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O.A.No. 279 of 2007

Dr. Jagannath Das ..... Applicant

Vrs.

Union of India and others.... Respondents

ORDER DATED 21st SEPTEMBER 2007

This Original Application was filed on 19.7.2007 and placed before the Bench for considering the question of admission on 20.7.2007 when the Learned Counsel M/S. H.M.Dhal, B.B.Swain and D.Pattanayak for the applicant remained absent. The applicant was also not present. The reason for non-appearance of the learned counsels for the applicant was 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 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)

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 and the question of admission of the O.A. is decided as under.

3. Applicant Dr.Jagannath Das, who is presently working as Chief Medical Officer, CGHS,Unit IV, A.G.Colony, Bhubaneswar (Orissa), has filed this Original Application praying for quashing Annexure 10 and for a direction to the Respondents to sanction and disburse the salary, TA and other allowances of the applicant for the period from 1.6.2005 to 10.8.2005.

4. Annexure 10 is the letter dated ¼.12.2006 issued by the Welfare & Cess Commissioner, Bhubaneswar (Respondent No.3) whereby and whereunder the applicant has been intimated that it will not be possible for the said organization to settle the salary, HRA as well as TA allowance, etc., in the absence of regularization of his suspension period

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for which all the required documents have been sent to the Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi and advising him to approach the Ministry of Health & Family Welfare.

5. The applicant has impleaded Union of India, represented through its Secretary to Government, Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi, as Respondent No.1 and the Director General,Labour Welfare, Ministry of Labour, Government of India, Jaisalmer House, Mansingh Road, New Delhi as Respondent No.2 in this organization.

6. It is the case of the applicant that he has been working as Chief Medical Officer in the Central Government Health Service Scheme under the Ministry of Health & Family Welfare, Government of India.. His services having been placed at the disposal of the Labour Welfare Organization, Bhubaneswar, the applicant was transferred and posted to work as Chief Medical Officer under Respondent No.3 w.e.f. 18.10.2000. Annexure 1 is the letter dated 24.5.2005 issued by respondent No.3 to the applicant intimating the applicant that the Ministry of Health & Family Welfare vide order No. C-18011/6/96-Vig. Dated 9.5.2005 discloses that the applicant was placed under suspension vide the said Ministry's order

dated 26.6.2001 and that due to his failure to intimate the fact of suspension, salary and allowances were being paid to him as usual. By the said letter dated 24.5.2001 the applicant was requested to intimate the circumstances under which he did not intimate the fact of his suspension to Respondent No.3. In response thereto, the applicant by his representation dated 31.5.2005 (Annexure 2) intimated Respondent No.3 that by order dated 9.5.2005 (enclosure to Annexure 3) that the order of suspension dated 26.6.2001 was revoked with immediate effect. Annexure 4, the letter dated 3.6.2005 and Annexure 5, the letter dated 6.6.2005 written by the applicant to Respondent No.3 and 1 respectively as well as Annexure 6 the order dated 20.6.2005 reveal that he was repatriated to the Ministry of Health & Family Welfare, and posted to GNCT, Delhi, w.e.f. 6.6.2005. Thereafter the applicant by Annexure 7 the letter dated 4.7.2005 and Annexure 8 the letter dated 27.7.2005, requested Respondent No.3 to relieve him to join GNCT, Delhi and to release his salary for the months of June and July 2005. Annexure 9, the letter issued by the Ministry of Labour & Employment, shows that the applicant joined the GCNT, Delhi w.e.f.6.6.2005 and therefore, the questions of relieving him from the office of Respondent No.3 did not arise. As regards the payment of salary for the months of June and July 2005, it was intimated

to the applicant that the matter was already taken up with the Ministry of Health & Family Welfare for necessary action. Annexure 11 is the representation dated 23.1.2005 to Respondent No.1 alleging non-payment of his salary by Respondent No.3 for the period from June 2005 to 10th August 2005. The said representation is stated to be pending before Respondent No.1.

7. From the above recitals it is clear that the applicant was admittedly placed under suspension by Respondent No.1 during the period from 26.6.2001 to 9.5.2005 when his services were placed under Respondent No.3. The fact of his suspension was suppressed by the applicant and when Respondent No.3 called upon the applicant to explain his conduct, the applicant immediately reported Respondent No.3 that by order dated 9.5.2005 the suspension order has been revoked. It also appears that due to suppression of his suspension, Respondent No.3 continued to disburse his full pay and allowances to the applicant all through. Therefore, when the fact of suspension of the applicant was brought to the notice of Respondent No.3, apparently the payment of salary for the month of June, July and up to 10th August 2005. The applicant has not disputed the fact mentioned in Annexure A 10 that he

was paid full pay and allowances during the period of his suspension from 26.6.2001 to 9.5.2005. He has also not disputed that the Ministry of Health & Family Welfare has regularized the aforesaid period of his suspension. In view of this, there is nothing wrong on the part of Respondent No.3 in withholding the salary of the applicant from June 2005 till the date when he was relieved from the office of Respondent No.3 and in advising the applicant to approach the Ministry of Health & Family Welfare to regularize the period of suspension. Instead of approaching the Ministry of Health & Family Welfare, the applicant has filed this O.A. praying for quashing Annexure 10 and for a direction to the Respondents to sanction and disburse the salary, TA and other allowances of the applicant for the period from 1.6.2005 to 10.8.2005. In this view of the matter, the applicant, having not exhausted the remedy available to him by approaching the Ministry of Health & Family Welfare (Respondent No.1), who is his employer and competent to take decision regarding regularization of his suspension period, depending upon which Respondent No.3 has to take a decision whether or not the salary and allowances from the month of June till the date when he was relieved from the office of Respondent No.3 should be released, cannot maintain this Original Application before this Tribunal as the same is hit by Section

20(1) of the Administrative Tribunals Act, 1985, which mandates that a Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the rules.

8. In consideration of all the above, while rejecting the Original Application at the threshold, I would like to observe that in the event the applicant makes a representation to Respondent No.1 for regularization of the period of his suspension and consequential release of his pay and allowances, the said authority would be well advised to consider and dispose of the same by a speaking order at the earliest.

9. With the above observations, the Original Application is rejected at the admission stage itself.

(N.D.RAGHAVAN)
VICE-CHAIRMAN

fix for pronouncement on 21.09.09. at 2.30 PM.