
(2015) 03 MAD CK 0232

In the Madras High Court

Case No : Writ Appeal No. 2167 of 2013, M.P. Nos. 1 of 2013 and 1 of 2014

Chief Secretary and Others

APPELLANT

Vs

V. Bhavani Subbaroyan

RESPONDENT

Date of Decision : 26-03-2015

Acts Referred:

Advocates Act, 1961 — Section 34

Citation : (2015) 2 LW 745 : (2015) 4 MLJ 19 : (2015) WritLR 363

Hon'ble Judges : M. Duraiswamy, J.; V. Dhanapalan, J.

Bench : Division Bench

Advocate : P.H. Aravind Pandian, AAG. V. Assisted by S. Rajeswaran, Spl. Govt. Pleader and C.V. Shailandhaan, Govt. Advocate, for the Appellant; K.M. Vijayan, Sr. Counsel for K.V. Sajeev Kumar for Royan Law, Associates, Advocates for the Respondent

Final Decision : Disposed off

Judgement

M. Duraiswamy, J.—The above writ appeal arises against the order of the learned Single Judge dated 11.02.2013 passed in W.P. No. 1126 of 2012.

2. The respondents in the writ petition are the appellants in the above writ appeal and the respondent herein is the writ petitioner.

3. The respondent herein has filed the writ petition in W.P. No. 1126 of 2012 to issue a writ of mandamus, directing the appellants to forthwith settle her professional fees in accordance with the bills dated 17.9.2009, 19.10.2009, 13.5.2010, 3.9.2010, 21.1.2011 and 22.2.2011 pending sanction, together with interest at 18% per annum from the date of bill till the date of payment.

4. The respondent was initially appointed as Government Advocate in the year 2006, subsequently appointed as Additional Government Pleader and later appointed as Special Government Pleader (Civil Suits) on 14.5.2011. The respondent, tendered her resignation from the post of Special Government Pleader, due to change of power in the State of Tamil Nadu.

5. In the seven bills raised by the respondent, she claimed a total sum of Rs. 29,85,500/- towards professional fee and the details of which are as follows:--

After tendering her resignation, the respondent sent a representation on 26.7.2011 seeking sanction of the above bills and in spite of receipt of the same by the third appellant, no action was taken. Therefore, the respondent sent a reminder on 13.9.2011 stating that she would claim interest at the rate of 18% per annum till the date of actual payment. Subsequently, on 14.2.2011, the respondent sent another reminder and even for that she did not receive any response from the third appellant.

6. It is pertinent to note that the respondent resigned her post on 14.5.2011. She was appearing before this court representing the Government and the Government Officials in her capacity as Special Government Pleader (Civil Suits).

7. The learned Single Judge, after hearing both sides, disposed of the writ petition by directing the appellants to sanction the legal fee claimed by the respondent in respect of the above referred bills with 12% interest per annum from the date of expiry of six months of submission of fee bills till the date of payment. Further, the learned Single Judge has directed the appellants to complete the entire exercise and settle the amounts to the respondent, within two months from the date of receipt of copy of the order.

8. Aggrieved over the order passed by the learned Single Judge, the respondent has filed the above writ appeal.

9. Heard Mr. P.H. Aravind Pandian, learned Additional Advocate General, appearing for the appellants and Mr. K.M. Vijayan, learned Senior Counsel appearing for the respondent.

10. Mr. P.H. Aravind Pandian, learned Additional Advocate General, appearing for the appellants submitted that out of the seven items, for which the respondent had claimed her professional fee, four cases are still pending and so far as the pending cases are concerned, fee can be paid only after the disposal of the civil suits. Further, the learned Additional Advocate General submitted that as per Rule 9-A of the Law Officers High Court Standing Orders, in cases, where more than one Law Officer was in charge of a particular case, the fee payable to that particular case, shall be shared equally among the Law Officers, who prepared the affidavit or the application or the counter affidavit or the petition or the statement as the case may be and the succeeding or different Law Officer, who argued the case.

11. Countering the submission made by the learned Additional Advocate General, Mr. K.M. Vijayan, learned Senior Counsel appearing for the respondent submitted that in the case of pending civil suits, the respondent is entitled to receive 50% of the total fee payable. Therefore, according to the learned Senior Counsel, the bills raised by the respondent is just and proper and further, the learned Senior Counsel submitted that section 34 of the Advocates Act, enables the High Court

to make rules for fixing and regulating the fee payable by any party in respect of fee of the Advocates. Therefore, the High Court Fee Rules governs the Advocates as far as those practising in original side are concerned. Further, the learned Senior Counsel submitted that the respondent had claimed the professional fee under Order V Rule 2(i)(c) of the High Court Fee Rules.

