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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.NO. 930 OF 2005
Cuttack, this the 3rd day of ~~September~~^{October}, 2007

Smt. Binodini Mohanty and another Applicants
Vrs.
Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not ? *Yes*.
2. Whether it be sent to the Principal Bench or not ? *Yes*.


(N.D.RAGHAVAN)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.NO. 930 OF 2005
Cuttack, this the 3rd day of ~~September~~^{October}, 2007

CORAM:

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

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1. Smt. Binodini Mohanty, aged about 49 years, w/o late Madan Mohan Mohanty, At-Sukula, P.O. Sikula, P.S.Purusottampur, Dist. Ganjam, now residing at/PO-Buguda, Dist. Ganjam.
2. Sri Santosh Kumar Mohanty @ Rajendra Narayan Mohanty, aged about 28 years, son of late Madan Mohan Mohanty, At-Sikula, P.O.Sukula, P.S.Purushottampur, Dist. Ganjam, now residing At/PO/PS-Buguda, Dist. GanjamApplicants

Advocates for applicants - M/s P.K.Mishra,
A.K.Panda & S.S.Mishra

Vrs.

1. Union of India, represented through its Secretary, Ministry of Human Resources, At-Shastri Bhawan, New Delhi.
2. Director General, Archaeological Survey of India, Janpath, New Delhi 110011.
3. The Superintendent Archaeological Chemist, Archaeological Survey of India, Chemistry Branch, Kedar Gouri Road, Bhubaneswar.
4. The Principal Pay & Accounts Officer, Ministry of Human Resource & Development, At-Shastri Bhawan, 'C' Wing, New Delhi.
5. The Director (Science), Archaeological Survey of India, 29, New Cantonment, Dehradun 248001

..... Respondents

Advocate for Respondents - Mr.U.B.Mohapatra, SCGSC.

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O R D E R

12/ SHRI N.D.RAGHAVAN, VICE-CHAIRMAN

Bereft of unnecessary details, it would suffice to note that the two applicants are the widow and son of one Madan Mohan Mohanty who, while working as Attendant under the Respondents, passed away on 30.7.2000 at the age of 51 years. Consequent upon the death of Madan Mohan Mohanty (hereinafter referred to as 'the deceased Government servant'), the terminal dues including family pension were paid to applicant no.1. It is the grievance of the applicants that the Respondent-Department have failed to consider the repeated approaches made by the widow-applicant No.1 for providing employment assistance to applicant No.2 on account of the premature death of the deceased Government servant. They have, therefore, filed this Original Application praying for the following relief:

“8. Relief(s) sought:-

In view of the facts mentioned in paragraph 4, the applicants pray for the following reliefs:-

This Hon'ble Tribunal may direct the Respondents to appoint the applicant no.2 in Group D post by considering the representations and documents submitted by the applicants before them which are still pending at their end;

And further pray to pass any other order/orders as deemed fit and proper.

And for such act of kindness, the applicants shall as in duty bound ever pray.”

2. The Respondents, by filing a detailed counter, have refuted the claim of the applicants. The applicants have also filed a rejoinder thereto.



3. I have perused the pleadings and considered the rival contentions, from which the sole point, which arises for consideration is whether or not the Respondents-Department have considered the request made by applicant No.1, the widow, for providing compassionate appointment to applicant No.2 in accordance with the Scheme of Compassionate Appointment.

4. Perusal of the pleadings and the documents furnished by the parties reveals that the Director (Admn.), Archaeological Survey of India, Government of India, New Delhi, by letter dated 3.11.2003 (Annexure 14 to the O.A.), informed the Superintending Archaeological Chemist, ASI, Bhubaneswar, that the Committee constituted by the competent authority to consider the appointments on compassionate grounds as per the provision made in para 12(C) of the Scheme for Compassionate Appointment and guidelines issued by DoP&T, examined the application of Shri Santosh Kumar Mohanty (applicant No.2) and after taking into account the financial resources, liabilities/assets, etc. of the family of the deceased Government Servant, did not recommend the case of the applicant No.2 for appointment on compassionate grounds. The said Superintending Archaeologist, ASI, Bhubaneswar, was also requested under the said letter to inform applicant No.2 accordingly. The Office Memorandum dated 18.11.2003 (Annexure R/15 to the counter) shows the applicant to have received the said O.M. along with the letter dated 3.11.2003. In this view of the matter, the contention of the applicants that



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the Respondent-Department have not considered the request made by applicant No.1 for providing compassionate appointment to applicant No.2 is untenable.

