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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A. No.877 of 2011
Cuttack, this the 19th day of June, 2013

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HON'BLE MR. A.K. PATNAIK, MEMBER (JUDL.)
HON'BLE MR. R. C. MISRA, MEMBER (ADMN.)

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Archaeological Survey of India Worker's Union represented through-

1. Secretary
Shri Ajaya Kumar Patnaik,
Son of Late Sadhu Charan Patnaik,
Aged about 56 years,
Working as Casual Worker with temporary status,
At-Lalitagiri Archeological Survey of India,
Buddhist Site,
Lalitagiri,
Post-Lalitagiri,
Ps-Mahanga,
Dist. Cuttack.

2. Bimbadhar Barik,
Son of Late Basudeva Barik,
Aged about 41 years,
Casual Worker with Temporary Status,
Under Senior Conservation Assistant,
Archeological Survey of India,
Bhubaneswar Sub Circle,
Samantrapur,
Dist.Khurda.

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3. Ramesh Chandra Samantray,
Son of Late Judhistira Samantray,
Aged about 41 years,
Casual Worker with Temporary Status,
Under Senior Conservation Assistant,
Archaeological Survey of India,
Bhubaneswar Sub Circle,
Samantrapur,
Dist.Khurda.Applicants

(Advocate(s):-M/s. B.Rout, B.P.Bahali,N.Dash)

-Versus-

Union of India represented through –

1. Secretary,
Government of India,
Ministry of Culture,
New Delhi-110 011.
2. The Director General,
Archaeological Survey of India,
Janpath,
New Delhi-110 011.
3. The Superintending Archaeologist,
Archaeological Survey of India,
Bhubaneswar Circle,
Toshali Apartment,
Satyanagar,
Bhubaneswar,
Dist. Khurda.
4. Purna Chandra Sethy,
Aged about 40 years,
Casual worker with temporary status,
Under Sr. Conservation Assistant,
Archaeological Survey of India,
Cuttack Sub Circle,
Dist. Cuttack.

Ans.

5. Pratap Kumar Sahoo,
Aged about 41 years,
Casual Worker with Temporary Status,
At-Ganeswarpur Panchupandav Temple,
Archaeological Survey of India site,
Po.Rudrapur,
Ps-Tangi,
Dist. Cuttack.

6. Muralidhar Behera,
Aged about 42 years,
Working as Monument Attendant,
Culture Shed,
Archaeological Survey of India,
Monument Site,
At/Po/Ps/Dist.Jajpur.Respondents

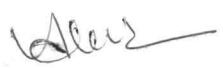
(Advocate(s)-Mr.S.Barik).

0 R D E R**A.K. PATNAIK, MEMBER (J):**

In this Original Application filed under section 19 of the Administrative Tribunals Act, 1985, the prayer of the applicants is for a direction to the Respondents to ante date the date of conferment of temporary status of such of the casual labourers (Applicant Nos.2&3) who are similarly situated like that of the Respondent Nos.4, 5 and 6.



2. Respondents have filed their counter in which it has been stated that as per the order of this Tribunal dated 12th May, 2000 passed in OA Nos.81 & 82 of 1998 and dated 10.4.2002 in OA No. 266 of 1997 –upheld by the Hon'ble High Court of Orissa and Hon'ble Supreme Court of India temporary status was awarded to the Respondent Nos.4,5 and 6 retrospectively. As regards the grant of temporary status to similarly situated other casual workers working under the Respondents the matter was taken up with the competent authority at New Delhi who in letter dated 29th July, 2011 conveyed the approval for conferment of temporary status with prospective effect i.e. from the date of issue of the order. Accordingly, order was issued by the Respondent No.3 granting temporary status to the similarly situated casual workers (like the Applicant Nos.2&3) prospectively w.e.f. 3rd August, 2011. The services of the applicant Nos. 2 & 3 together with other similarly placed casual workers have already been regularized against the vacant Gr.D post i.e.



Monument Attendant strictly as per the DoP&T Scheme dated 10th September, 1993.

3. Applicants have filed their rejoinder in which it has been stated that there was no direction from this Tribunal that the cases of the applicants are only to be considered or any cutoff date was provided by this Tribunal for grant of temporary status on the applicants therein. The direction of this Tribunal was to consider granting of temporary status to the applicants strictly in terms of the Scheme. Therefore, the Respondents while considering the cases of the Respondent Nos.4,5 and 6 ought to have considered the cases of other similarly situated casual workers working under the Respondents.

4. We have heard Mr.B.Rout, Learned Counsel appearing for the Applicants and Mr.S.Barik, Learned Additional CGSC appearing for the Respondents and perused the records.