12. On a careful consideration of the materials available on record and the submissions made by the learned Senior Counsel on either side, it could be seen that there is no dispute that the respondent had served as Special Government Pleader (Civil Suits) till 14.5.2011. She raised seven bills claiming a total sum of Rs. 29,85,500/- towards her professional fee. Out of the seven bills, the cases relating to three bills (five cases) viz.,

"(i) C.S. No. 418/2001,

(ii) O.S.A. No. 217/2006 and

(iii) O.S.A. Nos. 376, 377 and 378 of 2007"

were already disposed of. So far as the appeals in O.S.A. Nos. 376, 377 and 378 of 2007 are concerned, the same was disposed of on 30.7.2009 and the appellants have also paid the professional fee to the respondent. So far as the other two matters are concerned, viz., C.S. No. 418/2001 and O.S.A. No. 217/2006 are concerned, the learned Additional Advocate General submitted that the appellants will settle the fee bill raised by the respondent within a short time. The other four matters viz.,

"(i) C.S. No. 934/2005

(ii) C.S. No. 553/2005

(iii) C.S. No. 1090/2009 and

(iv) C.S. No. 564/2005"

are still pending. Out of these four matters, except C.S. No. 564/2005, the other three matters are at the stage of trial. C.S. No. 564/2005 is pending for framing of issues.

13. On a perusal of the typed set of papers filed by the respondent, it could be seen that the then Additional Government Pleaders claimed their professional fees for the civil suits as per section 2(i)(c) of the High Court Fee Rules, 1956. As per Rule 2(ii) of the High Court Standing Order, 1956, the Government Advocate, who assisted the Special Government Pleader or the Additional Government Pleader is entitled to claim 1/3rd of the fee payable to the Special Government Pleader or the Additional Government Pleader as the case may be. As per Rule 9-A of Law Officers High Court Standing Orders, in all cases where more than one Law Officer was in charge, the fee payable shall be shared equally among the Law Officers who prepared the pleadings and the succeeding or the different Law Officer who argued the case.

14. In the case on hand, as already stated, out of the seven bills raised by the respondent, three bills raised in respect of the suits and appeals were already disposed of. Therefore, the respondent is entitled to the fee as claimed by her in her fee bill, in respect of the matters which were already disposed of. The learned Additional Advocate General also submitted that the bills in respect of these three items will be settled shortly. In respect of the remaining four pending matters, the respondent is entitled to claim the bill as per section 2(i)(c) of the High Court Fee Rules, 1956.

15. When the erstwhile Additional Government Pleaders have raised the bill under section 2(i)(c) and were also paid their professional fee as claimed by them, the respondent cannot be discriminated. Therefore, the respondent is entitled to claim the professional fee as per section 2(i)(c) of the High Court Fee Rules. However, in view of Rule 9-A, the respondent should share the professional fee payable to the said four pending cases along with the other Law Officer or Law Officers, who also appeared in the said matters after the disposal of the said matter.

16. It is needless to say that under section 2(ii) of the High Court Rules, the concerned Government Advocate, who assisted the Special Government Pleader or the Additional Government Pleader is entitled to claim 1/3rd fee separately.

17. Therefore, we are of the considered view that the respondent is entitled to claim her professional fee in respect of the four pending matters only after the disposal of the said matters. As per Rule 9-A, she should share the professional fee payable under section 2(i)(c) of the High Court Fee Rules for the said matters along with the other Special Government Pleader or the Additional Government Pleader, who appeared in the matters previously or subsequently. The respondent is entitled to claim interest at the rate of 12% per annum, so far as the bills in respect of the matters which were already disposed of. The appellants are directed to pay the professional fee to the respondent along with requisite interest in respect of cases which were already disposed of, within a period of three weeks from the date of receipt of a copy of this judgment and they are further directed to settle the professional fee of the respondent in respect of the pending suits, within a period of three months from the date of disposal of each of the civil suit. With the above modification, the writ appeal is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

18. Before parting with, we would like to add that in a matter of claim of fees, for the work done by the Law Officers of the Government, many times, we experience that they are before this Court, claiming that their fees are not paid and approaching this Court for a direction to disburse their professional fees. This kind of situation is not good for the effective functioning of officers, either during their period or even thereafter. Therefore, every Stakeholders, involved in this process, should consider this position, frame necessary Rules and Regulations in the manner, as expected. In addition to what is already available in respect of certain areas, a comprehensive Rules may be framed for this purpose by

regulating every aspect of this matter. We expect the appropriate authorities to act complying with the above observation and do the needful.