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MA No. 81 of 2006 (Arising out of OA No. 668 of 2003)

ORDER DATED 30th OCTOBER 2007

MA No. 81 of 2006 was placed before the Bench on 31.7.2007 when the Learned Counsel M/S. Sidhartha S.Mohapatra and J.K.Swain for the Applicant and the Learned Counsel Mr.S.B.Jena, the learned Additional Standing Counsel for the Respondents or anybody on their behalf including their respective parties in person, were absent due to Advocates' strike on Court work before this Bench purportedly on the basis of the CAT Bar resolutions passed without substance or value but violating principles of natural justice too. In this connection, I would like to refer to the decision in the case of Ramon Services Private Limited Vrs. Subash Kapoor and Others, reported in JT 2000 (suppl. 2) Supreme Court 546, holding as follows:

> "When the advocate who was engaged by a party was on strike, there is no obligation on the part of the court either to wait or to adjourn the case on that account. It is not agreeable that the courts had earlier sympathized with the Bar and agreed to adjourn cases during the strikes or boycotts. If any court had adjourned cases during such periods, it was not due to any sympathy for the strikes or boycotts, but due to helplessness in certain cases to do otherwise without the aid of a Counsel." (Judgement Paras-5 & 14)
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> "In future, the advocate would also be answerable for the consequence suffered by the party if the non-appearance was solely on the ground of a strike call. It is unjust and inequitable to cause the party alone to suffer for the self imposed dereliction of his advocate. The litigant who suffers entirely on account of his advocate's non-appearance in court, has also the remedy to sue the advocate for damages but that remedy would remain unaffected by the course adopted in this case. Even so, in situations like this, when the court mulcts the party with costs for the failure of his advocate to appear, the same court has power to permit the party to realize the costs from the advocate concerned. However, such direction can be passed only after affording an opportunity to the advocate. If he has any justifiable cause, the court can certainly absolve him from such a liability. But the advocate cannot get absolved merely on the ground that he did not attend the court as he or his association was on a strike. If any Advocate claims that his right to strike must be without any loss to him but the loss must only be for his innocent client, such a claim is repugnant to any principle of fair play and canons of ethics. So, when he opts to

strike work or boycott the court, he must as well be prepared to bear at least the pecuniary loss suffered by the litigant client who entrusted his brief to that advocate with all confidence that his cause would be safe in the hands of that advocate." (Para-15)

"In all cases where court is satisfied that the ex parte order (passed due to the absence of the advocate pursuant to any strike call) could be set aside on terms, the court can as well permit the party to realize the costs from the advocate concerned without driving such party to initiate another legal action against the advocate." (Para-16)

"Strikes by the professionals including the advocates cannot be equated with strikes undertaken by the industrial workers in accordance with the statutory provisions. The services rendered by the advocates to their clients are regulated by a contract between the two, besides statutory limitations, restrictions, and guidelines incorporated in the Advocates Act, the Rules made thereunder and Rules of procedure adopted by the Supreme Court and the High Courts. Abstaining from the courts by the advocates, by and large, does not only affect the persons belonging to the legal profession but also hampers the process of justice sometimes urgently needed by the consumers of justice, the litigants. Legal profession is essentially a service oriented profession. The relationship between the lawyer and his client is one of trust and confidence." (Para-22)

"No advocate could take it for granted that he will appear in the Court according to his whim or convenience. It would be against professional ethics for a lawyer to abstain from the Court when the cause of his client is called for hearing or further proceedings. In the light of the consistent views of the judiciary regarding the strike by the advocates, no leniency can be shown to the defaulting party and if the circumstances warrant to put such party back in the position as it existed before the strike. In that event, the adversary is entitled to be paid exemplary costs. The litigant suffering costs has a right to be compensated by his defaulting Counsel for the costs paid. In appropriate cases, the Court itself could pass effective orders, for dispensation of justice with the object of inspiring confidence of the common man in the effectiveness of judicial system. Inaction will surely contribute to the erosion of ethics and values in the legal profession. The defaulting Courts may also be contributory to the contempt of this Court."

(Paras-24, 27 & 28)

2. Keeping in view the aforesaid case law laid down by the Hon'ble Supreme Court, condemning severely such strike as contempt of Court particularly Hon'ble Supreme Court itself and leaving the Ld.Counsels including those representing Government/s at the peril of facing the consequences thereof, the available record on hand has been perused for adjudicating the issue as below.

