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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH CUTTACK.

O.A . No. 474/2012
Cuttack this the 21st day of May,2014

Suvendu Mohanty...Applicant

-Versus-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? Yes
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not ? Yes


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH CUTTACK.

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CORAM

HON'BLE SHRI A.K.PATNAIK, MEMBER(J)
HON'BLE SHRI R.C.MISRA, MEMBER(A)

Shri Suvendu Mohanty, Aged about 56 years, Son of Shri Giridhari Mohanty, 2C/182, Sector-9, CDA, Cuttack, PIN- 753 014, Casual News Reader/Presenter in DDK, Bhubaneswar.

...Applicant

By the Advocate(s)-M/s.S.K.Ojha
S.K.Nayak

-Versus-

- (1) Union of India represented through its Secretary, Government of India, Ministry of Information and Broadcasting, Shastri Bhawan, New Delhi.
- (2) Prasar Bharati Broadcasting Corporation of India represented through Chief Executive Officer, Doordarsan, Doordarshan Bhavan, Mandi House, Copernicus Marg, New Delhi, PIN-110 001.
- (3) The Director General, Prasar Bharati Broadcasting Corporation of India, Doordarshan, Doordarshan Bhavan, Mandi House Copernicus Marg, New Delhi-1.
- (4) The Director, Television Centre, Prasar Bharati Broadcasting Corporation of India, Doordarshan Kendra, Chandrasekharpur, Bhubaneswar-751 005.
- (5) The Director, News Prasar Bharati Broadcasting Corporation of India, Doordarshan Kendra, Chandrasekharpur, Bhubaneswar-751005.

...Respondents

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



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ORDERR.C.MISRA, MEMBER(A):

Applicant in this Original Application is a casual News Reader/Presenter in Door Darshan Kendra, Bhubaneswar and has approached this Tribunal seeking the following relief.

- i) To quash the decision communicated in letter dated 05.08.2011 under Annexure-A/6.
- ii) To direct the Respondents to extend the benefit of the Memorandum under Annexure-A/1 to the applicant and to other similarly situated News Readers/Presenters presenting the News in the Door Darshan and pay the differential arrear dues retrospectively.
- iii) To direct the Respondents to pay the applicant revised tariff per assignment regularly.
- iv) To direct the Respondents to pay the applicant interest at the rate of 12% on the arrears amount
- iv) To pass any other order/orders as deemed fit and proper.

2. The hearing in this O.A. was concluded on 2.1.2014, and the learned counsels for applicant and Respondents filed their written notes of submission on 20.1.2014. Orders were reserved. At the time of preparation of orders, a doubt was entertained regarding the maintainability of this O.A. before the Tribunal on account of an earlier O.A. bearing No.260/00103/14 based upon similar facts being rejected on the issue of maintainability. Therefore, the matter was posted under the heading "For Being Spoken To" on 16.4.2014 again. We have heard the



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learned counsel for both the sides on the point of jurisdiction of the Tribunal to adjudicate the case, and gone through their written notes of submission.

3. The applicant in this O.A. has averred that he has been continuing to discharge the duty of Casual News Reader in Door Darshan Kendra, Bhubaneswar on rotational basis since long. He has not given any specific date from which he is doing this work; nor has he specified the post against which he is working. He was getting Rs.800/- per day. The per day tariff was enhanced to Rs.1365/- with effect from 23.8.2006. But the applicant was not paid as per the revised rate, and with this grievance, he approached the Tribunal in the first round of litigation in O.A.No.375 of 2011. In disposing of the said O.A. on 9.6.2011, the Tribunal directed the Respondents to consider and dispose of the pending representation. The Respondents complied with the orders of the Tribunal on 5.8.2011, but by this order the applicant did not get his desired relief, and that is why he has again approached the Tribunal in the present O.A. Even though the question of maintainability was not raised in the first round of litigation, the question of maintainability needs to be addressed, as we are of the view that we should not go into the merits of the case, without answering the question of law.

