

(1972) 09 OHC CK 0009
In the Orissa High Court
Case No : O.J.C. No. 750 of 1971

Sri Gangadhar Hehera

APPELLANT

Vs

Superintendent, Govt. Press and Another

RESPONDENT

Date of Decision : 08-09-1972

Acts Referred:

Orissa Service Code, 1939 — Rule 71, 71(1), 71(80)

Citation : (1972) 38 CLT 1063

Hon'ble Judges : B.K. Ray, Acting C.J.; S. Acharya, J; B.K. Patra, J

Bench : Full Bench

Advocate : S.C. Misra, for the Appellant; Additional Government Advocate, for the Respondent

Judgement

B.K. Patra, J.—The Petitioner entered into service in the Government Press on 1-9-1937 as a Copy Holder. In due course, he was promoted as an Assistant Overseer. He attained the age of 55 years on 1-3-1969 and on that ground he was retired with effect from that date. His contention is that he is a workman as that expression is defined in the Note appended to Rule 71(1) of the Orissa Service Code (hereinafter referred to as the Code), and that consequently he was entitled to be retained in service up to the age of 60 years provided that he continued to be healthy and efficient. As admittedly he was not retired at the age of 55 years on the ground of impaired health or of being negligent or inefficient in discharge of his duties, the order of retirement in Annexure-1 is attacked as being bad in law. The Petitioner, therefore, prays for the issue of a writ of mandamus directing the opposite parties to retain him in service till the latter attains the age of 60 years. The opposite parties in the counter affidavit submit that having regard to the nature of duties which are assigned to be performed by an Assistant Overseer he cannot be said to be a workman and that consequently the order retiring him on his attaining the age of 55 years is valid.

2. The only point that arises for consideration in this writ application is whether or not the Petitioner is "a workman" as that expression is defined in the Note

appended to Rule 71(a) of the Orissa Service Code. This precise question came up for consideration before a Division Bench of this Court in *Ramesh Chandra Sahu and Ors. v. State of Orissa* 1971 (1) C.W.R. 492, and it was held that an Assistant Overseer working in the Government Press is a workman within the meaning of Rule 71(a) of the Code and that consequently, the order superannuating him on his attaining the age of 55 years was bad. Another Bench of this Court in *Soloman P.D. Sahu v. State of Orissa and Ors.* 1971 (2) C.W.R. 502, held that an Overseer of the Government Press is not a workman. Our learned brother R.N. Misra, J. who delivered the leading judgments in both the cases referred to above distinguished in the latter case the decision in the earlier case on the ground that the Assistant Overseer was admittedly drawing a salary below Rs. 500/- and being the lowest in the supervisory hierarchy was directly dealing with the artisans and on occasions was discharging the duties of an artisan, and therefore, he was a workman and that the Petitioner in the latter case was an Overseer whose main duty was to supervise the work of others, and that apart he was drawing a salary of more than five hundred rupees and consequently would not fall in the category of a workman. When the present case came up for admission and hearing before a Division Bench of this Court, it appears to have been contended before their Lordships that there is no difference in the nature of duties of assigned to be performed by an Overseer and an Assistant Overseer and that consequently, there is a conflict between the two decisions referred to above which requires to be resolved. This case was, therefore, referred for decision to a larger Bench and this is how it has come up before us for disposal.

3. Rule 71(a) of the Orissa Service Code runs 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 65 year. 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 up to 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 un-skilled artisan employed on a monthly rate of pay in any Government establishment.

