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O.A.NO. 97 of 2006

Bharat Ch.Das and 24 others .....

Applicants

Vrs.


Union of India and 14 others .....

Respondents

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

This Original Application was filed on 30.1.2006 and placed before the Bench for considering the question of admission on 30.1.2006 when notices on the question of admission were directed to be issued to the Respondents requiring them to file counter within six weeks. Thereafter it was placed before the Deputy Registrar on 25.5.2006, 9.8.2006, 27.11.2006 and 2.1.2007 when time was extended by him for filing of counter. Counter was filed by the Respondents on 5.1.2007. The matter was again placed before the Deputy Registrar on 1.2.2007 when time was granted by him to the applicants to file rejoinder. Thereafter the matter was placed before the Bench on 2.3.2007, 5.3.2007, 13.3.2007, 23.3.2007, 8.5.2007, 9.5.2007 and 6.7.2007 for the purpose of filing of rejoinder and removal of some defects in the counter. But no rejoinder was filed by the applicants and the defects, as pointed out by the Registry, were not removed by the Respondents.

2. When the O.A. was placed before the Bench on 24.7.2007 for considering the question of admission and continuance or otherwise of the interim order of stay granted on 31.1.2006, <sup>9</sup>and for the reasons indicated in the order dated 24.7.2007 the Bench adjourned the same to 26.7.2007. On 26.7.2007 two out of the twenty-five applicants were present and the learned counsels M/s S.Pattnaik and D.K.Mohanty for the applicants and Ms.S.Mohapatra, the learned Additional Standing Counsel and Mr.B.Dash, the learned Additional Standing Counsel both for the Respondents remained absent due to ~~due to~~ Advocates' strike on Court work before this Bench purportedly on the basis of the CAT Bar resolutions passed without <sup>- any basis, in</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 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)



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*"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)

3. 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.

4. Brief facts of the twenty-five applicants are that they have been continuing as casual workers with temporary status in **Group-D posts** in the Respondent-organization (vide statement Annexure A/1). According to the applicants, in terms of Government of India, DoP&T, OM dated 10.9.1993 (Annexure A/2) and the Prasar Bharati's O.M. dated 25.2.1993 (Annexure A/3) steps had been taken by the Respondents, vide Annexures A/4, A/5 and A/6, the services of the applicants were not yet been regularized despite availability of vacancies in different Group D posts and therefore, O.A.Nos. 675, 703-725 and 806 of 2005 were filed by them before the Tribunal. These O.As. were finally disposed of by the Tribunal by order dated 19.8.2005 (Annexure A/7) with direction to the Respondents to consider the grievances of the applicants as raised in the representations.

4.1 It has been stated by the applicants that Respondent No.1, the Director General, Doordarshan/Prasar Bharati (Broadcasting Corporation of India), by O.M. dated



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17.10.2005 (Annexure A/8), while forwarding the copy of the aforesaid O.As. along with the copy of the order dated 19.8.2005 passed by the Tribunal, informed Respondent No.4, the Director, Doordarshan, that a Draft Scheme for regularization of the temporary status workers against the vacancies at the stations was prepared and sent to the Ministry of I&B for consideration and that further action in the matter would be taken after the Draft Scheme was approved by the said Ministry.

4.2 While the matter stood thus, the Respondent-organization took steps to fill up some posts by way of selection from the open market and therefore, the applicants filed MA No.772 of 2005 in the said disposed of O.As., praying for Tribunal's intervention in the matter. The Tribunal by order dated 2.12.2005 (Annexure A/9) passed on MA No. 772 of 2005, issued the following direction:

“.....In the meantime special recruitment drive for recruitment of SC and ST candidates for 7 posts of Technician and 2 posts for Helper shall remain stayed until further orders....”

4.3 It is claimed by the applicants that Respondent No.1, vide O.M. dated 26.12.2005(Annexure A/11), directed Respondent No.4 to regularize the services of casual workers in the post of Khalasi. The applicants have also claimed that Respondent No.3 by letter dated 22.12.2005 (Annexure A/12), directed Respondent No.4 to regularize the services of the applicants against the vacant posts available at different HPTs/LPTs in the State of Orissa.

4.4 The applicants have stated that although there existed three vacancies in the post of Khalasi at DDK, Bhubaneswar, only one Sri Shyam Singh has been issued with the offer of appointment vide letter dated 2.1.2006 (Annexure A/14) and the rest two vacancies still remain unfilled. On the other hand, Respondent No.4, by his letter dated 9.1.2006 (Annexure A/14) informed the learned Additional Standing Counsel, Shri Bimbisar Dash representing the Respondents, that a Scheme was under consideration of Ministry and as and when it was finalized, the regularization of



Temporary Status Workers would be taken up; that the eligible Casual Workers with temporary status belonging to SC/ST community might apply directly for the above said posts and their cases would be considered on merit; and that there was a Special Recruitment Drive for SC/ST which did not relate to the regularization of casual workers.

4.5 It is the grievance of the applicants that despite availability of vacancies at different HPT and LPT stations of DDK in the State of Orissa, vide Annexure A/12, the Respondents, instead of regularizing the applicants' services, had issued vacancy circular by way of advertisement and are also contemplating to repeat the same in future to deprive them of regularization of services.

