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O.A.No. 256 of 2007

Tajmul Hussain Applicant

Vrs.

Union of India and others Respondents

Order dated 3.10.2007 (Later: 4.45 P.M.)

The Original Application was filed on 13.8.2007 and placed before the Bench for considering the question of admission and the prayer for interim relief on 27.8.2007 when neither the learned counsel Dr.D.B.Mishra for the applicant nor the applicant in person appeared. However, upon perusal of the record, by order dated 27.8.2007, notice of motion for admission, interim prayer and on the limitation was directed to be issued to the Respondents returnable by thirty days and the O.A. was posted to 3.10.2007 for considering the question of admission. The notices were accordingly issued by the Registry on 28.8.2007.

2. On 3.10.2007 neither the learned counsel Dr.D.B.Mishra for the applicant nor the applicant in person appeared before the Bench. It appears from the record that the Respondents have not entered appearance through the learned Panel Counsel(Railways) or the learned Standing Counsel (Railways). The Respondents have also failed to depute any of their officer, along with the relevant records, to appear and represent them before the Bench when the case was called.

3. The reason for non-appearance of the learned counsel Dr.D.B.Mishra for the applicant is apparently due to the Advocates' strike on Court work before this Bench, purportedly on the basis of the CAT Bar Association resolutions passed without any coordination, etc. 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**

etc.

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."

lhd . (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)

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

4. Applicant Tajmul Hussain, aged 36 years, who claims to be son of Ayub Hussain, the retired Railway servant, has filed this Original Application on 13.8.2007 praying for a direction to the Respondents to consider his case as per representation dated 15.3.2007 (Annexure A/4) regarding empanelment as substitutes in view of order dated 16.4.2004 passed in OA No. 520 of 2001, OA Nos.256 of 2005 and 336 to 483 of 2005 which were disposed of on 8.6.2005 (Annexure A/3) series and in similar cases.

5. The applicant has stated that the Tribunal by order dated 18.5.2006 has disposed of similar case vide O.A.No.413 of 2006 (M.Srinivas Rao v. UOI & others) (Annexure A/5). It is the case of the applicant that his father retired from Railway service on 30.6.1988. In response to the notification dated 13.8.1990 (Annexure A/2) he had made application for enrolment/empanelment as fresh face as substitute for utilization against day to day causalities. The Tribunal has already disposed of a number of Original Applications giving direction to the Respondents to consider and dispose of the representations of the applicants in those cases and the case of the applicant is similar to theirs.

6. In the above facts and circumstances of the case and since the Tribunal has already disposed of similar matters and the Respondents have failed to appear either through the learned Panel Counsel(Railways)/Standing Counsel(Railways) or to get themselves represented by a duly authorized departmental officer when the case was called, no fruitful purpose would be served by adjourning the matter awaiting the counter or production of the relevant records, I am of the considered view that it would meet the ends of justice if the Senior Divisional Personnel Officer, East Coast Railway, Khurda



Road Division (Respondent No.3 herein), with whom the applicant's representation dated 15.3.2007 (Annexure A/4) is stated to be pending, is directed to consider the said representation of the applicant in accordance with the directions issued by the Tribunal in the earlier cases referred to above as well as the rules/executive instructions/orders in vogue and to dispose of the same and communicate his decision to the applicant within a period of 90(ninety) days from the date of receipt of copy of this order. **It is ordered accordingly.** The Registry shall communicate a copy of this order to the said Respondent No.3 by Registered Post with A.D. forthwith.

7. With the above observation and direction, the Original Application stands disposed of.



(N.D.RAGHAVAN)

VICE-CHAIRMAN