4. The jurisdiction, powers and authority of the Central Administrative Tribunal have been delineated in Section 14 of the Administrative Tribunal Act, 1985. The relevant provisions are reproduced below.



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"Section-14(1)- Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all Courts [except the Supreme Court () in relation to -

- (a) recruitment, and matters concerning recruitment, to any All India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;
- (b) all service matters concerning –
 - (i) a member of any All India Service; or
 - (ii) a person [not being a member of an All India Service or a person referred to in Clause ©] appointed to any civil service of the Union or any civil post under the Union; or
 - (iii) a civilian [not being a member of an All India Service or a person referred to in Clause©] appointed to any defence services or a post connected with defence; and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or or any Corporation[or Society] owned or controlled by the Government;

©all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause(ii) or sub-clause (iii) of Clause(b), being a person whose services have been placed by a State Government or any local or other authority or any



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Corporation [or Society] or other body, at the disposal of the Central Government for such appointment".

5. The Tribunal is empowered under this provision to adjudicate all service matters concerning "*a person appointed to any civil service of the Union or any civil post under the Union*". The question that has been agitated in the present case is whether the applicant is appointed to a civil post under the Union. From the averment made in the O.A., it becomes clear that the applicant has been continuing to discharge the duty of a Casual News Reader in the Door Darshan Kendra. There has been no appointment to any 'post' as such. The reason why the applicant has come to the Tribunal is to claim revised tariff from a particular date. Therefore, strictly speaking the applicant has not been appointed to any civil post. He has not been recruited to any post, thereby is strictly debarred from the jurisdiction of the Tribunal under Section 14 of A.T.Act, 1985.

6. However, learned counsel for the applicant has forcefully submitted that even the service conditions of a casual employee can be adjudicated by the Tribunal. He has relied upon the judgment of the Hon'ble High Court of Odisha in Writ Petition(Civil) Nos.3388 and 3752 of 2010 decided on 19.3.2010, reported in 2010(Supp-1) OLR-1101. In this judgment the Hon'ble High Court has decided that "*the recruitment held for filling up the post existing in different departments of the Government of Odisha, in whatever form i.e., either contractual or casual would amount to recruitment to a "civil service", as the relationship of master and servant*



between the State and the employees exists and added to it, payments of remunerations or wages, as the case may be, are made out of the Government Exchequer". Therefore, in consonance with Section - 15 of the Act, the State Administrative Tribunal alone had jurisdiction to decide such disputes.

7. The Hon'ble High Court in this matter relied upon the decision of the Hon'ble Apex Court in the case of ***Mathurdas Mohanlal Kedia & Ors. (AIR 1981 SC 53)***. The Hon'ble Apex Court laid down the law that the true test for determination of the question whether a person is holding a civil post or is a member of the civil service is the existence of a relationship of master and servant between the State and the persons holding a post under it. Such a relationship is determined by selection, appointment, payment of remuneration and power to take disciplinary action like suspension and dismissal. Presence of all or some of these factors is the ultimate determinant of the relationship of master and servant between the Govt. and the employee.

8. The Hon'ble High Court has also adverted to the judgment of the Hon'ble Apex Court in the case of ***Union of India & Ors. vs. Deep Chand Pandey & another (AIR 1993 SC 382)*** wherein the Hon'ble Apex Court has held that the A.T.Act covers a wide field and there is nothing to suggest that the provisions dealing with the jurisdiction of the Tribunal should receive a narrow interpretation.

9. On the point of maintainability, learned counsel for the Respondents has submitted that the applicant was given news reading

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assignment on rotation basis, and he is not covered under the regularization scheme of Door Darshan. His case may not be adjudicated in the Tribunal since he is not holder of a civil post, and he is not striking a claim for regularization.

