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O.A.No.260 of 2007

Sri Raghunath Majhi ..... Applicant

Vrs.

Union of India and others ..... Respondents

ORDER DATED 21<sup>st</sup> SEPTEMBER 2007

1. By order dated 20.8.2007 notices of motion for admission as well as interim prayer were directed to be issued to the Respondents. It appears that Shri S.Mishra, learned Additional Standing Counsel has entered appearance for the Respondents, but no counter has been filed.

2. On 19.9.2007 when the O.A. was placed before the Bench for considering the question of admission and the prayer for interim relief, neither the learned counsel M/s P.K.Padhi and J.Mishra for the applicant nor Mr.S.Mishra, the learned ASC for the Respondents appeared, including their parties in person too, on account of Advocates' strike on Court work before this Bench on the basis of purported CAT Bar Association resolutions passed without substance or value but violating principles of natural justice too.

2.1 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



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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



7 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)

2.2 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 has been perused for adjudicating the issue as below:

3. Applicant Sri Raghunath Majhi, who retired from Government service as HSG I Head Post Master, w.e.f. 31.10.2003, has filed this O.A. praying for quashing Annexure A/1, the charge sheet dated 29.10.2003 issued under Rule 14 of the CCS (CCA) Rules containing 5 articles of charge alleging his involvement in the frauds committed in respect of SB Account, KVP, etc., while he was working as Postmaster and Deputy Post Master of Jharsuguda Head Post Office, and Annexure A/2, the order dated 4.3.2004 regarding appointment of Sri B.D.Pal, Retired APMG, as Inquiry Authority to inquire into the charges framed against the applicant.

4. The applicant has also prayed for interim relief to direct the Respondents not to pass any final order in the disciplinary proceedings against the applicant, and to release the retiral dues of the applicant.

5. The applicant has contended that initiation of the disciplinary proceedings just before his retirement from service is arbitrary, whimsical, mala fide and colourable exercise of power; that appointment of a Retired Government Servant as Inquiry Authority is illegal; that non-




issuance of notice to D.W. by the I.O. is illegal; that principles of natural justice have not been followed during the inquiry; and that he has no direct involvement in the frauds alleged to have been committed by others in as much as he was discharging supervisory duties. The applicant has also contended that due to non-conclusion of the disciplinary ~~proceeding~~ initiated against him, the final retirement benefits have not yet been settled.

6. From the above it is clear that the disciplinary proceeding initiated against the applicant has not yet been finalized and that no final order therein has been passed by the Disciplinary Authority, as a consequence whereof though the applicant has retired in October 2003, the *retiral dues* are yet to be paid to him. Be that as it may, the Original Application in its present form is too premature because the final order is yet to be passed by the disciplinary authority. But the Respondent-Departmental authorities are under an obligation to finalize the disciplinary proceeding initiated against the applicant. Though in the meantime more than three years have passed, the disciplinary proceeding has not been finalized. It appears that the applicant has also made representation on 12.12.2005 (Annexure A/6) to the Secretary to Government, Department of Posts, Government of India, New Delhi (Respondent No.1) raising more or less the same points as are urged in the present O.A. and praying for early disposal of the disciplinary case initiated against him. This seems to have yielded no response. It is stated by the applicant that the said representation (Annexure A/6) is still pending with the said authority.

7. In consideration of all the above, while holding that the present O.A. being too premature is not maintainable, I feel that ends of justice would be met if Respondent No.1 is directed to consider and dispose of the applicant's representation dated 12.12.2005 (Annexure A/6) by a speaking order and communicate the same to the applicant within a ~~period of three months from the date of receipt of copy of this order.~~ The said Respondent No.1 is also directed to ensure disposal of the disciplinary proceedings initiated against the applicant within the period stipulated above. It is ordered accordingly.

8. The Registry shall communicate a copy of this order to Respondent No.1 forthwith.

9. With the above observation and direction, the Original Application is disposed of. No costs.

  
(N.D. RAGHAVAN)  
VICE-CHAIRMAN

*fix for pronouncement on 21.09.07 at 230pm*  
*Adi.*