5. The next aspect of the matter is as to whether the Respondent-Department have duly considered the claim of the applicants in accordance with the Scheme for Compassionate Appointment. The Respondent-Department have issued circular dated 2.1.2002 formulating the Scheme for compassionate appointment in consonance with DoP&T's letter dated 9.10.1998 and its subsequent revised instruction vide letter dated 4.9.2001. It has been laid down therein that the object of the scheme is to grant appointment on compassionate grounds to a dependent family member of a Government servant dying in harness. The eligibility criteria while recommending such cases on compassionate grounds should be that the family of the deceased is indigent and deserves immediate assistance for relief from financial destitution and economic distress. The Head of Office will satisfy himself that the grant of compassionate appointment is justified before recommending such cases. In accordance with the Respondent-Department's circular dated 2.1.2002 The Welfare Officer/Asst. Archaeological Chemist, Bhubaneswar, conducted an enquiry and submitted his report. The said report is the enclosure to Annexure R/10. The enquiry report, inter alia, reveals that Madan Mohan Mohanty, the deceased Government servant joined the post of Attendant in the office of Assistant Superintending



Archaeological Chemist, Eastern Zone, Bhubaneswar, on 11.6.1974 on compassionate ground due to the death of his brother-in-law late Musa Mohanty, ex-Attendant. As per the order passed by the Civil Court, Rs.1000/- was being deducted from the salary of the deceased Government servant and sent to the Registrar, Civil Courts, Berhampur, from February 1999 to June 2000 towards maintenance payable to the applicants. The applicants were not staying with the deceased Government servant. After the death of the deceased Government servant on 30.7.2000 payment of DCRG, GPF balance, encashment of leave, etc. Rs.2,21, 591/- was made to the applicant. Applicant No.1 was also getting family pension at Rs.1790/- + DA, which came to Rs.2667/-.

Applicant No.1, along with her son applicant No.2, had been staying with her brother at village Pathuria Sahi, Buguda, Ganjam at the residence of her brother since last 20 years. It also revealed that the deceased Government servant and his daughter were staying at Kapilprasad, Bhubaneswar, with his sister's family as he got the job on compassionate ground after the death of his brother-in-law and that the daughter of the deceased Government servant got married a few years back. Applicant No.1 was working as temporary worker in the Anganwadi Centre and getting Rs.300/- per month. During enquiry, the Welfare Officer also recorded the statements of different villagers, and on the basis of these statements and available records pertaining to the death of brother-in-law of the deceased Government servant as well as the



compassionate appointment provided to the deceased Government servant, the enquiry report was submitted by him.

6. From the above recitals, it is clear that the husband of applicant No.1 got the job under the Respondent-Department on compassionate grounds on account of death of his brother-in-law Musa Mohanty, ex-Attendant, with an undertaking that he would look after the family of Musa Mohanty. Applicant No.1, widow of the deceased Government servant, along with her son applicant No.2 were living separate from the deceased Government servant and were receiving maintenance of Rs.1000/- from the deceased Government servant by virtue of civil court's order. All the terminal dues and the family pension were paid to applicant no.1. The only daughter of the deceased Government servant got married and his family consisted only of the applicants, i.e., the widow and son. It is also found on enquiry by the Welfare Officer that applicant No.1 has been working in Anganwadi Centre and getting monthly remuneration of Rs.300/-. She is also in receipt of monthly family pension of Rs.2667/-. In consideration of these findings recorded by the Welfare Officer deputed by the Respondent-Department to enquire into the indigent condition of the family of the deceased Government servant, I do not find any infirmity or illegality in the decision of the Respondent-Department denying employment assistance to applicant No.2.



7. Besides, the rejection of the claim of the applicants for providing employment assistance to applicant No.2 was communicated to the applicants 19.11.2003 (Annexure R/15) which shows applicant No.2 to have acknowledged the receipt of the same. But the applicants have filed this Original Application on 30.11.2005, i.e., after more than two years from the date the decision was communicated to the applicants. The applicants, if at all aggrieved by the said decision, should have approached this Tribunal within a period of one year from the date when the decision was communicated to them. In consideration of this, the Original Application is barred by limitation. The applicants appear to have made further representation on 15.12.2003 (Annexure 16), but such representation cannot be held to have saved the limitation.

8. For the foregoing reasons, the Original Application is held to be without any merit, besides being barred by limitation. However, the rejection of this O.A. is not a bar for the disposal of such representation in one way or the other in accordance with law and by a speaking order.

9. Before parting with, I am constrained to record here that the learned counsels M/s P.K.Mishra (who appears to have taken for granted ~~- leave for her~~ his seeking accommodation from 23.7.2007 to 1.8.2007), A.K.Panda and S.S.Mishra for the applicants and the learned Senior Standing Counsel Mr.U.B.Mohapatra for the Respondents, including ~~their~~ 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 Association



VS
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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.”
(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)



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"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."

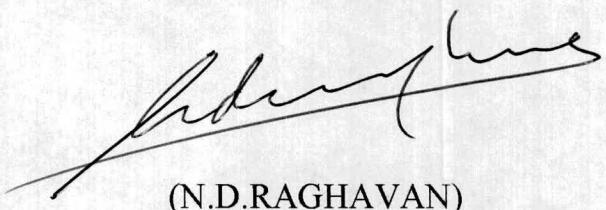
(Paras-24, 27 & 28)

10. 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 at the peril of facing the
consequences thereof, the available record on hand has been perused ~~the~~ I
have adjudicated as above this old O.A. adjourned from the year 2005
onwards. *from time to time. L.R.*

11. In the result, the Original Application is rejected accordingly
as above. No costs.


(N.D.RAGHAVAN)
VICE-CHAIRMAN

PPS

fix for pronouncement
on 03.10.07 at P.M.
L.R.