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O.A.No. 208 of 2007

Fakir Charan Das Applicant
Vrs.

Union of India and others Respondents

ORDER DATED 21st SEPTEMBER 2007

By order dated 27.6.2007 the notices on the motion for admission of the O.A. were directed to be issued to the Respondents returnable by six weeks and the matter was posted to 17.8.2007 for considering the question of admission. On 17.8.2007 at the request of the learned counsel appearing for Respondent No.4 prayed for four weeks time, to which the learned counsel for the applicant did not have objection, and the matter was posted to 18.9.2007 for considering the question of admission.

2. On 18.9.2007 when the matter was placed before the Bench, the learned counsel Mr.D.K.Mohanty for the applicant, Mr.U.B.Mohapatra, learned SCGSC for the departmental respondents, and M/sS.S.Mohapatra, J.Swain, A.Mishra and S.Soren for the private Respondent No.4 remained absent on account of Advocates strike on Court work before this Bench on the basis of purported CAT Bar Association resolutions¹². In this connection, I would like to refer to the decision of the Hon'ble Supreme Court in the case of Ramon Services Pvt.Ltd. v. Subhash Kapoor and others, **JT 2000 (Suppl.2) SC 546**, wherein Their Lordships, in paragraphs 24, 27 and 28 of the judgment, have held that no advocate can take it for granted that he will appear in the court according to his whims and fancies 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 appropriate cases the court itself can 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 and the defaulting Courts may also be contributory to the contempt of the Hon'ble Apex Court. Keeping in view the case law laid down by the Hon'ble Supreme Court, the materials available on record were perused and order was reserved.

3. Applicant Fakir Charan Das has filed this O.A. for the following relief:

"8. RELIEF SOUGHT FOR:

In view of the facts stated in para 5 above, the Applicant prays for the following reliefs:

- "i. To quash the selection and appointment of Respondent No.4 to the post of GDSBPM of Kurujanga B.O.
- ii. To direct the Respondents to appoint the Applicant to the post in question, with all consequential service and financial benefits retrospectively.
- iii. To pass any other order/orders as deemed fit and proper in the circumstances of the case."

4. From the averments made in the O.A. it clearly reveals that the advertisement for the post was issued on 17.6.1999 (Annexure A/1) ^{- and etc.} & the applicant was provisionally selected to the post in question subject to the outcome of OA



No.137 of 1999 before the Tribunal. One Dillip Kumar Patra had filed OA No. 326 of 2000 before the Tribunal for quashing the selection and appointment of the present applicant to the said post. The Tribunal, after hearing the parties, by order dated 26.9.2000 (Annexure A/4) quashed the selection and appointment of the present applicant to the post and further directed the Departmental authorities to conduct a fresh selection amongst the candidates keeping it confined to the OBC candidates and while considering the case of the applicant along with the candidates who have been considered and those OBC candidates whose candidatures have been wrongly rejected as per the observations contained in the order, should also be taken into consideration. The present applicant (who was Respondent No.5 in OA No.326 of 2000) challenged the Tribunal's order dated 26.9.2000 (Annexure A/4) by filing OJC No. 12292 of 2000 before the High Court. The High Court by order dated 20.11.2006 dismissed the writ petition filed by the present applicant and confirmed the order of the Tribunal. The Review Petition No.32 of 2007 filed by the present applicant (petitioner in OJC No.12292 of 2000) was disposed ~~the~~ ^{of} ~~Review Petition~~ with the observation that the order of the High Court ~~but~~ dated 20.11.2006 passed in OJC No. 12292 of



2000 shall not stand as a bar on the way of the petitioner in getting the benefit under the circular dated 30.12.1999 if the same is applicable to the case of the petitioner.

5. In compliance with the direction given by the Tribunal, as confirmed by the High Court, fresh selection took place wherein the applicant in OA No. 326 of 200 and present Respondent No.4 Dillip Kumar Patra was selected and appointed to the post in question by order dated 14.2.2007 (Annexure A/10)

6. After all the above, the applicant made representations dated 7.4.2007 to the departmental authorities to review the selection and appointment and for necessary orders appointing the applicant to the post.

7. The selection to the post under the rules is made on the basis of marks secured by the candidates in the H.S.C. Examination. Income of the candidates is also one of the criteria for selection to the post. The marks secured by the applicant and Respondent No.4 in the present case and the property qualification were considered by the Tribunal in the earlier OA No. 326 of 2000. The points as now raised by the applicant were raised in the said O.A. and decided by the



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Tribunal. The Tribunal's order has also been confirmed. The present O.A. filed by the applicant raising the same points, in my considered view, is hit by the principle of res judicata.

8. In consideration of all the above, the Original Application is rejected.


(N.D. RAGHAVAN)

VICE-CHAIRMAN

*fix for pronouncement
on 21.09.07 at 230PM*

