

O.A.No. 263 of 2007

Sri Bishnu Charan Singh and another .....	Applicants
Vrs.	
Union of India and others .....	Respondents

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

The Original Application was filed on 14.5.2007 and placed before the Bench for considering the question of admission on 23.8.2007 when the learned counsel Mr.P.K.Padhi for the applicant remained absent due to Orissa *- Advocates strike too. Hence, the date* Bandh and the O.A. was posted to 28.8.2007.

2. On 28.8.2007 the learned counsel Mr.P.K.Padhi for the applicant remained absent due to Advocates' strike on Court work before this Bench purportedly on the basis of the CAT Bar resolutions passed without *- any basis, date* 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

*[Signature]*

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)



“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<sup>for</sup> at the peril of facing the consequences thereof, the available record on hand has been perused for adjudicating the issue as below.

4. The two applicants are father and son who have filed the present O.A. praying for a direction to the Respondents to reconsider the case of applicant no.2 son for compassionate appointment in any post in the Orissa Postal Circle.

5. MA No.332 of 2007 filed by the applicants seeking permission of the Tribunal to jointly prosecute the O.A. is allowed.

6. Brief facts of the case are that applicant No.1 Bishnu Charan Singh, while working as a Group D employee in the Postal Department, was permitted to retire from Government service on medical invalidation w.e.f. 27.2.1998. (Annexure A/1). Applicant No.1 made a representation to the departmental authorities for providing employment assistance to his son (applicant No.2) on



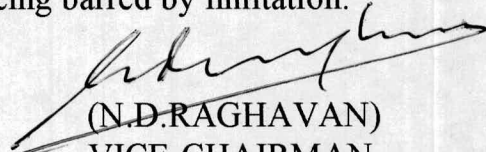
compassionate ground and in response thereto, Respondent No.2 by letter dated 29.7.2003 (Annexure A/2) called upon applicant No.2 to furnish invalidation certificate, consent letter of second son, and income certificate for the purpose of considering the case of compassionate appointment. Annexure A/4, dated 19.2.2004 issued by Respondent No.2 reveals that the case of the applicants for compassionate appointment was duly considered by the Circle Relaxation Committee and rejected on the ground that there was already a case of invalidation retirement of more than five years and that the liability of the family was not much.. Instead of praying for quashing the said order dated 19.2.2004 (Annexure A/4) the applicants have made a prayer for a direction to the Respondents to reconsider the case of compassionate appointment.

7. From the above recitals, it is clear that the cause of action in this case arose on 19.2.2004 when Annexure A/4 was issued, but the applicant has filed the present O.A. on 14.5.2007. Thus the O.A. is barred by limitation.

8. However, the applicants have filed MA No.334 of 2007 for condonation of delay in filing the O.A. The illness of applicant No.1 (father) has been stated to be the ground for delay in filing the O.A. The medical certificate enclosed to the MA shows the Doctor to have certified that applicant No.1 was suffering from Poly-arthritis IHD and under medical treatment from 1.1.2005 to 30.4.2007. It has been clearly mentioned in the cause-title of the O.A. that applicant No.2- son is aged 30 years. In the event applicant No.1- father was ill during the period from 1.1.2005 to 30.4.2007, applicant No.2-son who was major being aged 30 years could have pursued the matter. In consideration of



the above, I do not find the applicants to have been able to explain the delay in filing the present Original Application. Therefore, the prayer for condonation of delay is disallowed and the M.A. is rejected. Consequently, the O.A. is rejected at the stage of admission itself, as being barred by limitation.

  
(N.D. RAGHAVAN)  
VICE-CHAIRMAN

PPS

fix for pronouncement  
on 03 10 07 at PM.

