

(2013) 01 JH CK 0138
In the Jharkhand High Court
Case No : L.P.A. No. 249 of 2012

M/s. Central Coalfields Limited and Others

APPELLANT

Vs

Anil Kumar Lal

RESPONDENT

Date of Decision : 24-01-2013

Acts Referred:

Citation : (2013) 1 JLJR 468

Hon'ble Judges : Prakash Chandra Tatiya, C.J; Jaya Roy, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties. The respondent-petitioner, who is an Advocate, preferred a writ petition being W.P. (C) No. 4267 of 2006 and prayed that writ be issued against the respondent-appellant with respect to the payment of his fees for the cases which he conducted, @ Rs. 550/- per appearance, as was fixed for appearance in the district court in a contract between the parties. The admitted facts of the case is that the petitioner-Advocate earlier filed a suit for recovery of certain fees amount (for conducting some other cases) against the same very appellant, which was decreed by the trial court. Instead of filing another suit for recovery of fees for other cases, the petitioner filed present writ petition for recovery of his fee amount.

2. The learned Single Judge allowed the writ petition, directing the respondent-appellant to calculate the total amount of arrears towards bill and also interest @ 9% per annum on the total amount due from the date the writ petition was instituted i.e., 1st August, 2006. This judgment dated 20th April, 2012 is under challenge before us.

3. The learned counsel for the appellant submitted that writ petition of an Advocate for his fees is not maintainable, in view of the judgment of the Hon'ble Supreme Court, delivered in the case of Improvement Trust, Ropar through its Chairman Vrs. S. Tejinder Singh Gujral, reported in : 1992 (0) GLHEL-SC 11520.

4. Learned counsel for the respondent-writ petitioner vehemently submitted that Advocate is discharging the public duty and, therefore, in view of the above reason, the writ petition was maintainable. It is submitted that in view of the fact that earlier decision was given by the civil court, wherein the rate of fees has already stand concluded/decided by virtue of the judgment passed against the appellant and, therefore, there is no dispute with respect to the quantification of the amount. It is also not in dispute that the writ petitioner was Advocate of the appellant and, therefore, in that fact situation also the writ was maintainable.

5. We have considered the submissions of the learned counsel for the parties and perused the facts of the case.

It is not in dispute that earlier writ petitioner filed a suit and he got the decree, in the matter of fee for particular case at particular rates and that decree attained the finality. However, question arises is whether the petitioner, who was rendering a professional service to the appellant was discharging a public function, which is required to be considered in the light of the judgment of the Hon"ble Supreme Court delivered in the case of Kumari Shrelekha Vidyarthi and Others Vs. State of U.P. and Others, , wherein issue involved was with respect to the termination of the a appointment of all Government counsel in all districts of the State of Uttar Pradesh, wherein question was decided that what is the role of the Government Counsel, who got the appointment from the Government. In that context, said judgment was rendered and in this case admittedly the writ petitioner gave his service under a private contract to it's client, may it be to a Public Sector Undertaking, but it was not more than that of rendering services by the petitioner to the Public Sector Undertaking as a private person and was not discharging any public duty. Advocates contract with his client is relevant to decide what duty the advocate was discharging. Every professional engagement of an advocate, may it be for Government or Government undertaking is not an engagement to perform "public duty".

6. In the case of Binny Ltd. and Another Vs. V. Sadasivan and Others, , it has been held by the Hon"ble Supreme Court that writ of mandamus or the remedy under Article 226 is pre-eminently a public law remedy and is not generally available as a remedy against private wrongs. It is used for enforcement of various rights of the public or to compel public/statutory authorities to discharge their duties and to act within their bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties.

In that case, the responders were working as member of the Manager staff of the appellant Company, which was engaged in the manufacture of cloth. They signed agreement with the Management acceding to the request of the appellant Company and continued to perform the same duties as before. In that matter, the question was with respect to the termination of the service of those persons as workmen. In that context, the Hon"ble Supreme Court has held that the scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought.

The issue of public authority in public service was considered in the said judgment, which also has no application to the facts of the present case. In contra, the Hon''ble Supreme Court in the case of Improvement Trust, Ropar (supra) has already held that no writ can be for recovery of an amount under a contract of rendering professional service by advocate. The High Court in that case was found to be wrong when it entered a writ petition of an Advocate for recovery of professional fees from the other party and that was Improvement Trust, Ropar.

In view of the judgment of the Hon''ble Supreme Court, delivered in Improvement Trust, Ropar (supra), we are of the considered opinion that writ petition was not maintainable and hence Letters Patent Appeal is allowed and the impugned judgment dated 20th April, 2012 is set aside and writ petition is dismissed.