# State Of Orissa & Others vs Adwait Charan Mohanty on 27 January, 1995

## Equivalent citations: AIRONLINE 1995 SC 737

## Bench: K. Ramaswamy, N. Venkatachala

PETITIONER:
STATE OF ORISSA & OTHERS

Vs.

RESPONDENT:
ADWAIT CHARAN MOHANTY

DATE OF JUDGMENT27/01/1994

BENCH:
K. RAMASWAMY & N. VENKATACHALA, JJ.

ACT:

HEADNOTE:

JUDGMENT:

1. Leave granted in S.L.P. NOS.4424, 13245-547, 18110- 18113/93, 4064/94,2363/94, SLP /94 (OCC 24681),2260, 4223, 2588/94, 20136/93, 4882/94, SLP...../94 (CC 25141), 9901, 2428, 11084-11095/94, SLP /94 (OCC 26551), 18784,19083/94.

2. These appeals raise a common question of law whether each of the respondents was liable, to be superannuated only on attaining die age of 60 years. All the respondents have been working in various departments of the appellant-State as Draftsman, Senior Draftsman, Architectural Asst. Draftsman, Architectural Draftsman, Planning Assistant, Carpenter, Heavy Vehicle Driver, Mechanic, Foreman, Motor Grade, Operator, Ferro Printer, Welder, Concrete Mixture Driver, Junior Machineman, Pump Mechanic, Pump driver-cum- Mechanic, etc. etc. On attaining the age of superannuation of 58 years, when they were sought to be, retired, they approached the Administrative Tribunal, Orissa, which in the impugned Orders has held that they were workmen and entitled to continue in service, until they attained the age of 60 years as provided for under the second proviso to Rule 7 )(a) of the Orissa Service Code (for short, 'the Code'). It is not necessary to

deal in detail with the facts of each case for they we not different from each other. However, facts of the case of Adwait Charan Mohanty, respondent in C.A. No. 1497/93 could be referred to as exempler case. While working as a Draftsman in the office of the Executive Engineer, Minor Irrigation Division, Cuttack, he attained the age of 58 years on July 12, 1990. When he was to retire on July 31, 1990, he challenged the notice of retirement, Annex-A therein, contending that he is a workman within the meaning of the Code. The Tribunal held him to be a workman and that, therefore, he was entitled to continue in service till he completed the age of 60 years on July 31, 1994 with all the benefits of salary and allowances etc.

3. The question is whether the respondents are entitled to continue until they attained the superannuation age of 60 years? The Orissa Civil Services (Classification, Control and Appeal) Rules, 1962, (for short, 'the Rules'), defines government servant in Rule 3(f) to mean a person who is a member of a service or who holds a civil post under the State and includes any such person on foreign service or whose services arc temporarily placed at the disposal of the Union Government or any other State Government or a local or other authority and also any person in the service of the Union Government or any other State Government or a local or other authority whose services are temporarily placed at the disposal of the State Government. Under Rule 8 the posts under the State other than those ordinarily held by persons to whom the Rules do not apply, are by general or special order of the government classified as (i) State Civil Posts, Class I, (ii) State Civil Posts, Class II, (iii) State Civil

-Posts, Class 111, (iv) State Civil Posts, Class IV. Schedule-B of the Rules enumerates all classes of posts. Class III service and posts have been enumerated in which all the afore-stated posts have been specified. Class IV posts have also been specified and in none of the Class IV posts, the posts held by the respondents find place. Rule 29 of the Code defines Ministerial servant to mean a government servant of a subordinate service whose duties are entirely clerical, and any other class of servant specially defined as such by general or special order of the State Government. The Note appended thereto defines that Inspectors 1 and Sub-Inspectors of Police employed purely on clerical duties and Sub-Registrar are not "ministerial ser- vants".

4. Rule 52-A reads as follows:-

> "Unless otherwise expressly provided by the State Government in any statutory rules the minimum age-limit for entry into Government service shall be as follows
>
> (i) not below twenty-one years in the case of gazetted Government servants in Class 1, Class 11 or Class III service;
>
> (ii) not below twenty in the case of non-

gazetted Government servants in Class III service other than Ministerial servants;

(iii) not below eighteen years in the case of non-gazetted Class III Ministerial servants and Class IV Government servants.

