

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

WP(C).No. 1320 of 2015 (R)

PETITIONER(S):

**P.PARAMESWARAN NAIR,
ADVOCATE (FORMER ASSISTANT SOLICITOR GENERAL),
'SIVASAI', CC 29/1308, ELAMAKKARA P.O.,
COCHIN-682 026.**

BY ADVS.DR.S.GOPAKUMARAN NAIR (SR.)

**SRI.P.CHANDRASEKHAR
SRI.P.SREEKUMAR
SRI.S.PRASANTH
SRI.SOORAJ T.ELENJICKAL
SRI.P.A.MOHAMMED SHAH
SMT.UMA
SRI.B.PRASANTH
SRI.T.S.SARATH**

RESPONDENT(S):

- 1. UNION OF INDIA,
REPRESENTED BY THE SECRETARY,
MINISTRY OF HOME AFFAIRS, NORTH BLOCK, NEW DELHI.**
- 2. MINISTRY OF LAW AND JUSTICE,
REPRESENTED BY ITS SECRETARY, SASTRI BHAVAN,
NEW DELHI.**
- 3. JOINT SECRETARY (FREEDOM FIGHTERS DEVISION),
2ND FLOOR, NDCC-II BUILDING, PARLIAMENT STREET,
NEW DELHI-110 003.**
- 4. DEPUTY SECRETARY,
FREEDOM FIGHTERS DIVISION, 2ND FLOOR, NDCC-II BUILDING,
PARLIAMENT STREET, NEW DELHI-110 003.**
- 5. UNDER SECRETARY,
FREEDOM FIGHTERS DIVISION, 2ND FLOOR, NDCC-II BUILDING,
PARLIAMENT STREET, NEW DELHI-110 003.**

msv/

WP(C).No. 1320 of 2015 (R)

**6. REGISTRAR GENERAL,
HIGH COURT OF KERALA, ERNAKULAM-682 031.**

**7. M.P.GOVINDAN NAIR,
CONSULTANT, SECRETARY, 'SREEMOOLAM',
MANIMALA ROAD, FREEDOM FIGHTERS DIVISION,
HIGH COURT OF KERALA-682 031.**

**R1-R5 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R6 BY ADV. SRI.BABU PAUL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
14-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

- P1- A TRUE COPY OF THE ORDER DENYING THE LAWFUL CLAIMS OF THE PETITIONER.
- P2- A TRUE COPY OF THE VARIOUS MEMORANDUMS ISSUED BY THE MINISTRY OF LAW AND JUSTICE, THE 2ND RESPONDENT.
- P3- A TRUE COPY OF THE MEMOS OF APPEARANCE FILED IN THE CASES WHERE BILLS HAD BEEN RAISED.
- P4- A TRUE COPY OF THE REPRESENTATION FILED BEFORE THE UNDER SECRETARY.
- P5- A TRUE COPY OF THE REPRESENTATION FILED BEFORE THE SECRETARY, MINISTRY OF HOME AFFAIRS.
- P6- TRUE COPY OF THE SANCTION ORDER.
- P7- TRUE COPY OF THE LETTER SENT BY THE CENTRAL GOVERNMENT COUNSEL.
- P8- TRUE COPY OF THE LETTER D.O.NO.119/GENK137/2013-F.F.(SZ) DTD.11.10.2013.
- P9- TRUE COPY OF THE COVERING LETTER INDICATING THE PARTICULARS OF THE COMPLAINT.
- P10- TRUE COPY OF THE FRONT PAGE OF COUNTER AFFIDAVITS FILED BY THE PETITIONER IN ALL THE 7 CASES.
- P11- TRUE COPY OF THE REPORT FURNISHED TO THE PETITIONER BY THE 7TH RESPONDENT.
- P12- TRUE COPY OF THE FRONT PAGE OF THE COUNTER AFFIDAVIT FILED BY THE CENTRAL GOVERNMENT COUNSEL.
- P13- TRUE COPY OF THE REPLY SENT BY THE PETITIONER ON 5.11.2013.
- P14- A COPY OF THE SAID ADVICE LETTER WAS SEND TO ME BY THE SECTION OFFICER, MINISTRY OF HOME AFFAIRS.

RESPONDENT(S)' EXHIBITS:

- EXT.R1(a): TRUE COPY OF LETTER NO.52/CC/K47/2013-FF(SZ) DTD.12.3.2015.
- EXT.R1(b): TRUE COPY OF COMMUNICATION DTD.11.10.2013 OF MINISTRY OF HOME AFFAIRS.