5. Mr. B.Rout, learned counsel appearing for the Applicants submitted that claiming the same benefits as were



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granted to Respondent Nos.4, 5 and 6 in pursuance of the order of this Tribunal dated 12th May, 2000 in OA Nos.81 & 82 of 1998 and dated 10.4.2002 in OA No. 266 of 1997 – upheld by the Hon'ble High Court of Orissa and Hon'ble Supreme Court of India, the applicants and all other similarly situated employees submitted their representations. As no heed was paid to such grievance of the applicants, they have approached this Tribunal in OA No. 376 of 2011 which was disposed of on 13.6.2013. Hence by drawing our attention to the orders under Annexure-A/3 it has been submitted that in pursuance of the said direction of this Hon'ble Tribunal dated 13.06.2013 in O.A.No.376/2011, the Respondents granted Temporary Status to 54 members of the Union prospectively w.e.f. the date of issue of the order dated 03.08.2011 and 23.08.2011 respectively whereas Temporary Status were granted to Respondents No- 4, 5 and 6 from retrospective effect in compliance to the order of this Tribunal passed in O.A.No.-81/1998, OA No- 82/1998 and OA No. 266/1997 thereby causing gross discrimination between one set of

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employees. It has been contended by Mr. Rout that the Respondents have suppressed the material facts in their counter.

Further the learned counsel for the Applicants strenuously argued that this Tribunal had only directed the Respondents for grant of Temporary status strictly in terms of the scheme (Annexure 2 to the said O.A) but the respondents are trying to justify their action by stating that Respondent Nos.4,5 and 6 were conferred with temporary status retrospectively as per the order of this Tribunal which is not correct. In this connection Mr.Rout drew our attention to the order of this Tribunal in O.A. No. 81/1998 and 82/1998 placed at Annexure-A/6 to the rejoinder. Mr.Rout also submitted that the Respondents have challenged the said order of dismissal of the Hon'ble Orissa High Court but the Hon'ble Supreme Court of India but the Apex Court has also dismissed the same at the stage of admission and hence the order of this Tribunal has reached its finality making the Respondents duty bound to extend the benefits to all other



similarly situated employees. Lastly, it was contended by Mr. Rout, Learned Counsel for the Applicant that Respondent Nos. 4, 5 and 6 are too junior to the Applicants but they have got the seniority in all respect only due to the grant of temporary status retrospectively without considering the cases of all other similarly situated employees. Accordingly he has prayed for grant of the relief as prayed for in this O.A.

6. On the other hand, Mr.S.Barik learned Additional CGSC appearing for the Departmental Respondents submitted that as per the direction of this Tribunal in O.A. Nos. 81 & 82/1998 dated 12.03.2000 and in O.A. No. 266/1997 dated 10.04.2002 upheld by the Hon'ble High Court of Orissa and Hon'ble Apex Court, temporary status was awarded in favour of the applicants therein retrospectively. However the Respondent No. 3 i.e. Superintending Archaeologist, Archaeological Survey of India, Bhubaneswar Circle considered the cases of the other similarly situated persons and extended the said benefit w.e.f. 03.08.2011 strictly as per the scheme of DoPT dated



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10.09.1993 in adhering to the direction of the Director General, Archaeological Survey of India, New Delhi vide letter No. 13/4/2009-Adm-II (Pt) dated 29.07.2011. Mr. Barik brought to our notice that all these applicants have accepted the said order conferring the temporary status prospectively and thereafter, the services of temporary status casual workers including the applicants in the instant OA have already been regularized against the vacant posts of Group-D, as per the guidelines/circular of DoP&T, New Delhi and taking into consideration the date of initial engagement under the establishment of the Respondent No. 3 & seniority list of the temporary status casual workers as evident from Annexure-P/2.

Besides the above, by placing reliance on the decision of the Principal Bench of this Tribunal dated 22.07.2011 in O.A.No. 2155/2011 it was contended by Mr. Barik that DoPT Scheme of "Casual Labourers (Grant of Temporary Status and Regularization) Scheme" was issued on 10.09.1993. Thus, the cause of action would be taken to

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have arisen in September, 1993. The instant OA was filed on 06.07.2011 which is after a lapse of over 17 years. Therefore, this OA is hit by the provision of Section 21 of the A.T. Act, 1985. In this regard Mr.Barik has placed reliance on the decision of the Hon'ble Apex Court in the case of **D.C.S. Negi Vrs. U.O.I. & Others** decided on 07.03.2011 in SLP (C) No. 7956/2011 (CC No. 3709/2011) in which the Hon'ble Apex Court while dismissing the appeal, have observed that the Administrative Tribunal established under the Act is duty bound to first consider whether the application is within limitation and an application can only be admitted if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21 (3). The Tribunal cannot abdicate its duty to act in accordance with the statutes under which it is established and the fact that an objection of limitation is not raised by the respondent/non applicant is not at all relevant. Thus the O.A.



filed in the year 2011 for a cause of action that arose in the year 1993 would attract limitation.