10. While deliberating upon these submissions, our attention has been drawn to the decision of Hon'ble Apex Court in the case of ***State of Karnataka vs. Ameerbi (2007) 11 SCC 681***, in which it has been held that Anganwadi workers appointed under the ICDS are not holders of any civil post, and therefore, the Tribunal had no jurisdiction to entertain the application. This verdict was on the basis of factors like posts of Anganwadi workers not being statutory in nature, and Anganwadi workers not carrying out any function of the State. The Hon'ble Apex Court noted that Anganwadi workers were free to contest an election, which a holder of a civil post would not be free to do. The rules framed under proviso to Article 309 of the Constitution of India are not attracted in case of the Anganwadi workers, while it is admitted that they have worked for a long time under a scheme which is, of course, not permanent in nature.

11. It is admitted that there is no clear and undisputed definition of a 'post', or 'a civil post'. The observation of the Constitution Bench of the Hon'ble Apex Court in the case of ***State of Assam v. Kanak Chandra Dutta (1976) SC 679: (AIR 1967 SC 884)***, as quoted below is a pointer in this regard.

"There is no formal definition of 'post' and 'civil post'. The sense in which they are used in the Services Chapter of part XIV of the Constitution is indicated by their context and

setting. A civil post is distinguished by Article 310 from a post connected with defence; it is a post on the civil as distinguished from the defence side of the administration, an employment in a civil capacity under the Union or a State".

12. We would now attempt to apply the ratio decided by the Hon'ble High Court of Odisha in ***Hrusikesh Sethi case (W.P. (Civil) Nos.3388 and 3752 of 2010)*** to the admitted facts of this O.A. To recapitulate some of the standards that are to be applied for determination of a holder of a civil post, these are; a relationship of master and servant, power to appoint, suspend and dismiss, payment of remuneration and wages. At least a few of these determinants must be present. In the present O.A., applicant has not been appointed to any post. There is no existence of power to suspend or to dismiss. No doubt, he receives remuneration for the work that he performs on assignment from the Respondents. But that is only the payment that he receives in exchange of specific work discharged. It may be recalled in this context that Hon'ble Apex Court did not hold Anganwadi workers as holders of civil posts in spite of the fact that they received honorarium from the Government and performed functions under an important scheme, called Integrated Child Development Scheme. So the mere fact that the applicant received payment as a casual News Reader from the Respondents cannot alone be the basis for determining master servant relationship. A more comprehensive test is required for deciding such a relationship. The applicant fails this test as evident from the facts that have been brought forth before us.



13. In Hrusikesh Sethi case (supra), the Hon'ble High Court of Odisha came to the conclusion that in view of the authoritative conclusions arrived at in the case of Mathuradas Mohanlal Kedia & Ors., coupled with the decision of the Supreme Court in the case of Union of India vs. Deep Chand Panday, the recruitment held for filling up of the post existing in different Departments of the Government of Odisha in whatever form, i.e., either contractual or casual, would amount to recruitment to a civil service, as the relationship of master and servant between the State and the employees exists and added to it, payments of remuneration or wages as the case may be, is being made out of the Government Exchequer. The applicant in this O.A. fails the test laid down by the Hon'ble High Court, inasmuch as he was never recruited to fill up any post in either contractual or casual capacity, by the Respondents. The applicant has not approached the Tribunal praying for regularization in the services of Respondents. He being a casual News Reader on rotational basis, has prayed for application of revised tariff fixed by the Respondents in his case.

14. The jurisdiction, powers and authority of this Tribunal are defined under Section 14 of the Administrative Tribunals Act, 1985, the details of which have been quoted earlier in this order. After a detailed discussion of the provisions of the Act, and the ratio laid down by the Hon'ble Apex Court and the Hon'ble High Court, we have come to a conclusion that the Tribunal lacks the jurisdiction and authority to decide upon the application of the present applicant.



15. Thus, the O.A. is dismissed on the ground of maintainability before the Tribunal. No costs.

(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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