5. Rule 71(a) provides superannuation which is relevant for the purpose of this Case, reads thus:-

> "Except as other wise provided in the other clauses of this rule the date of compulsory retirement of a Government servant, except a ministerial servant who was in Government service on the 31st March 1939 and Class IV Government servant, is the date on which he or she attains the age of 58 years subject to the condition that a review shall be conducted in respect of the Government servant in the 35th year of age in order to determine whether he/she should be allowed to remain in service up to the date of the completion of the age of 58 years or retired on completing the age of 55 years in public interest."

6. The second proviso reads as follows:-

> 'Provided further 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 semiskilled and unskilled artisan employed on a monthly rate of pay in any Government establishment."

7. The Note was subsequently amended with effect from October 13, 1989, which reads "Note - For this purpose, "a workmen" means a highly skilled, skilled, semi-skilled or unskilled artisan employed on a monthly rate of pay in any industrial or workcharged establishment".

8. The question, therefore, is whether a Class III Government servant, on attaining the superannuation age of 58 years, is required to retire or whether he is entitled to remain in service until he attains superannuation age of 60 years as a workman within the meaning of the Code. Shri Dipanker Gupta, learned Solicitor General,contended that all the respondents belong to respective subordinate services of the State governed by the Rules framed under proviso to Article 309 of the Constitution. The Rules enumerate the class of service. For superannuation of the maximum age has been prescribed by Rule 71 (a). Therefore, the Government servants in the respective class of services who hold civil post are required to retire on attaining the age of superannuation specified in the Code. The expression 'workman' defined in the Code is referable to the workman who must be, an artisan. An artisan is one who practices or cultivates an art as an artist or one who is employed in any of the industrial arts such as Mechanic. The respondents, therefore,, are not artisans. It is also contended that an artisan essentially is one who produces an article of some kind with the help of tools and brings into existence a product for sale. In other words, he produces an article of commercial goods with the aid of tools or with an element of creativity introduced by the artisan into the product which he creates. None of the respondents could be, treated to be an artisan. Therefore, they are not entitled to continue in service up to the age of 60 years. It is also further contended that the workman, must, of necessity, by reason of definition, means one working in an

industrial or workcharged establishment of the Government. None of the respondents is continuing either in an industrial establishment or a workcharged establishment. He Tribunal, therefore, committed grievous error of law in directing that the respondents shall be retained in service till they attained the age of 60 years.

9.The core contentions of the several learned counsel appearing for the individual respondents, run thus: The superannuation age of 58 years having been prescribed for a government servant under the Code, unless retired on attaining the age of 55 years in public interest on the grounds enumerated therein by all the employees in Class 1, II and III, exception has been carved out to Class IV government servants. The definition of workman in' the second proviso brought out another exception to the main part of Rule 71(a). Every workman, highly skilled, skilled, semi-skilled or unskilled working either in Class 1, 11 or III services have been treated as a class, as being an artisan and given exception as regards age of their retirement. All of them have been treated as a class and declared that they are also to retire on attaining the superannuation of 60 years. Otherwise it would be violative of Article 14. Differing instructions were given by various departments bring out discriminatory treatment in superan- nuation of the workman. The word 'workman', in this background, should be understood broadly. Any government employee, be he highly skilled, skilled, semiskilled or unskilled, should be given the benefit of the superannuation of 60 years envisaged by the exception to the general rule in the second proviso. The industrial establishment must equally be understood broadly and not in a technical sense. The workshop etc. maintained in any department of the government or the driver mechanics etc. working in different departments and all the respondents in these cases answer the definition of workman. The workman defined under the Industrial Disputes Act has been widely interpreted by this Court in diverse judgments. The Driver of the government vehicle was also held to be workman. In the light of the service jurisprudence, the respondents have rightly been declared to be entitled to superannuation on attaining 60 years. The Tribunal has rightly given the benefit to the respondents. Exercising the power under Article 136, this Court may decline to interfere with the benefit given by the Tribunal. It is also contended that they have worked pursuant to the orders of the Tribunal and that, therefore, they should not be saddled with the liability to refund the amount already paid by way of salary and allowances.

