

(2002) 02 MAD CK 0133
In the Madras High Court
Case No : Writ Petition No. 12329 of 1997

M. Joseph

APPELLANT

Vs

The Government of Tamilnadu

RESPONDENT

Date of Decision : 25-02-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 02 MAD CK 0133

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : Hemasampath, for the Appellant; R. Thenmozhisivaperumal, AGP and D. Veerasekaran, for the Respondent

Final Decision : Allowed

Judgement

V. Kanagaraj, J.—Writ petitioner praying to issue a writ of mandamus directing the respondents to calculate the fees payable to the petitioner for the period from 1981 to 1985 when he worked as Government pleader, Madurai in accordance with Legal Practitioners' Fees Rules 1973.

2. In the affidavit filed in support of the writ petition, the petitioner would submit that he worked as Government Pleader from 1981 to 1985; that at that time he represented the Government in many land acquisition cases of North Neighbourhood Scheme and immediately after the cases were disposed of seeking the certified copies of the judgment and decree for 86 cases along with the proforma, fee bills and advance stamp receipts; but in spite of several representations made to the respondents 2 to 4 since there was no response and ultimately he was given to understand that the fee was going to be calculated on the basis of G.O.Ms.no.900 Home (Courts) dated 10.5.1985; that he made representation to the District Revenue Officer, stating that the said Government order has no retrospective application, which could be applied to the case of the petitioner, since all those cases were disposed of prior to the passing of the Government Order and the court itself has fixed the fees payable to the

Government Pleader that the fee payable to him as per the decree sent to the fourth respondent and the Tahsildar as fixed by the court had been calculated to Rs.1,00,000/-; that the second respondent issued proceedings dated 26.3.1997 sanctioning a sum of Rs.2,000/-only for five cases payable by the fifth respondent for whom the lands were acquired; that he had also sanctioned a further sum of Rs.2,000/- for 28 LAOP cases as against the 28 decrees in all those cases each fixing a sum of Rs.2,000/- towards Government Pleader's fees; when represented to the fourth respondent, he expressed his inability and helplessness saying that they have to follow G.O.Ms.no.900 Home (Courts) dated 10.5.1985 and hence, the writ petition, for the relief extracted supra.

3. No counter has been filed on the part of any of the respondents.

4. However, learned Additional Government Pleader would argue on instructions imparted to her and on the part of the learned A.G.P. she would lay emphasise on the averments of the writ petition and would emphatically deny the theory of the Government that the G.o.Ms.no.900 Home (Courts) dated 10.5.1985 would apply to the case of the petitioner, on account of two reasons; the first being the Government order is prospective in nature and no retrospective effect has been given to the same. Even if there is such a retrospective effect given to the Government order, it cannot be applicable to the case of the petitioner, since the fee has to be paid to the Government pleader for the cases conducted for which the fee has been fixed in each and every case by the court, which has passed the decrees in those cases and therefore citing the Government order, which is inapplicable to the case of the petitioner, the petitioner cannot be denied of his legal entitlement of getting the legal fee as it had been granted by the court.

5. In consideration of the facts pleaded by the parties and the circumstances brought forth, having regard to the materials placed on record and upon hearing the learned counsel for both, it comes to be known that the petitioner praying for the issue of writ of mandamus to direct the respondents to calculate the fees payable to the petitioner for having worked as Government pleader, Madurai in the disposal of certain cases of the nature of land acquisition original petitions in the court of Subordinate Judge, Madurai during the period from 1981 to 1985 has filed the above writ petition, since all these years, the respondents have not paid the fees to him at all.

6. The petitioner's claim is based on the Legal Practitioners' Fees Rules, 1973. On the other hand, on the part of the Government, the learned Additional Government pleader would lay emphasise on the Government order passed in G.o.Ms.no.900 Home (Courts) dated 10.5.1985 and there is absolutely no dispute regarding the facts that the petitioner acted in certain number of cases as the Government Pleader, prior to the coming into being of the said Government Order and that his legal fee for those cases in which he appeared on behalf of the Government is still due. Regarding the claim of the petitioner, the proof of cases and the types of cases that he appeared for coupled with the facts court in which they were conducted and decrees were passed also there is

absolutely no dispute. However, the dispute pertains to the fixation of the fee whether on the basis of the Legal Practitioners Fees Rules, 1973 or on the basis of the said G.O.Ms.No.900 Home (Courts) dated 10.5.1985, since the petitioner's claim is based on the earlier Rules and the respondents' claim is based on the later Government Order.

7. Be that as it may; there is no denial of the fact that the decree passed by the court in which the petitioner defended the Government includes the fixation of the fee of the Government Pleader as Rs.2,000/- in each and every such cases disposed of and whiloso, whether the Government Order now projected to be the guiding factor for calculating the fees of the Government Pleader could be put against the fixation of the same by the court in the very decree passed in each and every case, thereby fixing the fee of the Government Pleader at Rs.2,000/- is the point for determination.

8. No doubt the Government Order is only an executive instruction not having the force of law such of the statutory provision, but an order made by a civil forum of law is not only binding on parties to which the Government must necessarily be a party, since in the cases of acquisition of land for the public purpose, it is the Government represented by its officials, such as the Collector, the Special Tahsildar is the main party and therefore, the order passed by the court of reference and the Subordinate Judge is entirely binding on the respondents and therefore, when the fee of the Government Pleader has been fixed therein, in each and every case by the court itself, which is not disputed at all, there is absolutely no other clue or guidance or interference need be necessary, since such fixation of the fee by the court is binding on the Government and therefore, the only option left with the respondents is to calculate the fees in all the cases conducted by the petitioner and issue the cheque in favour of the petitioner to the total sum arrived at as his legal fee especially in view of the fact that such a fixation of the fee by the Subordinate Court, Madurai could only be testified in the appropriate upper forums of law, which the respondents have not chosen to do till date and therefore, such fixation of the fee in the decrees passed by the court of Subordinate Judge, Madurai goes unchallenged and the same has to be complied with by the respondents.

9. For all the above discussions held, the petitioner becomes entitled to the relief as sought for in the writ petition. The respondents are hereby directed to calculate the fees payable to the petitioner for the period from 1981 to 1985 as detailed in the affidavit filed in support of the writ petition, in terms of the fixation of the fee for the petitioner having acted as Government Pleader in those cases by the decree of the court concerned and calculating the total sum shall pay as legal fee in favour of the petitioner within a period of two months from the date of receipt of a copy of this order.

10. In result, the writ petition succeeds and the same is allowed in terms of the findings and directions of the foregoing paragraphs.

i) However, in the circumstances of the case, there shall be no order as to costs.