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STATE OF ORISSA AND ORS.

v.

ARNAB KUMAR DUTTA

JANUARY 24, 1996

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[G.N. RAY AND B.L. HANSARIA, JJ.]

Service Law :

Orissa Service Code

C

R.71(a) Second proviso—Draughtsman in P.W.D.—Age of superannuation—Held, Draughtsman would not be a workman to get benefit of retention in service up to the age of 60 years—He has to retire on completion of 58 years of age.

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The present appeal was filed by the State of Orissa against the judgment of the Orissa Administrative Tribunal which ordered the respondent, a draughtsman in the service of the State Govt., to be retained in service upto the age of 60 years. This Court, while ordering issue of notice in the present appeal observed that the matter would be disposed of in view of the judgment of this Court in *State of Orissa & Ors. v. Adwait Charan Mohanty & Ors.**

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It was contended for the respondent that the appeal should not be decided on the basis of *Adwait Charan Mohanty's* case* as in that case Court's attention was not drawn to the Resolution of the State Government dated 21.5.1974 on the subject of age of superannuation of workman appointed in Architectural and Drawing Branches of P.W.D. in which draughts man was one of the categories of the staff of Architectural Branch required to be retained in service till the age of 60 years.

Allowing the appeal, this Court

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HELD : The respondent has to retire on completion of the age of 58 years. This Court in *State of Orissa v. Adwait Charan Mohanty & Ors.** on the question of retention in service of a workman upto the age of 60 years, as per the second proviso to s.71(a) of the Orissa Service Code, examined the meaning of the word 'artisan' occurring in the note appended to the proviso, and held that the object of the Rule appears to bring 'artisan

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workman' on par with class IV employees, and he alone is required to retire on completion of 60 years of age, but not the gazetted or non-gazetted class-III government servant or even class II or class I; and, therefore, a draughtsman would not be a workman to get the benefit of retention in service upto the age of 60 years. The fact that attention of the Court was not drawn to the Resolution dated 21.5.1974, has no significance.

[894-G; 893-E-F; 894-A-C]

**State of Orissa & Ors. v. Adwait Charan Mohanty & Ors., [1995] Supp. 1 SCC 470, explained and relied on.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2338 of 1996.

From the Judgment and Order dated 25.11.94 of the Orissa Administrative Tribunal, Bhubaneswar in O.A. No. 2558(C) of 1994.

A.K. Panda for the Appellants.

P.N. Misra for the Respondent.

The Judgment of the Court was delivered by

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 1995 Supp (1) SCC 470 *State of Orissa & Others v. Adwait Charan Mohanty & 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

A 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

B 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.

D 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

E because a perusal of the Resolution shows that the same owes its origin to the decision of the Orissa High Court in OJC 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

F 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.

G 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.