

HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.31012 OF 2014

ORDER:

The petitioner prays for Mandamus declaring letter No.1350/E2/2011 dated 22.09.2014 of 5th respondent, as illegal, arbitrary and contrary to G.O.Rt.No.798, Law (L.I) Department dated 02.05.2007. The petitioner prays for a further direction to release honorarium Rs.15,000/- per month w.e.f., 07.06.2006 to 06.06.2009 in terms of G.O.Rt.No.798 dated 02.05.2007.

The brief facts of the case are as follows:

The petitioner is a practising Advocate. The 1st respondent through G.O.Rt.No.534, HM & FW (R.1) Department dated 06.05.2006 appointed the petitioner as Standing Counsel for Andhra Pradesh Yogadhyayana Parishad/respondent No.1. Letter of appointment dated 06.05.2006 was issued agreeing to pay petitioner professional fee at Rs.1,000/- for conducting a case and Rs.250/- towards expenses for the cases filed in the High Court and the Andhra Pradesh Administrative Tribunal. A sum of Rs.500/- for conducting a case and Rs.250/- towards fee and expenses are offered to be paid for cases filed at subordinate Courts.

Through G.O.Rt.No.1927, Law Department dated 02.11.2010, the respondents extended the term for a further period of three years w.e.f., 07.06.2009. Therefore, in all, the petitioner has rendered professional service to 1st respondent for a period of six years. G.O.Rt.No.798 Law (L1) Department was issued amending G.O.Ms.No.187 Law (L1) Department dated 06.12.2000. The petitioner requested respondents for payment of honorarium in terms of G.O.Ms.No.187 Law (L1) Department dated 06.12.2000. Through the impugned communication, the same was rejected by the 4th

respondent. It is convenient to excerpt the communication dated 22.09.2014.

“I am to inform you that initially you have been appointed on 07.06.2006 for three years Standing Counsel with the terms and conditions agreed upon by you i.e., for remuneration of a case wise fee of Rs.1,000/- for conducting and Rs.250/- towards expenses fixed in the Hon’ble High Court and Andhra Pradesh Administrative Tribunal, a case wise fee of Rs.500/- for conducting and Rs.250/- towards expenses for cases in the Hon’ble Courts subordinate to High Court in the city.

As per the said agreement, the remuneration has been paid for the period from 07.06.2006 to 31.05.2009 i.e., the first term of appointment as Standing Counsel.

Subsequently, for the second term of your office as Standing Counsel i.e., from 01.06.2009 to 31.05.2012, remuneration has been paid as per G.O.Rt.No.798 Law (L.I) Department dated 02.05.2007 i.e., at the rate of Rs.15,000/- per month.

Therefore, there are no dues to be paid towards your remuneration for holding two terms of office as Standing Counsel for Andhra Pradesh Yogadhyayana Parishad”.

The appointments and conditions of service of Law Officers is governed by G.O.Ms.No.187 Law (L1) Department dated 06.12.2000. The Government through G.O.Rt.No.798 Law (L.1) Department dated 02.05.2007 issued amendment to G.O.Ms.No.187 dated 06.12.2000. The amendment reads as follows:

“In instruction 3 of the Andhra Pradesh Law Officers (Appointed and Conditions of Service) instructions, 2000, issued in G.O.Ms.No.187, Law dated 6th December, 2000, in sub instruction (2) at the end of clause (g), the following words shall be added, namely:-

“However, the Standing Counsels may be paid a minimum monthly honorarium of Rs.15,000/- p.m. and also more, if the retainer fee and case wise fee exceeds Rs.15,000/- p.m. on average as per the willingness of the Standing Counsels obtained at the time of taking charge.”