Accordingly, it was contended by Mr.Barik, Learned Additional CGSC that besides on merit, this OA being hit by the provision of Section 21 of the A.T. Act, 1985 is liable to be dismissed.

7. In view of the above, before going to the merit of the matter it is expedient to deal with the point of limitation canvassed by Mr.Barik. In the instant case, as we find the Respondent-Department in pursuance of the order of this Tribunal dated 12th May, 2000 in OA Nos.81 & 82 of 1998 and dated 10.4.2002 in OA No. 266 of 1997 –upheld by the Hon'ble High Court of Orissa and Hon'ble Supreme Court of India, conferred the temporary status retrospectively, on the Respondent Nos.4, 5 and 6 vide orders dated 11.12.2009 without considering the cases of the Applicants or similarly situated casual workers especially those who were senior to them taking into consideration the date of initial engagement. Being aggrieved, the applicants submitted representation and

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thereafter, approached this Tribunal in OA No. 376 of 2011.

The said OA was disposed of on 13.6.2011 with direction to consider the representation submitted by the applicants. In compliance of the said order the Respondents conferred the temporary status on the applicants and other similarly situated casual workers vide order dated 3.8.2011 prospectively. Again being dissatisfied with the said decision of the Respondent-Department, the applicants filed the instant OA on 16th November, 2011 which was admitted on 19.3.2012 and notice was issued to the Respondents. Therefore, the cause of action for the applicants arose on or after the order dated 3.8.2011 and certainly not from September, 1993 as submitted by Mr.Barik. In view of the above, the point of limitation raised by Mr.Barik cannot be accepted. Even otherwise also this OA cannot be unsuited on the point of limitation when the claim of the applicant is legitimate. This view gains support by a recent decision of the Hon'ble Apex Court in the case of **Tukaram Kana Joshi & Ors. through Power of Attorney Holder Vs. M.I.D.C. &**



Ors. [Civil Appeal No.7780 of 2012 arising out of SLP (C) No.2418 of 2012- disposed of on November 2, 2012] reported in (2013) 1 SCC 353 relevant portion of which is extracted herein below:

“10. The State, especially a welfare State which is governed by the Rule of Law, cannot arrogate itself to a status beyond one that is provided by the Constitution. Our Constitution is an organic and flexible one. Delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. There is another facet. The Court is required to exercise judicial discretion. The said discretion is dependent on facts and circumstances of the cases. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be mitigating factors, continuity of cause action, etc. That apart, if whole thing shocks the judicial conscience, then the Court should exercise the discretion more so, when no third party interest is involved. Thus analyzed, the petition is not hit by the doctrine of delay and laches as the same is not a constitutional limitation, the cause of action is continuous and further the situation certainly shocks judicial conscience.

11. The question of condonation of delay is one of discretion and has to be decided on the basis of the facts of the case at hand, as the same vary from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226, nor is it that there can never be a case where the Courts cannot interfere in a matter, after the passage of a certain length of time. There may be a case where the demand for justice is so compelling, that the High Court would be inclined to interfere in spite of delay. Ultimately, it would be a matter within the discretion of the Court and such discretion must be exercised fairly and justly so as to

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promote justice and not to defeat it. The validity of the party's defence must be tried upon principles substantially equitable. (Vide: P.S. Sadasivaswamy v. State of T.N. AIR 1974 SC 2271; State of M.P. & Ors. v. Nandlal Jaiswal & Ors., AIR 1987 SC 251; and Tridip Kumar Dingal & Ors. v. State of West Bengal & Ors., (2009) 1 SCC 768;)

12. No hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. **In the event that the claim made by the applicant is legally sustainable, delay should be condoned.** In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a non-deliberate delay. The court should not harm innocent parties if their rights have infact emerged, by delay on the part of the Petitioners. (Vide: Durga Prasad v. Chief Controller of Imports and Exports & Ors., AIR 1970 SC 769; Collector, Land Acquisition, Anantnag & Anr. v. Mst. Katiji & Ors., AIR 1987 SC 1353; Dehri Rohtas Light Railway Company Ltd. v. District Board, Bhojpur & Ors., AIR 1993 SC 802; Dayal Singh & Ors. v. Union of India & Ors., AIR 2003 SC 1140; and Shankara Co-op Housing Society Ltd. v. M. Prabhakar & Ors., AIR 2011 SC 2161)

13. In the case of **H.D Vora v. State of Maharashtra & Ors.**, AIR 1984 SC 866, this Court condoned a 30 year delay in approaching the court where it found violation of substantive legal rights of the applicant. In that case, the requisition of premises made by the State was assailed.

