

22
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.06 OF 2012
Cuttack, this the 25th Day of July, 2014

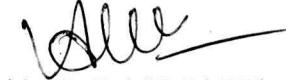
C.K. Patra..... Applicant

Vs.

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?


(A.K. PATNAIK)
MEMBER (J)

27

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. NO.06 OF 2014
Cuttack the 25th day of July, 2014

CORAM
HON'BLE MR. A.K. PATNAIK, MEMBER (J)

Chhabindra Kumar Patra,
aged about 35 years,
S/o. Harekrushna Patra of Hirapur,
P.O.-Godasrirampur, Via-Balakati,
Dist-Khurda, now working as Contingent Typist in the
Office of the Accountant General (Civil Audit),
Odisha, Bhubaneswar, Dist-Khurda..

...Applicant
(Advocates: M/s- C.R. Nandy, S. Ray, S.K. Kanungo, S.K. Barik)

VERSUS

Union of India Represented through

1. The Secretary,
Department of Finance,
Central Secretariat, North Block,
New Delhi.
2. Accountant General (Civil Audit),
Odisha, Bhubaneswar, Dist-Khurda.

... Respondents

(Advocate: Ms. Swapna Mohapatra)

ORDER

A.K. PATNAIK, MEMBER (J)

In this Original Application the applicant presently working as Contingent Typist in the office of the Accountant General (Civil Audit), Orissa, Bhubaneswar has prayed for a direction to be issued to Respondent No.2 to



24

regularize his service in any vacant post in the Pay Band-1, post of MTS or any other equal post treating his experience and granting relaxation in age applicable to his experience as casual labour, by quashing Annexure-A/7 dated 28.11.2011.

2. The short facts of the matter are that the applicant has been continuously working as Contingent Typist in the office of the Accountant General (Civil Audit), Orissa, Bhubaneswar w.e.f. 24.08.2004. According to him his engagement as Contingent Typist was converted to contractual basis for clearing the typing arrears @ Rs.5/- per page (Annexure-A/3 dated 19.11.2004. According to applicant, he having gained some experience submitted a representation to Accountant General (Civil Audit), Orissa, Bhubaneswar for consideration of his candidature for recruitment to the post of MTS. The matter having been rejected, vide Annexure-A/7, the applicant has approached this Tribunal seeking the relief as referred to above.

3. The Respondents have filed their counter opposing the prayer of the applicant. They have submitted that due to accumulation of arrear typing work in the office of Respondent No.2, the Principal of Orissa Shorthand & Type Writing Institute was requested to sponsor the names of some candidates for clearance of typing arrears and it was indicated that the engagement would cease as and when the arrears typing works are cleared. Based on this, the Principal of the Orissa Short Hand & Type Writing Institute recommended the name of the applicant and accordingly the applicant was engaged as contingent Typist on daily wage basis @72.50 per day, initially for 30 days w.e.f. 24.08.2004, which order was further

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25

extended for another month. Such engagement as contingent Typist was given by oversight of the order of Government of India issued by the Ministry of Personnel, Public Grievance & Pension (Dept. of Personnel & Training) vide O.M. dated 16.07.1990 (Annexure-R/3), by virtue of which complete ban had been imposed on the engagement of casual worker in the duties of Group – ‘C’ Post. Since Typist is a Group- ‘C’ post, the bills relating to payment of daily wage for typing of arrears was objected by the Pay and Accounts Officer and therefore, daily wage could not be paid at all. Under the circumstances, the order of engagement of the applicant as contingent Typist was modified to contractual Typist thereby stipulating his payment of remuneration @ Rs.5/- per page vide OOC No.900 dated 19.11.2004. The applicant accepted the aforesaid modification of the order of his appointment without any objection. The Respondents have submitted that the applicant was not working as a Departmental contingent/casual worker. With these submissions, Respondents have prayed for dismissal of this O.A. being devoid of merit.

4. I have heard Mr. C.R. Nandi, Ld. Counsel appearing for the applicant and Ms. S. Mohapatra, Ld. Addl. CGSC appearing for the Respondents and perused the materials on record. I have also gone through the rejoinder as well as written note of submission filed by the applicant. The order dated 28.11.2011 which is impugned and sought to be quashed, reads as under :

“With reference to his representation dated 02.11.2011 to treat him as Casual Worker in this office for the period of his work as Contractual Typist for the purpose of gaining benefits in the present recruitment to



MTS cadre has been considered by the Competent Authority but his request was rejected as it was against provisions of Rule".

