
(2011) 08 PAT CK 0048
In the Patna High Court
Case No : CWJC No. 485 of 2011

Pragatisheel Adhivakta Sahayak Kalyan Sansthan, Bihar,
Patna and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 25-08-2011

Acts Referred:

Citation : (2011) 4 PLJR 288

Hon'ble Judges : Samarendra Pratap Singh, J

Bench : Single Bench

Judgement

Samarendra Pratap Singh, J.—Petitioner No. 1, Pragatisheel Adhivakta Sahayak Kalyan Sansthan, Bihar, Patna, is a society registered under the Societies Registration Act and is represented through its General Secretary. Petitioner No. 2 is founder-cum-convener of the society.

2. The petitioners pray for following reliefs:

(a) For setting aside the impugned order dated 22.9.2009 issued by respondent no. 2 rejecting the representation dated 23.12.2008 and reminder dated 2.2.2010 filed in the light of observation of this Court dated 26.3.2009 (sic-- 26.3.2008 ?) passed in C.W.J.C. No. 2711 of 2003 Reported in Pragatisheel Adhivakta Sahayak Kalyan Sansthan and Another Vs. The State of Bihar and Others, .

(b) For direction to the State Government to formulate and implement the law for regularizing the welfare scheme on the pattern of Andhra Pradesh Advocate's Clerk Welfare Fund Act & Rules, 1992 and West Bengal Law Clerk Act and Rules, 1997 by establishing Bihar Law Assistant Council, Patna.

(c) The petitioners also seek compliance of the order dated 24.5.2007 as well as order dated 26.3.2008 passed in C.W.J.C. No. 2711 of 2003 Reported in Pragatisheel Adhivakta Sahayak Kalyan Sansthan and Another Vs. The State of Bihar and Others, .

3. The instant society has been created by and for the Advocates' Clerks of Patna High Court for the welfare and upliftment of moral, intellectual, social and financial interest of its thousands of members/Advocates' Clerks all over the State.

4. The petitioners plead that the Government promulgate a welfare Act for the Advocates' Clerks on the pattern of Andhra Pradesh Advocate's Clerk Welfare Fund Act & Rules, 1992 and West Bengal Law Clerk Act and Rules, 1997. The aforesaid Acts mandate that the litigants would be required to affix two rupees stamp on each Vakalatnama, which would be credited towards the fund or corpus to be managed and used for the benefit of Advocates' clerk welfare. Besides this, the Bihar Legislature has also enacted Bihar State Advocates Welfare Fund Act, 1983 and the Bihar Advocates Welfare Fund Rules, 1984, requiring affixing of welfare stamp of Rs. 5.00 on each of Vakalatnama for the benefit of lawyers.

5. The petitioners submit that earlier it has thrice moved before this court, first in C.W.J.C. No. 12393 of 2001 in which the learned Single Judge vide order dated 2.11.2001 observed that representation of the petitioner should be disposed of by speaking order. Then C.W.J.C. No. 2711 of 2003 Reported in Pragatisheel Adhivakta Sahayak Kalyan Sansthan and Another Vs. The State of Bihar and Others, was filed, which was disposed of on 26.3.2008 with an observation that the matter in question is with respect to a policy decision and an enactment of law, which would be in domain of State Govt. eminent and the Legislature and it is for them to consider the matter and take appropriate decision for which no direction can be issued.

6. It is relevant to state that vide order dated 4.12.2008 in Civil Review No. 111 of 2008 the learned Judge observed that the word "dismissed" should be read as "disposed of" in the last line of the order contained in paragraph 21 of C.W.J.C. No. 2711 of 2003 Reported in Pragatisheel Adhivakta Sahayak Kalyan Sansthan and Another Vs. The State of Bihar and Others, .

7. The petitioners submit that the respondent State rejected the representation of the petitioners vide Memo No. 3817 dated 22.9.2009, contained in Annexure-12, on the ground that it would cause financial burden on the State. Learned counsel submits that the enactment would not cause any financial burden on the State, as it would be the litigant, who would affix stamp of Rs. 2.00 on the Vakalatnama.

