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O.A. 268 of 2007

Pradip Kumar Das

Applicant

Vrs.

Union of India and others

.....Respondents

ORDER DATED 21st SEPTEMBER 2007 at 2.30 PM

The O.A. was placed before the Bench for considering the question of admission on 21.9. 2007 when one Mr. Prithwish Ganguly, Assistant Manager, ^{as the ad.} ~~the authorized~~ representative of the Respondents³ was present and the Learned Counsel Mr. Sarat Kumar Acharya for the Applicant and the Learned Additional Standing Counsel Mr.B.K.Mohapatra for the Respondents 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 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

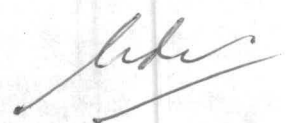
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advocate to appear, the same court has power to permit the party to realize the costs from the advocate concerned. However, such direction can be passed only after affording an opportunity to the advocate. If he has any justifiable cause, the court 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 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



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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 authorized representative of the Respondents was heard, and the available record on hand was perused and order was reserved.

3. Applicant Shri Pradip Kumar Das, who claims to have been working as Assistant Binder in the Government of India Text Book Press, Bhubaneswar and suffering from cancer, has filed this Original Application for quashing the Memorandum dated 4.7.2007 (Annexure A/4) and for a direction to the Respondents to disburse him the salary for the months of June, July and August 2007.

4. Annexure A/4 is the Memorandum dated 4.7.2007 issued by the Officer-In-Charge, Government of India Text Books Press,



Bhubaneswar (Respondent No. 3) which reads as follows:

"MEMORANDUM

With reference to his applications dt.21.6.07, dt.3.7.07 and subsequent application dt.3.7.07 submitted by his wife Mrs.R.R.Das, Shri P.K.Das, Asstt. Binder of this Press is hereby instructed to submit the leave applications for the following dates of his absence.

Dt.6.3.07 to 23.3.07 - 18 days

Dt.26.3.07 to 27.3.07 - 2 "

Dt. 2.4.07 - 1 "

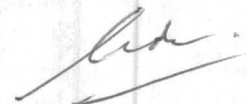
Dt.4.4.07 - 1 "

It has come to the notice that in spite of repeated verbal requests by the D.A. of leave section he is avoiding to submit any leave application. It may be pointed out here that though he is undergoing Chemotherapy as per records yet it has been seen many times during the above period he is loitering in the office premises approaching the Accountant, A.M.(A) and the Dy.Manager etc. for release of his pay for the month of June"2007.

As per records Shri Das has already received over-payment for 77 (seventy seven) day's salary as on 31.5.2007. If he submits leave applications for the dates mentioned above 40(forty) days out of the 77 days will be regularized and this office may consider advance payment of salary for treatment of his disease.

Hence he is instructed to submit the leave applications as stated above in his own interest otherwise the office will have no other alternative but to take action for excess drawal of salary for 77 days."

The applicant is stated to have submitted the required leave applications along with a representation dated 9.7.2007 (Annexure A/5). Copies of the leave applications have not been enclosed with Annexure A/5. He has also not furnished the acknowledgement along with Annexure A/5. He is also stated to have sent a further representation dated 1.8.2007



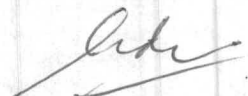
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(Annexure A/6) to the Respondent No.3) requesting for disbursement of the salary for the months of June and July 2007. According to the applicant, the salary for the months of June and July 2007 has not yet been disbursed to him.

5. By order dated 22.8.2007 notice on the question of admission was directed to be issued to the Respondents and the matter was posted to 21.9.2007. It was also directed by the said order that if the requirement of Annexure A/4 in its last but one para has been complied with by the applicant by Annexures A/5 and A/6, then the Respondents will consider the advance payment of salary for treatment of the applicant's disease within one week from the date of receipt of copy of the order. It appears from record that Shri B.K.Mohapatra, learned ASC, has entered appearance for the Respondents, but no counter has yet been filed. The Respondents have also failed to intimate the Tribunal as to whether they have taken any step in compliance with the Tribunal's interim order dated 22.8.2007.

6. As the matter relates to non-payment of salary to the applicant who is stated to have been suffering from cancer and the Respondents appear to have not responded to the notice as well as the interim order of this Tribunal and have thereby failed to consider the magnitude of the matter, no fruitful purpose will be served by adjourning the case for the Respondents to file their counter and ends of justice



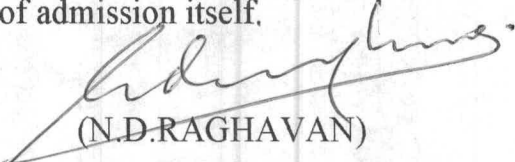
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would be met if Respondent No.3 is directed to make payment of the salary for the months of June, July and August 2007 by sanctioning the leave for the period in question on the basis of Annexure A/3, the representation dated 3.7.2007, and also to grant the advance payment of salary to the applicant for his medical treatment, as prayed for by the applicant vide Annexure A/4. It is ordered accordingly. This order shall be complied with by Respondent No.3 by 28.9.2007.

7. The Registry is directed to communicate a copy of this order to Respondent No.3 by Speed Post immediately.

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


(N.D. RAGHAVAN)

VICE-CHAIRMAN

*fix for pronouncement
on 21.09.07 at 230 PM
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