5. Admittedly, applicant has been working as contractual Typist. In recent part, this Tribunal dismissed many more matters on the point of maintainability by holding that persons engaged on contractual basis are not the holder of civil posts and as such, they cannot be said to have been appointed in connection with the affairs of the Union of State and thus cases filed by the persons working on casual basis is not maintainable before this Tribunal. This is well supported by the decision of the Hon'ble High Court of Orissa dated 11.07.2005 in **WP (C) No. 4601 of 2003 (S.Bhaskar Dora-Vrs-Union of India and Others)**.

Relevant portion of the order is extracted herein below:

"The question has arisen before this Court as to whether the Tribunal has jurisdiction to entertain the OA against the disengagement of the petitioner a casual Sweeper engaged on daily wage basis. In this regard the provisions of section 14 (1) of the Act are reproduced as under:

Jurisdiction, powers and authority of the Central Administrative Tribunal (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 Unjoin 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 (C)] appointed to any



27

- 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 (c)] 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 under the control of the Government of India or of any Corporation (or society) owned or controlled by the Government.
- (c) 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 Corporation (or society) or other body, at the disposal of the Central Government for such appointment.

Perusal of the above quoted provision shows that the Tribunal has jurisdiction to deal with the matters in relation to the 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 and also all service matters concerning number of all India Services or a person not being a member of All India Service but appointed to any Civil Service of Union or Civil Post under the Union. A casual worker can neither be said to be a holder of a Civil post nor can be said to be a member of any service under the Union. The petitioner was engaged only as a casual Sweeper on daily wage basis and hence his disengagement was not liable to be scrutinized by the Tribunal under the Act. Therefore, we have no hesitation to say that the impugned order of the Tribunal entertaining the O.A. and dismissing the same observing that it is time barred is without jurisdiction.

Before this Court, the petitioner has not only challenged the impugned order passed by the Tribunal but also prayed for a writ of mandamus directing the opposite parties to reinstate the petitioner in service from the date of his termination/preventing time to work (27.04.1993), to pay back wages and to regularize the petitioner in service.

The petitioner was disengaged in the year 1994. At this stage neither it can be directed to the opposite parties to reinstate the petitioner or to pay back wages nor any direction to regularize him in service can be issued. At the most the opposite parties may be



28

directed to consider his case for reengagement whenever service of a casual sweeper is required in the Department.

In view of the above facts and circumstance of the case, the writ application is allowed in part. **The impugned order passed by the Central Administrative Tribunal in O.A. No.543 of 2001 is quashed as the same is without the jurisdiction.** A writ in the nature of **mandamus** be issued commanding the opposite parties to consider the reengagement of the petitioner on priority basis whenever service of a casual Sweeper is required in future."

6. In the above case, the Hon'ble High Court of Orissa, after taking note of the provision of the A.T. Act, 1985, quashed the order of this Tribunal holding that the same was without jurisdiction and consequently, issued direction, in exercising the power under Article 226 of the Constitution of India to the Department to consider the reengagement of the petitioner therein, on priority basis, whenever service of a casual Sweeper is required in future and this Tribunal is bound by the order of the Hon'ble High Court of Orissa as it is trite law that where a court lacks inherent jurisdiction in passing a decree or making an order, a decree or order passed by such court would be without jurisdiction, non-est and void ab initio. The defect of jurisdiction strikes at the authority of the court to pass a decree which cannot be cured by consent or waiver of the party. In the instant case the applicant claiming to have been continuing on casual and daily rated basis prays for direction to the Respondents for his regularization and therefore following the order of the Hon'ble High Court of Orissa (supra) we are of the considered view that this Tribunal lacks jurisdiction to decide this matter. Hence, by applying the law laid down by the Hon'ble High Court of Orissa, quoted



29

above, this OA stands dismissed being without jurisdiction. There shall be no order as to costs.



(A.K.PATNAIK)
Member (Judicial)