Briefly stated, the case of petitioner is that in view of amendment to applicable service conditions, she is entitled to receive honorarium at Rs.15,000/- per month but not professional fee on case to case basis. The petitioner in support of her claim for payment of honorarium strongly relies upon the recommendations of the learned Advocate General which resulted in issuance of G.O.Rt.No.798 dated 02.05.2007. The petitioner made several representations to the Secretary, Legislative Affairs, Justice, Law Department for implementation of payment of Rs.15,000/- per month honorarium and the same was favourably recommended through letters dated 12.01.2012 and 18.04.2012. The Government issued circular Memo No.7920/372/L3/2010 dated 02.12.2010 and Memo No.1350/R1/2011 dated 22.01.2014 for implementation of G.O.Rt.No.798 dated 02.05.2007. The petitioner complains discrimination in implementation of G.O.Rt.No.798 dated 02.05.2007 at the hands of respondents by placing reliance upon G.O.Rt.No.287 Law Department dated 15.02.2007. The petitioner relies upon the order of this Court dated 19.03.2013 in W.P.No.618 of 2008. Therefore, the sum and substance of petitioner's case is that G.O.Rt.No.798 dated 02.05.2007 is issued by way of an amendment to the conditions in G.O.Ms.No.187 dated 06.12.2000. Through the amendment, the Government provided for minimum remuneration/honorarium to Standing Counsel and the same is payable w.e.f., 02.05.2007. The non-payment of honorarium to the petitioner from 07.06.2006 to 31.05.2009 is illegal, arbitrary and unconstitutional. Hence, the writ petition.

The Secretary F.A.C. Andhra Pradesh Yogadhaayana Parishad, Begumpet, Hyderabad/respondent No.1 filed counter affidavit opposing the writ prayer. The 1st respondent resists the writ prayer both in fact and law. The respondent admits the appointment of petitioner as Standing Counsel and the petitioner rendering services in two spells between 07.06.2006 and 31.05.2009, and 01.06.2009, and

31.05.2002. The controversy in the writ petition is limited to the extent of amount payable to the petitioner towards professional service for the first term.

According to 1st respondent, through G.O.Rt. No.534 HM &FW (R1) Department dated 06.05.2006, the terms and conditions between the petitioner and the 1st respondent are agreed. According to agreed term the petitioner was paid case wise at Rs.1,000/- and Rs.250/- towards fees and expenses respectively for conducting cases in the High Court/APAT and at Rs.500/- and Rs.250/- towards fee and expenses for the cases conducted in the subordinate Courts. The petitioner has accepted the offer of appointment and the 1st respondent has accordingly paid the amount to petitioner on case to case basis for the professional service rendered by the petitioner in the first spell. The 1st respondent avers that in the first spell of three years the petitioner has conducted three cases and the petitioner was paid agreed remuneration through proceedings No.691/APYP/2004 dated 09.02.2010. The 1st respondent admits the receipt of representation/ request dated 13.02.2008 of the petitioner for payment of monthly honorarium at Rs.15,000/- in terms of G.O.Rt.No.798 dated 02.05.2007. With reference to the applicability of G.O.Rt. No.798 Law(L1) Department dated 02.05.2007, it is contended that the Government Order provides for payment of minimum monthly honorarium at Rs.15000/- per month and also more, if the retainer fee and case wise fee exceeds Rs.15,000/- per month on average, however, with the willingness of the Standing Counsel. The order, it is contended, provides for exemption from payment of minimum honorarium for the Corporations which are on the verge of closure or have marginal activities.

The 1st respondent to justify non-payment of honorarium at Rs.15,000/- per month refers to the quality and quantity of professional

services rendered by the petitioner and contends that the amount paid in the first spell is commensurate to the professional services rendered by the petitioner. The 1st respondent goes to the extent of contending that G.O.Rt. No.1927 dated 02.11.2010 does not refer to G.O.Rt. No.798 dated 02.05.2007 for fixing the remuneration. It is stated that extending the term of Standing Counsel for three more years, payment of monthly honorarium was provided for and it was paid by the respondent. The 1st respondent refers to the details of cases conducted by the petitioner and also a few occasions where the petitioner has not rendered services to the Yogadhyana Parishad/respondent No.1, and the resultant payments made to the learned counsel who represented the Parishad. Through proceedings No.692/APYP/2004 dated 21.05.2014, the 1st respondent requested the Government to issue suitable orders for exemption from payment or honorarium at Rs.15,000/- per month from the date of G.O. till the expiry of first term on 07.06.2009. It is stated that the petitioner representing noble profession cannot penalise the respondent with these demands. The 1st respondent prays for dismissal of the writ petition.