Msv/

WP(C).No. 1320 of 2015 (R)

**EXT.R1(c): TRUE COPY OF COMMUNICATION DTD.13.11.2014 OF MINISTRY OF HOME
AFFAIRS.**

**EXT.R1(d): TRUE COPY OF COMMUNICATION DTD.14.11.2014 ISSUED TO THE DIG &
DISTRICT POLICE CHIEF, KOCHI CITY.**

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.MUHAMED MUSTAQUE, J.

~~~~~  
**W.P.(C).No.1320/2015**  
~~~~~

Dated this the 14th Day of October, 2015

J U D G M E N T

The petitioner was appointed as the Assistant Solicitor General of India to contest and defend the cases on behalf of the Union of India before this Court. This writ petition is filed on account of non payment of fees for conducting cases pertaining to freedom fighter's pension. The petitioner has approached this Court for the following reliefs:

“i. To issue a writ of certiorari or any other appropriate writ, direction or order quashing Exhibit P1 order.

ii. To issue a writ of mandamus or any other appropriate writ, direction or order commanding the respondents 1 to 5 to pay off the entire fees, covered by Exhibit P1 rejection order as well as Exhibit P3 series relating to memos of appearance.

iii. To issue a writ of mandamus or any other appropriate writ direction or order commanding the respondents to pay interest at the rate of 12% per annum for belated payment;

And

iv. To impose exemplary costs on the 4th and 5th respondents in adopting such deliberate, strange and arbitrary procedure for rejecting the lawful claims of the petitioner.”

2. The petitioner's request for professional charges and expenses have been turned down by Ext.P1 stating as follows:

“Since your personal appearance as well as effective date of hearing has not been duly verified by the Registrar General, High Court of Kerala, it may not be possible for us to reimburse. Accordingly, the bills in original are returned herewith. This issues with the approval of JS (FFR).”

3. The petitioner's case is that there is no practice of issuing certificate by Registry of High Court to certify effective date of hearing in respect of the cases wherein the petitioner appeared and argued. The petitioner has produced memos of appearance lodged before this Court as Ext.P3 series to substantiate his claim for fees for various cases. Therefore, it is submitted that in the light of memo of appearances, the respondents are bound to settle the fees payable by him.

4. In the counter affidavit filed by the respondents 1 to 5, it is stated that the petitioner after completion of tenure on 23/7/2014 submitted a large number of bills for reimbursement of fees in respect of cases regarding freedom fighters and rehabilitation. It is further submitted that unless the Ministry is satisfied that the petitioner's case is genuine and admissible, they are not bound to reimburse. It is further submitted that memo of appearance is not a conclusive evidence of personal appearance

of the petitioner on all the dates of hearings for which he has claimed reimbursement. It is further submitted that in several cases, the petitioner did not file any memo of appearance in many cases in respect of which bills have been raised. It is also submitted that the services of one consultant were hired to facilitate the Ministry in monitoring of court cases and it was reported that the petitioner had not personally appeared in many cases. It is also contended that the claims of legal fees will be subject to scrutiny and satisfaction of the paying authorities. Further, there are certain attribution of misconduct on the part of the petitioner.

5. As seen from the impugned order produced as Ext.P1, the rejection is mainly on the ground that the petitioner was unable to produce any documents to evidence effective appearance before this Court. The dispute now pertains to the bills raised by the petitioner in respect of cases referred in Ext.P3. There is no mechanism to keep track of effective appearance of the Counsel before this Court. The Counsel hold the brief on a fiduciary relationship. The trust is the paramount in such relationship. Any distrust would shake not only the relationship of the counsel and the client but would have an impact upon the system of administration of justice. The petitioner's term has come to an end on expiry of the term, his conduct is questioned stating that he was irregular and did not defend the

cases properly. If there had been any dereliction, action ought to have been initiated against him during his tenure. Allegations remain as allegations until it result in an action. It is to be noted that the Ministry has appointed seventh respondent as the consultant. The various communications generated from the seventh respondent would indicate that there are certain allegations of lapses on the part of petitioner but those allegations remain only as allegations since it was not resulted in action. The denial of legal fees to which he is entitled would arise only when the breach of trust arose and an action was inevitable. This cannot be raked up after engagement is over, when demand for fees is raised. The allegations cannot be whipped up as a defence, when claim for fees is demanded. Having allowed the petitioner to continue to serve upto the period of the term without any action, it is improper to deny the fees with reference to the facts which could have entailed in his termination of engagement.

6. It is to be also noted in the impugned order, the only reason stated is that the claim has not been duly verified by the Registrar General of this Court to satisfy effective appearance of the petitioner, no other cogent reason has been stated in the order to deny the fees claimed by the petitioner. Any attempt to supplement the reasons of rejection through the

W.P.(C).No.1320/2015

- : 5 : -

pleadings will have to be deprecated. In such circumstances, this Court is of the view that the impugned order is liable to be set aside. Accordingly, the following directions are issued:

Respondents 1 to 5 are directed to settle the claim for fees on receipt of proof of production of certified copies of memos of appearance lodged with this Court. Based on the proof of memos of appearance, the entire amount entitled to the petitioner shall be released within two months from the date of receipt of such proof. If the entire certified copies of memos of appearance are on record, the same shall be verified and the bills shall be paid based on the satisfaction within the time indicated as above.

The writ petition is disposed of as above. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

ms