

11

O.A. No.61 of 2006

Udayanath Tripathy

.....

Applicant

Vrs.

Kendriya Vidyalaya Sanghathan and others.....Respondents

ORDER DATED 30<sup>th</sup> OCTOBER 2007

This O.A. was listed for hearing on 24.4.2007, 30.4.2007, 7.5.2007 and 2.7.2007 when hearing was adjourned from time to time on the request of the learned counsel for either side. On 2.7.2007 the O.A. was adjourned to 31.7.2007 when the learned counsel M/s PRJ Dash and P.K. Behera for the applicant and the learned counsels M/s J.Sahu, H.K. Tripathy, J.P. Patra, S. Ray and Ashok Mohanty 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 *- any basis,* 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)

"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

*[Signature]*

13

- 3 -

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 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



-4-

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

2. Applicant Shri Udayanath Tripathy, now working as PGT (History), K.V.No.1, Bhubaneswar, by filing this O.A., has prayed for the following relief:

“8. RELIEF SOUGHT:

Under the circumstances, the applicant humbly prays that the Hon'ble Court may be pleased to quash the letter under Annexure A/6 and further be pleased to direct the Respondents-KVS to pay the Applicant all his transfer allowances i.e. TA etc. as per the Rule 15 of the transfer guidelines with interest;

And further be pleased to pass any other order/orders as deemed fit and proper.”

3. Respondent-KVS by filing their counter have stated that the Transfer TA to the tune of Rs.24,894/- has already been paid to the applicant by Demand Draft. They annexed to the counter Annexure R/1 in support of this statement.

4. The applicant has not filed any rejoinder disputing the above statement made by the Respondent-KVS.

5. In consideration of the above, I am of the opinion that the prayer of the applicant has already been allowed by the Respondent-KVS and therefore, this O.A. has <sup>- been ~~been~~</sup> rendered infructuous.

6. In the result, the O.A. is disposed of as infructuous. No costs.

  
(N.D. RAGHAVAN)  
VICE-CHAIRMAN

*fix for pronouncement.*

*lid*