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O.A.No.242 of 2007

Kishore Chandra Panda Applicant

Vrs.

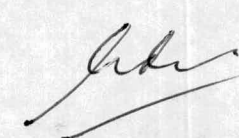
Union of India and others Respondents

ORDER DATED 21st SEPTEMBER 2007 at 230 PM. etc.

The O.A. was placed before the Bench for considering the question of admission on 21.9. 2007 when the Learned Counsel M/S. Achintya Das and and D.k.Mohanty for the Applicant and the Learned Panel Counsel (Railways) Mr.G.Singh for Respondent No.4 or anybody on their behalf including 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 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.”
(Judgement 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



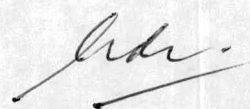
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the course adopted in this case. Even so, in situations like this, when the court mulcts the party with costs for the failure of his advocate to appear, the same court has power to permit the party to realize the costs from the advocate concerned. 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)

“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



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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)

2. 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 was perused and order was reserved.

3. Applicant Shri Kishore Chandra Panda, who took voluntary retirement from Railway Service w.e.f. 31.1.2007, has filed this O.A. praying for a direction to the Respondents to release the settlement dues in his favour with penal interest at 18% p.a.

4. By order dated 8.8.2007 notices were directed to be issued to the Respondents. The Shri G.Singh, learned Panel Counsel (Railways) has entered appearance for the Respondent No.4 only. The other Respondents have not appeared in this case. No counter has been filed by Respondent No.4.

5. Annexure A/1 is the representation dated 13.9.2006 submitted by the applicant to the Senior Divisional Personnel Officer, East Coast



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Railway, Khurda Road (Respondent No.4) giving three months notice for his voluntary retirement. Annexure A/2 is the memorandum dated 1.2.2007 issued by the Respondent No.4 showing the detailed particulars of service of the applicant wherefrom it is clear that the applicant's application for voluntary retirement has been accepted and the applicant has been allowed to retire from Railway service w.e.f. 31.1.2007 (AN). As the payment of retirement benefits was delayed, the applicant made a representation dated 24.4.2007 (Annexure A/3) to Respondent No.3 requesting for early disbursement of the settlement dues. The said representation having not yielded any fruitful results, the applicant filed the Original Application on 27.7.2007. The applicant has urged in his O.A. that as the payment of gratuity has not been made within three months from the date of his retirement, he is entitled to interest in terms of Rule 87 of the Manual of Railway Pension Rules 1993. The applicant has failed to produce any material to show that the Respondent-Railways have denied him any interest which is legally admissible to him. The Respondent-Railways are yet to make the payment of the settlement dues to the applicant. While making payment of the settlement dues the Respondents may grant interest in accordance with rules. The applicant in his representation dated 24.4.2007 (Annexure A/3) has requested Respondent No.4 to take necessary steps for immediate payment of pension and other retirement dues. It has been stated by the applicant that there is no response from the said Respondent No.4.



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6. In the facts and circumstances of the case, I feel that ends of justice would be met if the Original Application is disposed of with a direction to Respondent No.4 to consider and dispose of the applicant's representation dated 24.4.2007 (Annexure A/3) by a speaking and reasoned order and take a decision with regard to payment of the settlement dues of the applicant, including pension and interest, if any, payable thereon, within a period of 30(thirty) days from the date of receipt of copy of this order.

7. The Registry shall communicate copy of this order to Respondent No.4 by Speed Post forthwith,

8. With the above observation and direction, the Original Application is disposed of at the stage of admission itself.

(Signature)
(N.D.RAGHAVAN)

VICE-CHAIRMAN

*fix for pronouncement
on 21-09-07 at 230 PM
lib*

Or. dt. 21.9.07

*copy of order
may be given to
both counsels*

*(Signature)
26/9/07
S.O (J)*

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