14. The High Court committed an error in holding the appellants non-suited on the ground of delay and non-availability of records, as the court failed to appreciate that the appellants had been pursuing their

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case persistently. Accepting their claim, the statutory authorities had even initiated the acquisition proceedings in 1981, which subsequently lapsed for want of further action on the part of those authorities. The claimants are illiterate and inarticulate persons, who have been deprived of their fundamental rights by the State, without it resorting to any procedure prescribed by law, without the court realizing that the enrichment of a welfare State, or of its instrumentalities, at the cost of poor farmers is not permissible, particularly when done at the behest of the State itself. The appellants belonged to a class which did not have any other vocation or any business/calling to fall back upon, for the purpose of earning their livelihood.

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16. The appellants have been deprived of their legitimate dues for about half a century. In such a fact-situation, we fail to understand for which class of citizens, the Constitution provides guarantees and rights in this regard and what is the exact percentage of the citizens of this country, to whom Constitutional/statutory benefits are accorded, in accordance with the law.

17. The appellants have been seriously discriminated against qua other persons, whose land was also acquired. Some of them were given the benefits of acquisition, including compensation in the year 1966. This kind of discrimination not only breeds corruption, but also dis-respect for governance, as it leads to frustration and to a certain extent, forces persons to take the law into their own hands. The findings of the High Court, that requisite records were not available, or that the appellants approached the authorities at a belated stage are contrary to the evidence available on record and thus, cannot be accepted and excused as it remains a slur on the system of governance and justice alike, and an anathema to the doctrine of equality, which is the soul of our Constitution."

8. Now coming to the merit of the matter it is seen that according to the Respondents, temporary status was

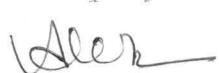
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conferred on Respondent Nos.4,5 and 6 retrospectively in compliance of the order of this Tribunal dated 12th May, 2000 in OA Nos.81 & 82 of 1998 and dated 10.4.2002 in OA No. 266 of 1997 –upheld by the Hon'ble High Court of Orissa and Hon'ble Supreme Court of India whereas the temporary status was conferred on applicants and similarly situated employees as per the DoP&T Scheme, 1993 in compliance of the order of this Tribunal, referred to above. In this regard we have perused the order of this Tribunal dated 12th May, 2000 vis-à-vis the seniority list of casual workers working under the Respondents. Nowhere it was directed by this Tribunal that temporary status should be extended to the said applicants retrospectively. The direction of this Tribunal was to consider the case of the Applicants in terms of the Scheme. Respondents considered the cases of the Respondent Nos.4, 5 and 6 and granted them temporary status on a date prior to the date of conferment of the temporary status on the applicants although it is the specific case of the Respondents that the applicants are similarly

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situated and senior to Respondent Nos.4, 5 and 6 in the seniority of casual workers maintained by the Respondent-Department. We find no logic on the principles followed in the matter of granting temporary status to the Respondent Nos.4,5 and 6 and others by the Respondents. In view of the above, there has been discrimination in the decision making process of the matter cannot be overruled. It is trite law that discretion cannot be exercised discriminatorily as it is anathema to rule of law. Further law is well settled that State is a model employer and is required to act fairly giving due regard and respect to the rules framed by it. It should always be borne in mind that the State has to see that legitimate aspiration of the employees are not guillotined and a situation is not created where hopes end in despair. Hope for everyone is gloriously precious and a model employer should not convert it to be deceitful and treacherous by playing a game of chess with their seniority. A sense of calm sensibility and concerned sincerity should be reflected in every step. An atmosphere of trust has to be prevail and when the employees



are absolutely sure that their trust shall not be betrayed and they be treated with dignified fairness then only the concept of good governance can be concretized (Re. **Bhupendra Nath Hazarika and Anr. Vrs. State of Assam and others** WITH **Bibekananda Das Vrs State of Assam and Ors, AIR 2013 SC 234**).

9. We would also like to observe that in the case of **Balram Gupta Vrs. Union of India and Anr, AIR 1987 SC 2354** the Hon'ble Apex Court have observed that as a model employer the Government must conduct itself with high probity and candour with its employees. In the case of **State of Harayana vrs. Piara Singh and Others, AIR 1992 SC 2130** it has been observed that the main concern of the court in such matters is to ensure the rule of law and to see that the Executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16.

10. On examination of the facts and law stated above, we find no ground to disentitle the applicants of the reliefs



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claimed in this OA or to dismiss this OA on the ground of limitation as raised by the Respondents. Accordingly, the Respondent Nos.1 to 3 are hereby directed to antedate the date of conferment of the temporary status of the applicants and all other similar situated casual workers working under the Respondents to the date of conferment of temporary status on the Respondent Nos.4,5 and 6 and pass the consequential order within a period of 120 days from the date of receipt of copy of this order. Resultantly, this OA stands allowed to the extent stated above. There shall be no order as to costs.



(R.C.MISRA)
Member (Admn.)



(A.K.PATNAIK)
Member (Judl.)