

(1996) 01 SC CK 0197

In the Supreme Court Of India

Case No : Civil Appeal No. 2338 of 1996

State of Orissa and Others

APPELLANT

Vs

Arnab Kumar Dutta

RESPONDENT

Date of Decision : 24-01-1996

Acts Referred:

Orissa Service Code, 1939 — Rule 71

Citation : (1996) 1 AD 829 : (1996) 2 JT 516 : (1996) 2 LLJ 87 : (1996) 1 SCALE 539 : (1996) 7 SCC 203 : (1996) 1 SCR 892

Hon'ble Judges : G. N. Ray, J; B. L. Hansaria, J

Bench : Division Bench

Advocate : A.K. Panda, for the Appellant; P.N. Misra, for the Respondent

Final Decision : Allowed

Judgement

Hansaria, J.—Leave granted.

2. While ordering for issuance of notice, it was stated that the matter would be disposed of at the notice stage in view of the judgment of this Court delivered on 27.1.1995 in C.A. No. 1497/93, which has since been reported in State of Orissa and Others Vs. Adwait Charan Mohanty and Others,

3. Shri Misra, who has appeared for the respondent, has, however, taken a stand that the appeal may not be decided on the basis of the aforesaid judgment inasmuch as while deciding the aforesaid case, this Courts attention was not drawn to the Resolution of the State Government dated 21.5.1974 on the subject of age of superannuation of workmen appointed in Architectural and Drawing Branches of P.W.D. in which draughtsman is one of the category of the staff of Architectural Branch, who is required to be retained in service till the age of 60 years.

4. In the case in question this Court was called upon to decide the age of retirement of a 'workman' who as per the second proviso to Rule 71(a) of the Orissa Service Code shall ordinarily be retained in service upto the age of 60

years. In the Note appended to the proviso, it has been stated that 'a workman' means a highly skilled, skilled or semi-skilled and unskilled artisan employed on a monthly rate of pay in any Government establishment. After examining the meaning of the word "artisan" finding place in the different dictionaries, it was held in paragraph 12 that the object of the Rule appears to bring "artisan-workman" on par with Class IV employees, and he alone is required to retire on the completion of 60 years of age but not the gazetted or non-gazetted Class III Government servants or even Class II or I, which would be the result if all artisans were given benefit of retention of service upto 60 years inasmuch as even a Director of Town Planning or Chief Architect could be considered to be an artisan. It was, therefore, held that among others a draftsman would not be a workman to get the benefit of retention of service upto the age of 60 years.

5. Shri Misra has taken pains to submit that the aforesaid Government Resolution having specifically stated that the draftsman would get the benefit of retention of service upto 60 years, the appeal may not be decided on the basis of the aforementioned judgment, because if the attention of the Court would have drawn to the Resolution, it is probable that the Court would have taken different view. We do not agree with the learned Counsel because a perusal of the Resolution shows that the same owes its origin to the decision of the Orissa High Court in O.I.C No. 632/69 read with the definition of the workman in the Note below the proviso to Rule 71(a). What is the purport of the Note has been explained in the aforesaid decision of this Court. The High Court's judgment in the OJC, cannot now be regarded as good in law. According to us, therefore, the fact that the attention of the Court in Adwait Charan Mohanty's case was not drawn to the Resolution has no significance.

6. The appeal, therefore, has to be allowed, which we hereby do, inasmuch as by the impugned judgment the respondent, who is a draftsman, has been ordered to be retained in service upto the age of 60 years. He has indeed to retire on completion of age of 58 years. So, the impugned judgment is set aside.

7. Parties to bear their own costs.