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**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**CUTTACK BENCH: CUTTACK**

ORIGINAL APPLICATION NO.752 OF 2005  
DECIDED ON **3RD** OF ~~SEPTEMBER~~ **OCTOBER**, 2007

Sukamuni Minz .....Applicant

VERSUS

Union of India & Others .....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? **NO** .
2. Whether it be circulated to all the Benches of Central Administrative Tribunal or not? **NO** .



N.D.RAGHAVAN  
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.752 OF 2005  
DECIDED ON 03<sup>rd</sup> OF OCTOBER, 2007

CORAM:

HON'BLE SHRI N.D.RAGHAVAN, VICE-CHAIRMAN

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IN THE CASE OF:

Sukamuni Minz, aged about 28 years, wife of late Bipin Bihari Minz,  
At/P.O.Rasarajpur, P.s.Sadar, Dt.Sindargarh.

..... Applicant

Advocates for the Applicant

.....M/S.A.K.Nanda,  
D.Rath &  
S.K.Bhanjadeo.

Versus:

1. Union of India, represented through its Commissioner, Kendriya Vidyalaya Sangathan Estt.(iii) Sector-18, Institutional Area, Saheed Jeet Marg, New Delhi-110016.
2. Asst.Commissioner, Administration & Finance, Kendriya Vidyalaya Sangathan Estt.(iii) Sector-18, Institutional Area, Saheed Jeet Marg, New Delhi-110016.
3. Asst. Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, At/P.O.Bhubaneswar, Dist.Khurda.
4. Principal, Kendriya Vidyalaya, At/P.O.Sundargarh.

..... Respondents

Advocates for the Respondents

.....Mr.Ashok Mohanty,  
M/S.J.Sahu,  
H.K.Tripathy &  
S.Ray.

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ORDER

SHRI N.D.RAGHAVAN, VICE-CHAIRMAN

This matter was listed for hearing on 7.8.2006, 21.8.2006, 23.8.2006, 28.8.2006, 30.3.2007, 7.5.2007 and 2.7.2007 when the matter was adjourned from time to time on the request of the learned counsel for either side. On 2.7.2007 the matter was adjourned to 30.7.2007. On 30.7.2007 the learned counsels M/s A.K.Nanda, D.Rath and S.K.Bhanjadeo for the applicant and M/s Ashok Mohanty, J.Sahoo, H.K.Tripathy and S.Roy for the Respondents remained absent due to advocates' strike on Court work before this Bench purportedly on the basis of the CAT Bar Association resolutions passed without <sup>— any basis, vide</sup> 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.”  
(Judgment Paras-5 & 14)



"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

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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)

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<sup>lib</sup> at the peril of facing the consequences thereof and in view of the provisions contained in Section 22(2) of the Administrative Tribunals Act, 1985 that Tribunal shall decide every application made to it as expeditiously as possible and ordinarily every application shall be decided on a perusal of the documents and written representations and after hearing such oral arguments, as may be advanced and in accordance with Rule 15

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of the CAT (Procedure) Rules, 1987, the available record on hand has been perused for adjudicating the issue as below.

2. Brief facts of the case of the applicant are that her husband, while working as a Group D employee at Kendriya Vidyalaya, Sundargarh, passed away on 21.10.2002. The applicant's prayer for compassionate appointment having been rejected vide Annexures A/3, A/5 and A/7 dated 24.12.2003, 3.1.2004 and 26.3.2004 respectively, this O.A. has been filed with the following prayer:

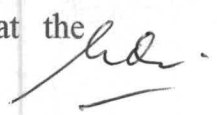
“8. Relief sought:

(a) To quash the order/letter dated 24.12.03, 3.1.04 and 26.3.04 at Annexures 4,5 and 7 respectively passed by the respondents.

(b) To direct the respondents to consider the case of the applicant for her appointment in any post on compassionate ground, as per her eligibility, within a stipulated period as may be deemed just and proper by the Hon'ble Tribunal.

(b) Pass such other order/orders/directions as may be deemed just and proper in the circumstances of the case.”

3. Respondent-KVS have filed their counter. In their counter, they have submitted that in terms of the Department of Personnel & Training O.M. dated 9.10.1998 compassionate appointment could be granted to the eligible persons within 5% of the total existing vacancies in Group C (LDC) and Group D cadres against the direct recruitment quota. It has been further submitted that in the Kendriya Vidyalaya Sangathan there is no direct recruitment to Group D posts as the work of these posts is being managed by outsourcing it. The Respondent-KVS have further submitted that the




- 5 - 16

services, like, cleaning, watch and ward duty and gardening work have been assigned to private agencies and that the vacancies in Group D cadre have been surrendered. However, the applicant's name has been enlisted for circulation to other Departments through the Ministry of H.R.D. for compassionate appointment.

4. I have considered the pleadings of the parties. Having regard to the facts and circumstances, I direct Respondent No.1, i.e., Commissioner, Kendriya Vidyalaya Sangathan, New Delhi, to intimate the applicant with regard to the fate of her prayer for compassionate appointment in view of the submission made in the counter that the applicant's name has been circulated to other Departments through the Ministry of H.R.D. The applicant shall also be communicated with the detailed information as to which Department her name has been recommended and forwarded by the Ministry of H.R.D. for compassionate appointment and at what stage the matter now stands, so that the applicant can <sup>- know her -</sup> ~~be~~ her fate.

5. With the above observation and direction, the O.A. is disposed of. No costs.

  
(N.D. RAGHAVAN)  
VICE-CHAIRMAN

fix for pronouncement on  
03.10.07 at P.M.