4.6 In the context of the above, the applicants have filed this Original Application for the following reliefs:

"8. RELIEF SOUGHT FOR:-

*Under the circumstances, the Hon'ble Court may be pleased to grant the following prayers:-*

- (i) *to direct the Respondent Nos. 1 to 4 to regularize the services of applicants forthwith against the vacant posts available in different DDK/HPTs/LPTs in the State of Orissa as per the scheme prepared by them;*
- (ii) *to direct the respondents not to recruit any outsider till full consideration of grievances of applicants for regularization are received;*
- (iii) *to direct the Respondents to regularize the applicants retrospectively with all service and financial benefits;*
- (iv) *to pass any other order/orders as deemed fit and proper*

They have also prayed for the following interim relief:

"9. Interim relief if any prayed for:-

*Pending final decisions on this O.A., the Hon'ble Court may be pleased to direct the Respondents not to fill up any Group D posts through any outsiders without being regularized the services of applicants."*





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5. The Respondents have filed a counter refuting the claim of the applicants. They have, inter alia, stated that the Original Application is not maintainable; that as per the Scheme of the Government of India the casual labourers bestowed with temporary status will not be brought over to the permanent establishment unless they are selected through regular process of selection for Group D posts; that special drive was initiated for filling up some backlog vacancies in Group D posts reserved for SC/ST by way of regular process of selection under the Recruitment Rules; that a Scheme for regularization of casual labourers with temporary status is pending consideration of the Ministry; that the order dated 2.12.2005 passed by the Tribunal was a product of misrepresentation of fact by the applicants; and that after finalization of the scheme by the Ministry the regularization of casual workers with temporary status will be taken up according to their seniority.

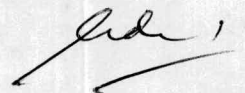
6. The applicants have not filed rejoinder disputing the stands taken by the Respondents.

7. From the above recital of facts it is clear that the 25 applicants were engaged as casual workers by the Respondents prior to 1994 and 1995. While continuing as casual workers the applicants were granted temporary status with effect from 1.4.1994 and 1.4.1995 in accordance with the Scheme of the Government of India. They have been continuing as such casual workers with temporary status till now. Admittedly, the Respondents have prepared a draft Scheme for regularization of the applicants' services, and such draft Scheme is pending consideration and approval by the



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competent authority. The Respondents have candidly admitted that after finalization of the Scheme the services of the applicants will be regularized as per seniority. As regards the grievance of the applicants, as raised in the present O.A., that the Respondents, instead of regularizing their services, are initiating selection process for recruitment from open market, the Respondents have stated that such process of selection has been initiated only to fill up the backlog vacancies falling under SC/ST quota and that persons working as casual labourers with temporary status have to go through the process of selection for appointment. In the backdrop of this position, the questions which arise for consideration of the Tribunal is, whether the applicants have a right to be considered for regularization straightaway against Group-D posts; and whether the Respondents are liable to be debarred from filling up the vacant Group D posts by way of recruitment from open market.

8. Though the Respondents have raised a plea in their counter that the present O.A. is not maintainable, but they have not indicated therein as to how the present O.A. is not maintainable. Undoubtedly, Doordarshan has since become Prasar Bharati (Broadcasting Corporation of India) with effect from 23.11.1997. Under sub-section (3) of Section 14 of the Administrative Tribunals Act, 1985 the Central Administrative Tribunal shall exercise, on and from the date with effect from which the provisions of the said sub-section apply to any local or other authority or corporation or societies, all the jurisdiction, powers and authority exercisable immediately before that date by all Courts except the Hon'ble Supreme Court in



relation to recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation or society and all service matters concerning a person appointed to any service or post in connection with the affairs of such local or other authority or corporation or society and pertaining to the service of such person in connection with such affairs. Under sub-section (2) of Section 14 of the Administrative Tribunals Act, 1985, the Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporation or societies owned or controlled by Government, not being a local or other authority or corporation or society controlled or owned by a State Government. Admittedly, while continuing as casual workers with temporary status in the Prasar Bharati, the applicants have filed the present O.A praying for a direction to Respondent Nos. 1 to 4, who are functionaries of the Prasar Bharati, to regularize their services in the available vacant posts at different DDK/HPTs/LPTs. and not to recruit any outsider till their grievances about regularization of their services are redressed by the Respondent-Prasar Bharati authorities. It is thus clear that the reliefs claimed by the applicants are directly against Prasar Bharati. The posts against which they seek regularization and/or appointment are borne in the establishment of Prasar Bharati over which this Tribunal has no jurisdiction in the absence of a notification being issued by the Central Government under Section 14(2) of the





Administrative Tribunals Act, 1985. In view of this, the Tribunal cannot entertain and try the Original Application for the purpose of granting the reliefs claimed by the applicants against the Prasar Bharati and the Original Application in its present form is not maintainable.

9. In the above view of the matter, I am not inclined to proceed further and discuss the issues raised by both the sides *on merits. ad*

10. In the result, the Original Application, being not maintainable due to lack of jurisdiction of the Tribunal over Prasar Bharati, is rejected at the stage of admission itself. The interim order passed on 31.1.2006 stands vacated. No costs.

*(N.D. RAGHAVAN)*

VICE-CHAIRMAN

*fix for pronouncement  
on 03.10.07 at PM.*

*ad.*