10.The crucial question is whether the respondents are entitled to the benefit of superannuation age of 60 years. Government servants are governed by the Statutory Rules. The Code prescribes the minimum age required for a person to enter into the government service and the age of his superannuation. Rule 71(a) clearly envisages superannuation of all the government servants except the Ministerial servants continuing as on March 3 1, 1939 and Class IV servants. In this case, we are not concerned with the Class IV government servants and none of the Ministerial servants continuing as on March 31, 1939, remains in service. All others including Class III government servants shall be required to retire on attaining the age of 58 years unless the government exercises its power of review which shall be conducted by the State Government in the 55th year of the government servant. Whether the government servant should be allowed to remain in service up to the date of completion of the age of 58 years or retire on completing the age of 55 years in the public interest is a matter which depends on exercise of power conferred on the government in that regards. Per force every government servant in Class I to III specified in the Rules, read with Schedule-B of the Rules, is required to retire from service on attaining the age of 58 years subject to

the condition of the exercising of the power by the State Government in the public interest as stated supra. It is not in dispute that all the respondents are in Class III service. Perforce, therefore, they shall be required to retire on attaining the age of 58 years.

11.The question is whether they are entitled to the benefit of the second proviso to Rule 71 (a) of the Code. It is un- fortunate that the Tribunal had turned its blind eye to the rules and blissfully omitted to advert to the main part of Rule 71 (a) of the Code and the Rules read with Schedule-B of he Rules. The entire focus was concentrated only on the consideration of the word 'workman' and the 'establishment' enumerated in the Note to the proviso. Rule 71 (a) of the Code and the second proviso and the note appended to it must be read together harmoniously to give effect to every part of it. A reading thereof would indicate that Class 1, 11 and III government servants shall retire on attaining the age of 58 years and Class IV employees are excluded from its operation. The highly skilled, skilled, semi-skilled or un- skilled workman-artisan working in an industrial establishment or workcharged establishment of the government and governed by the statutory rules also are given the benefit of the age of superannuation on attaining the age of 60 years on par with the Class IV employees. It is settled service jurisprudence and all the Rules of the Central Government and the State Governments, prescribe the superannuation of a government servant working as Class IV employee as on attaining the age of superannuation of 60 years. Having given the benefit of that class, the workman, be it highly skilled, skilled, semi-skilled or un-skilled, must be an artisan and is on monthly rate of pay working in industrial or workcharged establishment of the government. Such government servant also appears to have intended to be given the benefit of superannuation age of 60 years.

12.The amended Note clearly brings out the above object although it is ineptly woven out and elusively couched. For the purpose of the proviso, a workman means highly skilled, skilled, semi-skilled or unskilled artisan employed on a monthly rate of pay in an industrial or workcharged establishment. Shorter Oxford English Dictionary, (3rd Ed.) Vol-1, p. 103, defined artisan means - " 1. one who practices and cultivates art; an artist. 2. one occupied in any industrial art; a mechanic handicraftsman." Artist has been defined to mean "one who pursues some practical science; a follower of manual art". Webster's Third New International Dictionary, Vol 1, defines artisan "one who practices an art; 2. one trained to manual dexterity or skill in a trade." Black's Law Dictionary defines artisan "one skilled in some kind of trade, craft, or art requiring manual dexterity, e.g. a carpenter, plumber, tailor, me- chanic." The word 'artisan', therefore, has to be understood in common parlance in a wider sense as an art or an artist or one employed in any of the industrial art or produces an article of commercial value or utility with manual dexterity, either by manual labour or with the help of tools or machine and brings into existence a product for the sale or service. An element of not only creativity would be applied to bring into existence an article or commercial goods with dexterity employing manual or technical labour or with the aid of tools etc. However, it Is not exhaustive. Each case must be considered on its own facts and attendant circumstances to find whether the workman is an artisan. However, if he is a Class IV government servant, he too is entitled to superannuation on attaining 60 years of age.