3. M.A.No. 81 of 2006 has been filed by the applicant in O.A.No. 668 of 2003 praying for a direction to Respondent No.3 to allow the applicant to work under him and pay remuneration to the applicant from the wages. The applicant has averred in the M.A. that in the Original Application No. 668 of 2003 he had prayed for a direction to the Respondents to consider his case for appointment as per Annexures 5 and 7. By order dated 9.10.2003 the Tribunal disposed of the said O.A. directing that the case of the applicant is to be considered for grant of temporary status in accordance with the scheme. R.A.No.26 of 2003 filed by the Respondent-Department was disposed of on 26.9.2005 declining to interfere with the matter on the ground that the applicant was still working on casual basis under the Respondents.

4. The applicant's grievance in MA No.81 of 2006 is that he is in fact not continuing under the Respondent No.3, but has been working on daily wage basis in the office of the Chief Commissioner of Income Tax and one Sudarshan Behera has been allowed to work in the office of Respondent No.3.

5. The Respondents have filed an objection to MA No.81 of 2006 refuting the claim of the applicant. They have stated that the applicant, who was engaged in the office of Respondent No.3 w.e.f. 4.11.1996 as casual labour, was disengaged w.e.f. 6.11.2001 and therefore the Government of India scheme is not applicable to the case of the applicant in as much as he was not in service as on 1.9.1993 when the said

scheme came into force. After his disengagement w.e.f. 6.11.2001 the applicant was engaged as casual labour on daily rate of wages in the office of the Chief Commissioner of Income Tax, Bhubanswar and has been working as such till now. In view of this, the applicant's claim is untenable and the M.A. is liable to be rejected.

6. The applicant has also filed a reply to the Respondent's objection to MA No. 81 of 2006 wherein while reiterating his stand taken in the MA he has admitted that after his disengagement as casual labour on daily wage basis in the office of Respondent No.3 w.e.f. 6.11.2001, he has admitted to have been continuing as casual labour on daily wage basis in the office of the Chief Commissioner of Income Tax,Bhubaneswar and has, more or less, challenged his earlier disengagement w.e.f. 6.11.2001 and continuance of one Sudarsan Behera as casual labour on daily wage basis in the office of Respondent NO.3.

7. Upon perusal of the records and the order dated 9.10.2003 passed by the Tribunal finally disposing of O.A.No.668 of 2003 I find that the applicant had filed the said O.A. praying for a direction to the Respondents to consider the applicant's case in the light of Annexures 5 to 7 and 7/A and to allow the applicant to render his duty as he was working previously as a daily wager/casual labourer. The Original Application was for the first time placed before the learned Single Member Benchon 9.10.2003 for considering the question of admission. The learned Single Member Bench, without issuing notices to the Respondents, disposed of the O.A. by order dated 9.10.2003 with the direction to the Respondents to examine the grievance of the applicant as raised in the O.A. and grant him necessary relief, as due and admissible under the rules within a stipulated period. It was also directed by the learned Single

Member Bench that the Respondents should treat the paper book of the Original Application as a representation of the applicant to the Respondents and do the needful within the time frame indicated in the order. It is also the admitted case of the applicant as well as the respondents that the RA No.26 of 2003 filed by the Respondents to review the earlier order dated 9.10.2003 was rejected by the learned Single Member Bench. On the basis of these orders passed in the OA and the RA, the applicant has laid the present claim in the MA. After giving my anxious consideration to the facts and circumstances of the case, I am of the considered opinion that the applicant has virtually challenged his disengagement as casual labour in the office of Respondent No.3 and continuance of one Sudarsan Behera as casual labour in the office of Respondent No.3. Even in the O.A. the applicant had not assailed the same. Be that as it may, OA No.668 of 2003 having already been finally disposed of by the Tribunal by order dated 9.10.2003 and RA 26 of 2003 seeking review of the order dated 9.10.2003 having been dismissed, the present MA No.81 of 2006 filed after more than two years, in my considered view, apart from being not maintainable, is barred by limitation. The applicant cannot also be permitted to file MA No.81 of 2006 to widen the scope of the Original Application No. 668 of 2003 which has already been disposed of as stated earlier.

8. In consideration of all the above, MA No.81 of 2006 is rejected. No costs.

(N.D.RAGHAVAN)
VICE-CHAIRMAN

fix for pronouncement on
03.10.07 at P.M.