3

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 260/00555 OF 2014
Cuttack, this the 24th day of July, 2014

CORAM
HON'BLE MR. A.K. PATNAIK, MEMBER (Judl.)
HON'BLE MR. R.C. MISRA, MEMBER (Admn.)

.....

Nakula Kumar Bhuyan,
Aged about 38 years,
S/o- Late Golakha Bhuyan,
At/PO- Chandrasekhar Prasad,
P.S.- Dhenkanal Sadar, Dist- Dhenkanal,
now working as a Causal worker awarded with 1/30th status,
at Kapileswar Mahadev Temple,
Archaeological Survey of India site,
At/PO- Kamakhya Nagar, Dist- Dhenkanal, Orissa.

.....Applicant

Advocate(s)... Mr. P.B.Mohapatra)

VERSUS

Union of India represented through

1. The Secretary,
   Department of Culture,
   Ministry of Human Resources and Development,
   Sashtri Bhawan, New Delh-110001.
2. Director General,
   Archaeological Survey of India,
   Janpath, New Delhi-110011.
3. Superintending Archaeologist,
   Archaeological Survey of India,
   Bhubaneswar Circle, At- Toshasli Apartment,
   Block No. VI (B), PO- Satyanagar,
   Bhubaneswar, Dist- Khurda.

..... Respondents

Advocate(s)..... Mr. G.Singh

ORDER (ORAL)

A.K.PATNAIK, MEMBER (JUDL.):

The applicant has filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985 for consideration of his case for grant of temporary status from the retrospective effect and to extend all the service

and consequential benefits from the date of enjoyment of such benefit like others. It is the case of the applicant although he got 1/30th status w.e.f. 16.09.2008, he is yet to be granted the Temporary Status whereas, in the meantime, Respondent No.3 granted Temporary Status to other similarly situated persons. He submitted that he had earlier filed O.A. No. 388/13, which was disposed of with direction to the Respondents to consider his representation. In compliance of the said order, Respondent No. 3 considered his representation and rejected the same vide order dated 10.12.2013.

2. Heard Mr. P.B.Mohapatra, Ld. Counsel for the applicant, and Mr. G. Singh, Learned Addl. Central Govt. Standing Counsel appearing for the Respondents and perused the records.

3. We do not feel necessity to deal with the arguments advanced by respective parties as we find that as per the order of the Hon'ble High Court of Orissa **dated 11.7.2005 in WP (C) No. 4601 of 2003 (S.Bhaskar Dora-Vrs-Union of India and Others)** this OA is not maintainable before this Tribunal. The Petitioner in the said case was engaged as a casual sweeper under the Opposite Parties in the year 1993. He was disengaged on 01.05.1994. He filed OA No. 543 of 2001 before this Tribunal under section 19 of the A.T. Act, 1985 which was heard and dismissed by this Tribunal being grossly time barred. Thereafter, the petitioner challenged the said order before the Hon'ble High Court of Orissa in WP (C) No. 4601 of 2003 which was heard and disposed of on 11.07.2005. Relevant portion of the order is quoted 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 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 maters 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 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 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."

4. As could be evident from the order quoted above, 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 being without jurisdiction and consequently, issued direction in exercising the power under Article 226 of the Constitution of India, to consider the reengagement of the petitioner therein on priority basis whenever service of a casual Sweeper is required in future. This Tribunal is bound by the order of the Hon'ble High Court of Orissa. 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, admittedly, is a casual worker and obviously this Tribunal lacks jurisdiction to decide the matter. Hence by applying the law laid down by the Hon'ble High Court of Orissa, quoted above, this OA is not maintainable before this Tribunal.

5. Accordingly, this OA is dismissed being without jurisdiction. There shall be no order as to costs.

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

(A.K.PATNAIK)
Member (Judicial)

RK