13.In Prithipal Singh v. Union of India, 1991 Supp (1) SCC 32, Driver of a staff car who is also a mechanic who knows repairing the engine or vehicle was held to be an artisan. In Chandigarh

Administration through the Chief Engineer v. Mehar Singh, 1992 Supp (3) SCC 43, this Court held that a workman within the meaning of Clause (b) of Fundamental Rules, 56, has to satisfy the twin tests of workman and also an artisan employed on a monthly pay in an industrial or workcharged establishment, to qualify for superannuation at the age of 60 years. Therein since the facts were not clearly established, this Court remitted the appeal to the Tribunal after laying down the law, and directed the Tribunal to decide the question. In Bangalore Water Supply & Sewerage Board v. A. Rajappa, (1978) 2 SCC 213, a Bench of seven Judges of this Court considered the question under the Industrial Disputes Act - whether the Bangalore Water Supply & Sewerage Board is an industry. In that case, it was a statutory Board under consideration and not a government department. In that context, this Court while interpreting the word 'industry', the question whether the government department is an industry or not was specifically left open. Though the word 'industry' has been amended under the In- dustrial Disputes Act, the amended definition as on date has not been brought into force. Therefore, it renders little assistance. It is true that in Des Raj v. State of Punjab, (1988) 2 SCC 537, a Bench of two Judges of this Court, following Ban-

galore Water Supply and Sewerage Board's case, held that Irrigation Department of the State Government of Punjab an industry within the meaning of Industrial Disputes Act. We are not concerned with the dispute under the Industrial Dis- putes Act. Therefore, the need to go into the controversy of the correctness of the ratio of Des Raj's case does not arise. Suffice it to state that all the respondents are governed by the statutory rules made under proviso to Article 309 of the Constitution. Therefore, the interpretation should be confined to the language employed therein.

14.If the interpretation sought to be put up by the counsel for the respondents are given acceptance, it would render the very object of the Rules ridiculous and all Classes of government servants would be brought into the vortex of artisan. Class III consists of gazetted as well as non- gazetted employees. The government servants in Class III shall retire on completion of 58 years. If the interpretation that every artisan is a workman if he produces an article with dexterity or service with dexterity by manual or technical labour, he would be entitled to remain in service till the completion of 60 years. For ex- ample, even a Director of Town Planning or Chief Architect could be considered to be an artisan and, therefore, they too would be workmen entitled to superannuation up to the completion of 60 years of age. Similarly several officers in specified governmental activities would answer the defi- nition of workman, in particular, the Note to the proviso. It does not appear to be the object. As stated earlier, the object appears to be to bring artisan-workman governed by the statutory rules but at par with Class IV employee and he alone is required to retire on completion of 60 years of age but not the gazetted or non-gazetted Class III government servants or even in Class 11 or 1.

15. Therefore, we are of the considered view that the government employee in Class III service shall retire on completion of 58 years of age. Even an artisan-work-man who was promoted or appointed to Class III service be it gazetted or nongazetted shall retire on completion of 58 years of age. An artisan-workman who is working in an industrial or workcharged establishment but he is at par with Class IV employee is to retire on attaining the age of 60 years under the second proviso to Rule 71 (a) of the Code. In this view, it is not necessary to decide whether any industrial establishment in a government department, not specified, expressly, is an industry or a factory as contended by the

respondents. The Code clearly gives ben- efit to them. One essential condition to be satisfied is that such an artisan-workman, be it highly skilled, skilled, semi-skilled or unskilled, must, of necessity, be on monthly pay of the government.

16. Thus considered, the Tribunal has committed grievous and manifest error of law in not considering the cases on hand in this perspective. It has solely and wholly concentrated on the definition of the word 'workman' and the 'industrial establishment' to give the benefit of extended superannuation to the respondents. Since by the interpretation of the Tribunal, the respondents, until the order was stayed by this Court, remained in service and ren- dered the service to the State, we direct the appellant not to recover any pay and allowances paid to them till they are made to retire pursuant to the orders passed by this Court. Before parting with the case, we would like to point out that a cursory look into the Code would show existence of yearning gaps and ad-hoc amendments are made from time to time. It is high time to have fresh look and revamp the Code in the light of the developments of service jurisprudence.

17. The appeals are accordingly allowed and the O.As. are dismissed but in the circumstances, without costs. In some of the cases, namely, C.A.Nos. 676-679/ 94 and SLP No. 2260/94, appeals had been filed against the interim orders and this Court has suspended all the orders. In the light of the law laid down, the Tribunal is directed to consider and dispose of all these cases according to law.