It is therefore, clear that the Petitioner would be entitled to the relief he claims only if he is a workman. Whatever may be the ordinary conception of the expression "workman" and irrespective of how that expression is defined in other statutes that expression must receive for the purpose of the Orissa Service Code, the meaning assigned to it in the Note appearing under the proviso to Rule 71(a). The definition is not an inclusive definition. The use of the expression "means" in the Note referred to above shows that nobody can be deemed to be a workman for the purpose of Rule 71(80) unless he is either a highly skilled or skilled or semi-skilled or unskilled artisan. Further the use of the words "highly skilled", skilled, "semi-skilled", and "unskilled" goes to show that emphasis on the dexterity has not been intended and that a workman is one who is an artisan. The question then arises what exactly is meant by the expression "artisan". According to the Oxford Dictionary an artisan means one who is employed in any of the industrial arts; a mechanic; a handicraftsman, artificer. "Artificer" means one who makes by art or skill especially one who follows an industrial handicraft; a craftsman. "Handicraftsman" means a man who exercises a handicraft, i.e., a manual skill; skilled work with hands, a manual art, trade or occupation. According to Jowitt's Dictionary of Law (1959 Ed.) an artisan means an artificer and an artificer means persons who are masters of their art and whose employment consists chiefly in manual labour. According to Bonvier's Law Dictionary, the term "artificer" applies to those who are actually engaged or employed to do mechanical work or the like and not to those taking contracts for labour to be done by others. The same meaning is given to the word "artificer" in Black's Law Dictionary. It, therefore, appears to us that one cannot be called an artisan unless his employment consists chiefly in manual 180 hour.

4. The next question for consideration is what are the duties of an Assistant Overseer in the Orissa Government Press. The nature of duties assigned to the Overseer and the Assistant Overseer are to be found in Annexure-A dated 29-12-1961 which is a letter addressed by the Superintendent, Orissa Government Press to the Deputy Chief Inspector of Factories and Boilers, Orissa. The relevant portion thereof may be quoted.

Sub: Persons holding the position of supervision or management.

xx xx xx xx

2. Nature of duties performed by:

A. Overseer: The Overseer is responsible for the quality and quantity of the cutturn of the industrial workers. He is to see that the different sections of the Press are kept fully employed and when there is no adequate work the fact should be reported to the authorities immediately by him. He is responsible for the careful checking of all overtime requisitions and for keeping overtime down to a minimum. He is responsible for equal distribution of work among the workers. He is responsible to see that the orders of Superintendent, Deputy Superintendent and Assistant Superintendent are carried out strictly in the

sections and will make all practical efforts to get the work in time. He will also arrange for supply of required type materials to sections and inspect the section-holders books. He is treated as the Liason Officer of the different branches of the Press and will make coordination of work of various sections till final execution.

He will pay constant attention to the composing, printing and binding works and see that the works are executed economically and expeditiously.

B. Asst. Overseer: He will assist the Overseer in his day to day work. He will have to remain in charge of and in close supervision over the works of all the workers and keep coordination amongst the different sections of composing, binding and machine to get the proper cutturn from the workers. He will see that all printing Jobs are promptly executed and supplied to Departments concerned without allowing them to remain pending in any sections. He will also keep a thorough watch over the workers for better quality of printing, speedy execution of works in the press and extract proper cutturn.

3. Difference of status and rank of both the officers:

Assistant Overseer is subordinate to Overseer in status. But, in actual practice, the Overseer remains in charge of one while the Assistant Overseer remains in charge of another shift.

4. As per nature of duties of Overseer and Assistant Overseer mentioned in para. 2-(A) & (B) above, both of them are in charge and in close supervision of the works of all the workers and keep coordination amongst the different sections of composing, binding and machine to get the proper cutturn from the workers. Both are responsible to see that the works are executed expeditiously and also both are responsible for the quality and quantity of the cutturn of the industrial workers and as such both the posts of Overseer and Assistant Overseers are similar in nature. In this connection I may further state that two categories of officers namely, Overseer and Assistant Overseer have been created to facilitate Government work.

(Vide D.O. Letter No. III. 68/47/4473.

Cor. dated 29.12.1961)

From the above it is clear that the duties of both the Overseer and the Assistant Overseer are purely supervisory in nature and neither of them is ever expected to do any manual work. This is also so asserted in para 8 of the counter affidavit. In the rejoinder filed by the Petitioner to the said counter affidavit it was stated in para 7 thereof as follows:

In addition to the actual manual work that he has to perform in checking and distribution, the Petitioner has also to do the work at times, checking in a press, means correction, change of the formas, re-arranging the composed lines, changing the getting up and design which is an expert's job.