8. Mr. Lalit Kishore, learned AAG-1, appearing on behalf of State submits that the courts would generally restrain themselves from issuing any mandamus in taking of a policy decision regarding an enactment. He submits that whether an enactment, which would require a litigant to affix stamp of Rs. 2.00 on each vakalatnama for welfare of Advocates' Clerk, is entirely a matter in the domain of State Legislature and Government.

9. On 22.9.2009 the State Government rejected the representation of the petitioners on the ground that it would entail financial burden on it.

10. The learned Single Judge in paragraph 13 of order passed in C.W.J.C. No. 2711 of 2003 Reported in Pragatisheel Adhivakta Sahayak Kalyan Sansthan and Another Vs. The State of Bihar and Others, had observed that affixing stamp of Rs. 2.00 on vakalatnama by the litigants would in no way raise the financial burden on the State. Paragraph 13 of order dated 26.3.2008 passed in C.W.J.C. No. 2711 of 2003 Reported in Pragatisheel Adhivakta Sahayak Kalyan Sansthan and Another Vs. The State of Bihar and Others, , which dealing with the objection taken by State in its counter affidavit that learned Single Judge observed as follows:

So far as the first objection is concerned, there is no question of any financial burden on the State if the aforesaid welfare law is enacted. From the provisions of West Bengal and Andhra Pradesh Act, it would be quite apparent that this apprehension of the respondent-authorities is absolutely baseless and no financial burden at all has been put on the State. However with regard to financial burden upon the litigating public it may be pointed out that for the purpose of the welfare scheme for the petitioners the enactments of the other two States provided welfare stamp worth only Rs. 2.00 upon each vakalatnama filed on behalf of any party to the proceeding. It may be made clear that for the purposes of providing a welfare scheme for the Advocates of the State, the Bihar State Advocates' Welfare Fund Act, 1983 and the Bihar Advocates Welfare Fund Rules, 1984 have been promulgated by the State of Bihar according to which welfare stamps were to be affixed on every vakalatnama without which no vakalatnama was to be received by any court. Earlier the value of such stamp to be affixed on the vakalatnama was Rs. 5.00 per vakalatnama which has been now raised to Rs. 20.00 per vakalatnama by notification dated 07th January, 2008 (Bihar Ac, 4, 2008). It may also be noted in this regard that value of the stamps to be fixed on affidavits filed in the High Court was Rs. 25 which has been now raised to Rs. 30 and interlocutory application was Rs. 20.00 which has been now raised to Rs. 250.00 and the writ petition was Rs. 250.00 which has been now raised to Rs. 500.00. In the said circumstances, fixing a welfare stamp worth only Rs. 2.00 on each vakalatnama is definitely not going to cause any huge financial burden on the litigating public.

11. I am conscious of the fact that no direction can be issued to the State Government to enact a law for creation of Welfare Fund for Advocates' Clerks, even though other States have promulgated one. Nonetheless, it cannot be lost sight of, that Advocates' Clerks are an important wing of our legal (sic--system?). They perform work from system i.e. filing of the petitions and notice, marking of list, facilitating affidavits, to watch of the cases etc. They are also liable to pay registration fees regularly in the court under Part-IV, Chapter-XVIII of the Patna High Court and as well as Chapter-V of the Civil Court Rules. (sic) sides this they also give their time for the public causes as a "Judiciary Assistant" and "Important Wheel", as defined in Rule 15 of Part-IV, Chapter-XVIII of Patna High Court Rules and Chapter-V of the Civil Court Rules.

12. The Bihar State Bar Council has also made recommendation for enactment of Welfare Act for the Advocates' Clerks on the pattern of Andhra Pradesh Advocate's Clerk Welfare Fund Act & Rules, 1992 and West Bengal Law Clerk Act and Rules, 1997.

13. As reiterated above, no mandamus can be issued to respondents to frame such Act or Rules. It is up to the representatives of Bihar State Bar Council and petitioners' representative to approach the respondents in persons for impressing upon them for framing such Act, Rules or Schemes. It is expected that the respondent State would give due hearing in the matter.

The writ application stands disposed of in aforesaid terms.