The learned counsel representing the parties have substantially reiterated the factual and legal contentions stated in the pleadings.

At the outset, it is noticed that the 1st respondent with a view to resisting the claim of petitioner for payment of monthly honorarium not only stated a few allegations against the petitioner but also referred to a few letters received by the 1st respondent from the learned counsel who appeared for Yogadhyana Parishad/respondent No.1. This Court is not judging the quality or quantity of service rendered by the petitioner to the 1st respondent. Further, the conduct of 1st respondent in this behalf is not consistent. If for any reason, the 1st respondent is

dissatisfied with the quality of petitioner's service, the 1st respondent ought to have acted in its best interest, as the relationship between the counsel and the client is well defined. During the continuation of relationship of client and Standing Counsel, the 1st respondent neither made any grievance on the performance of petitioner nor circumstances warranting termination of the Standing Counsel. On the contrary, pursuant to the recommendation of the Secretary, A.P. Yogadhayana Parishad, the Government, issued G.O.Rt.No.1927 dated 02.11.2010, extending the term of petitioner for three years. Thus, having got the services of petitioner extended by three more years, the 1st respondent ought not to have even for the sake of record, adverted to these circumstances. Further, the outcome of writ petition is not dependent on these circumstances or considerations.

In the above facts and circumstances, the following points arise for consideration:

- 1) Whether the denial of payment of honorarium at Rs.15,000/- per month to petitioner through letter No.1350/E2/2011 HMFW (E2) Department dated 22.09.2014 is valid and sustainable?
- 2) Whether the petitioner is entitled for payment of honorarium in terms of G.O.Rt.No.798 Law (L1) Department dated 02.05.2007 and if so, the period for which the petitioner is entitled?

The Government of A.P. issued executive orders regulating the appointment and conditions of service of the Law Officers in the State vide G.O.Ms.187 dated 06.12.2000. These instructions are called the A.P. Law Officers (Appointment & Conditions of Service) Instructions 2000. These instructions are applicable to all the Law Officers except the learned Advocate General and the Additional Advocates General.

The instructions apply to Standing Counsel appointed for State Public Sector Undertakings, Local Authority, University, a charitable and Hindu religious institution or any other instrumentality of the Government. The un-amended instruction on payment of honorarium reads as follows:

“The honorarium payable to a Standing Counsel may be such as determined by the appointing institution.”

It is evident from the preface to G.O.Rt No.798 dated 02.05.2007 that the payment of honorarium to Standing Counsel by the institutions referred to above, requires sufficiency and uniformity. The learned Advocate General on considering the relevant factors advised the Government through letter No.43/2007 dated 27.01.2007 to incorporate amendment to Clause 3 (2)(g) referred to above. The Government after accepting the advise of the learned Advocate General, issued the following amendment.

“Therefore it has become necessary to amend the orders issued in the reference 3rd read above. The amendment hereby made shall be deemed to have come into force with immediate effect.

“In instruction 3 of the Andhra Pradesh Law Officers (Appointed and Conditions of Service) Instructions, 2000, issued in G.O.Ms.No.187, Law dated 6th December, 2000, in sub instruction (2) at the end of clause (g), the following words shall be added, namely:-

“However, the Standing Counsels may be paid a minimum monthly honorarium of Rs.15,000/- p.m. and also more, if the retainer fee and case wise fee exceeds Rs.15,000/- p.m. on average as per the willingness of the Standing Counsels obtained at the time of taking charge.”

The effect of amendment is payment of monthly honorarium at Rs.15,000/- to the Standing Counsel. The amendment in the opinion of this Court envisages two situations namely, payment of monthly honorarium at Rs.15,000/- irrespective of the actual higher amount payable by the institution and taking the willingness of Standing

Counsel to pay the agreed honorarium for the professional services rendered by the Standing Counsel.