The meaning of the averments is not very clear but it is stated by the learned

Counsel for the Petitioner that what the Petitioner means by the above averments is that in the course of discharging the duties allotted to him, he has sometimes to do the manual work himself. It is not the case of the Petitioner that enumeration of duties assigned to the Overseer and the Assistant Overseer as enumerated in Annexure. A to the counter affidavit is not correct. Annexure-1 A does not show that either the Overseer or the Assistant Overseer is expected to do any manual work. Assuming for a moment that in the course of discharge of their duties of supervision of the work of manual workers either the Overseer or the Assistant Overseer ever does any manual work himself that will not bring them within the category of manual workers. In this connection, reference may be made to a decision of the Supreme Court in *Burmah Shell Oil Storage and Distribution Company of India Ltd. Vs. The Burma Shell Management Staff Association and Others*, . The question arose in that case whether certain categories of employees under the Petitioner company are or are not workmen as defined in the Industrial Disputes Act. To answer this question their Lordship took note of the fact in practice, quite a large number of employees are employed in Industries to do work of more than one of the kinds mentioned in the definition of "workman". In cases where an employee is employed to do purely skilled or unskilled manual work, or supervisory work or technical work or clerical work, there would be no difficulty in holding him to be a workman under the appropriate classification. But frequently, however, an employee is required to do more than one kind of work. He may be doing manual work as well as supervisory work or he may be doing clerical work as well as supervisory work or he may be doing technical work as well as clerical work or he may be doing technical work as well as supervisory work. In such circumstances, their Lordships expressed the opinion that an employee must be held to be employed to do what work which is the main work that he is required to do even though he may be incidentally doing other types of work. In arriving at this conclusion, their Lordships quoted with approval the principle enunciated by them in *Ananda Bazar Patrika (P) Ltd. v. Its Workmen* (1969) Lab LJ 670, which is as follows:

The principle which should be followed in deciding the question whether a person is employed in a supervisory capacity or on clerical work is that if a person is mainly doing supervisory work but incidentally or for a fraction of the time also does some clerical work, it would have to be held that he is employed in supervisory capacity, and, conversely, if the main work done is of clerical nature, the mere fact that some supervisory duties are also carried out incidentally or as a small fraction of the work done by him not convert his employment as a clerk into one in supervisory capacity.

To illustrate what their Lordships stated above a more clear illustration was given as under:

If a person is employed to paint wans of a house or paint furniture, it would clearly be employment to do manual labour. If, on the other hand, he is an artist who paints works of art as a result of his own creative and imaginative faculty,

he would be held to be employed on technical work, even though, in creating the work, he will all the time be using his own hands to paint the picture. There can be a third case where a good artist may have pupils working under him who paint artistic pictures and he only guide their work. He may, on occasions, even make some Improvements by retouching the work done by the pupils. On the face of it, such a person cannot be held to be employed to do technical work; he would be a technical supervisor. These examples clearly Indicate that, In the case of the transport Engineer, whose principal duties are to see that the work ill properly done by the skilled and unskilled workmen working under him, he is really employed to do supervisory work and not technical work.

Applying these tests It must follow that although in the course of discharge of their duties which are purely supervisory in nature, either the Overseer or the Assistant Overseer has sometimes to do the mannual work himself, he does not thereby come within the category of an artisan and consequently would not be a "workman" as that expression is defined in the Note below Rule 71(a) of the Code. We are, therefore, unable to agree with the view taken in Ramesh Chandra Sahu and Ors. v. State of Orissa and Anr. 1971 (1) C.W.R. 492, referred to above that an Assistant Overseer working in the Orissa Government Press is a workman so as to entitle him to the benefit of the proviso to Rule 71(a) of the Code.

5. The writ application accordingly-fails and is dismissed, but in the circumstances. without costs.

S.K. Ray, Ag. C.J.

6. I agree.

The effect of this decision Is that the case Ramesh Chandra Sahu and Ors. v. State of Orissa and Anr. 1971 (1) C.W.R. 492, is no longer to be treated as good law.

S. Acharya, J.

7. I agree