Chatterjee Vs. Babulal Rajwar*, . Wherein Ahmad, J. (as he then was), took the view that an artisan is one who is trained to manual dexterity in

some mechanic art or trade. In that sense a driver may or may not be an artisan, but if a driver is also a mechanic he would certainly be classified as an artisan. The Patna decision proceeded on the basis that whether a motor car driver is an artisan or not would depend on the facts of each case.

9. We have already noticed that there is a definition of "workman" in Rule 71 (a) of the Orissa Service Code. The use of the words "highly skilled", "skilled", "Semiskilled" and "unskilled" goes to show that a special definition has been adopted for the purpose of the rule and emphasis on dexterity has not been intended. In the circumstances, keeping in view the definition in the Note and the law on the point we are of the view that a bus driver is an artisan and, therefore, a workman under the proviso to Rule 71 (a) of the Orissa Service Code. In view of the special definition we do not think it expedient to adopt the view of the Patna High Court to say that whether a bus driver would be a mechanic would be a question of fact to be determined in each case. On the aforesaid analysis, I would hold that a bus driver like the petitioner is an artisan and, therefore, a workman, and would be entitled to be retained in service ordinarily until he reaches the 60th year. It has already been noticed that this is not a case where the petitioner is being made to retire for being Inefficient or negligent or for having got impaired health.

In the circumstances, we are of the view that the petitioner is entitled to remain in service until he reaches the 60th year. The impugned notice requiring him to retire is, therefore, bad and is quashed. The petitioner is deemed to be continuing in service unaffected by the impugned notice or any action taken on its basis. The writ application is allowed with costs. A writ of mandamus be issued requiring the opposite parties to treat the petitioner to be continuing in employment on the same terms as before. Hearing Fee Rs. 100/- (One hundred).

G.K. Misra, C.J.

10. I agree.