In this background, the complaint of the petitioner is that at the time of her appointment as Standing Counsel what was applicable was un-amended instructions, and accordingly fee and expenses has been suggested and accepted. The recommendation of the learned Advocate General resulted in G.O.Rt.No.798 dated 02.05.2007 providing for payment of monthly honorarium to the Standing Counsel. Therefore from the effective date, the honorarium should be paid. The relationship between the petitioner and the 1st respondent is not confined to one case or a particular legal opinion is sought.

The petitioner is appointed and retained as a Standing Counsel for a period of three years with definite terms and conditions/responsibilities. The benefit of amended instruction was extended to the petitioner and fresh appointment order was issued for three years. Likewise, at the time of issuing the appointment order through G.O.Rt.No.534 dated 06.05.2006, the institutions etc. referred to above had discretion to determine the professional fee and expenses payable to the Standing Counsel. With the amendment, reasonable and minimum remuneration as honorarium is assured to the learned Standing Counsel representing institution or instrumentalities of the State in High Court and APAT. The honorarium now fixed has taken into consideration the extent of work and number of institutions for which Standing Counsel are appointed and without any discrimination, a reasonable uniform sum is assured. Therefore, there should be a right and proper reason for denying the benefit of minimum honorarium by the 1st respondent to the petitioner. Further, the 1st respondent is conscious that in the face of the amended instruction through G.O.Rt No.798 dated 02.05.2007, there is obligation to pay honorarium. Therefore, through letter dated

30.06.2014 requested the Government to exempt the 1st respondent from payment of minimum remuneration at Rs.15,000/- per month from the date of G.O. Rt.No.798 dated 02.05.2007 till 07.06.2009. Had it been a case where G.O. Rt.No.798 dated 02.05.2007 is not applicable, there ought not to exist a reason to request exemption of amended G.O.

The 1st respondent having retained the petitioner as Standing Counsel for six years ought not to be accusing petitioner of rendering deficient or no service to the 1st respondent. The amendment through G.O.Ms.798 dated 02.05.2007 is categorical in its application to the Institutions/ Instrumentalities of the State etc. The 1st respondent by reference to un-amended executive instructions agreed to pay on case to case basis as it provided discretion to these organisations, whereas the discretion is replaced by amendment through G.O.Ms.No.798 dated 02.05.2007. If that being so, the 1st respondent should have acted in terms of applicable instructions and paid honorarium to the petitioner. The petitioner represents the noble profession and the 1st respondent being an instrumentality of the State ought not to arbitrarily deny benefit to petitioner. Had it been a case where the 1st respondent desired not to have the petitioner as its Standing Counsel, the 1st respondent ought to have terminated the services of the petitioner at any time in the two spells, instead an extension for one more term was granted on the representation of Secretary, Andhra Pradesh Yogadhyana Parishad. The quality of service rendered by the Standing Counsel is not measured by reference to number of cases the Standing Counsel handles. There are several ancillary and connected duties a Standing Counsel is expected to discharge.

Further, it is not the case of the 1st respondent that in spite of entrustment of work, the petitioner failed to attend. The amended G.O. is applicable to petitioner and refusal is an irrelevant circumstance and

cannot be justified.

For the above reasons, I am of the opinion that the denial of monthly honorarium to petitioner in terms of G.O.Rt.No.798 dated 02.05.2007 is arbitrary and illegal, and the impugned letter refusing to pay monthly honorarium is liable to be set aside and is accordingly set aside. The petitioner prays for payment of monthly honorarium from 07.06.2006 to 31.05.2009.

The petitioner relies upon G.O.Rt No.798 dated 02.05.2007. The instant Government order, as noted earlier, is effective from 02.05.2007. Therefore, the petitioner on her own choice gives retrospective effect and claims monthly honorarium at Rs.15,000/- per month from 07.06.2006 till 02.05.2007 and the assertion is not in terms of amended G.O. G.O. is effective from 02.05.2007 and the petitioner cannot claim any benefit anterior to the effective date. Therefore, the petitioner is entitled for monthly honorarium at Rs.15,000/- per month from 02.05.2007 till 31.05.2009. The points are answered accordingly.

The writ petition is allowed as indicated above. No order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

S.V. BHATT, J

29th January, 2015
Lrkm/Stp