

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	12/04/2018
Delivered on	14/09/2018

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P.No.33087 of 2013

M.C.Swamy

..Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by the Secretary to Government,
P.W.D. Department,
Fort St. George,
Chennai - 600 009.

2.The Executive Engineer,
PWD / Kaveri Mordanisation Division,
Near Taluk Office Compound,
Kumbakonam.

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, to direct the respondents PWD Department to pay the fees bill together with interest @ 12% from 07.05.2003 onwards.

For Petitioner : Mr.M.C.Swamy
For M/s.Senthil Swamy Assoc.

For Respondents : Mr.N.Inbanathan
Additional Government Pleader

सत्यमेव जयते
O R D E R

Heard Mr.M.C.Swamy, learned counsel, representing M/s.Senthil Swamy Associates, learned counsel on record for the petitioner; Mr.N.Inbanathan, learned Additional Government Pleader for the respondents and perused the materials available on record.

2. This Writ Petition has been filed for issuance of Writ of Mandamus, directing the respondent- PWD Department to pay the fees bill together with interest @ 12% from 07.05.2003 onwards.

3. The petitioner is a practising Advocate in Madras High Court and he was appointed as the Special Government Pleader

(CS), as such he was holding the Office between 18.10.2001 and 21.07.2004. The petitioner would state that he duly discharged his duties with at most dedication and sincerity. According to the petitioner, the Public Works Department, through one Mr.Mohd. Yusuf, former Special Government Pleader preferred an appeal before Customs Excise and Gold (Control) Appellate Tribunal (in short "CEGAT"), challenging the demand made by the Excise Department, Government of India in the year 1995 and it came to be dismissed. Thereafter, the Excise Department demanded Rs.57,34,991.23/- from the Public Works Department. At that juncture, the petitioner was approached by the Government and he filed a Writ Petition before the High Court and obtained favourable orders to reopen the appeals which were disposed of by the CEGAT, Chennai and eventually the appeals were allowed and the demand was also cancelled. The grievance of the petitioner is that the professional fee raised by the petitioner at the rate of 1% on the claim of Excise Duty on 08.11.2002 have not been settled despite reminders dated 08.01.2007 and 25.09.2013.

4. A common counter affidavit has been filed by the Special Secretary to Government, Public Works Department, Government of Tamil Nadu verbatim denying the averments made by the petitioner, however, fortunately the appointment of the petitioner as a Special Government Pleader in 2001 and conduct of the case for the respondent-Department before the High Court have not been disputed. According to the respondents, the bill raised by the petitioner based on G.O.Ms.No.45, Highways Department, dated 24.02.1999, claiming 1% of the total amount is not correct and as per G.O.Ms.No.464, Public Works Department, dated 08.04.1999, he is entitled to claim Rs.875/- for his every appearance.

5. This Court has repeatedly deprecated the practice of the Government in adopting delaying tactics and directed the respondents to pay the counsel fee along with interest. In W.P.No.5635 of 2007, this Court on 09.04.2018 has observed that it is unfortunate that the respondents have made their own counsel to approach and appear before this Court for payment of his legal fee and made him as a litigant before this Court.

6. In 2012 (2) CTC 405 [K.V.Venkatapathi (deceased) v. CMWSSB], N.Paul Vasanthakumar, J has held as follows:-

"18. Before parting with this case, I am constrained to state as follows:-

During the course of the hearing of this Writ Petition it was informed by the Members of the Bar that the Government and its instrumentalities are not paying the bill amounts to the former Advocate

Generals, Additional Advocate Generals, Special Government Pleaders, Government Pleaders, Government Advocates and Standing Counsels promptly and even after expiry of their terms. Number of Writ Petitions are filed by former Law Officers. The authorities of the Government and Public Sector Undertakings are duty bound to keep in mind that it is not proper to force the learned Advocates to file Writ Petitions for the sanction of their legal fees after availing their professional service/work with satisfaction. Forcing the learned Counsels, who are Officers of the Court to stand as litigants is regrettable. The concerned officers of the Government and Public Sector Undertakings are to be reminded by the Chief Secretary, Government of Tamil Nadu to settle the legal fee payable to all the Advocates so as to avoid unwanted litigations of this nature before this Court. The registry is directed to mark a copy of this order to the Chief Secretary, Government of Tamil Nadu, Chennai-600009.

The Writ Petition is ordered with the above directions and observation. No costs. Consequently, connected Miscellaneous Petition is closed."

7. In the case on hand, it is not disputed that the first respondent had lost their case before the CEGAT, Chennai and the petitioner was engaged by the respondent-Department to challenge the order in a Writ Petition. Indisputably, the Writ Petition was allowed and eventually, the respondents have succeeded before the CEGAT, by which payment of Excise Duty of Rs.57,34,991/- has been saved.

8. The learned counsel for the petitioner has produced the copy of the judgment in W.P.No.26861 of 2003, dated 26.10.2017 to show that a direction has been issued to the Collector of Customs to refund the amount of Rs.33,40,771/- pre deposit made by the first respondent to prefer the appeal. The petitioner seeks 1% of the total amount towards professional fee based on G.O.Ms.No.45, dated 24.02.1999, which is now opposed based on G.O.Ms.No.464, dated 08.04.1999.

9. Taking note of the above facts, I find no substance in the contention of the respondents. In my considered opinion, the petitioner is entitled to succeed in this Writ Petition. Accordingly, the Writ Petition is allowed. The respondents shall pay the fee claimed by the petitioner along with interest at the rate of 12% from January 2007 till the date of realization.

There is no order as to costs.

r n s

Sd/-
Asst. Registrar (CS-IX)

//True Copy//

Sub Asst. Registrar

To

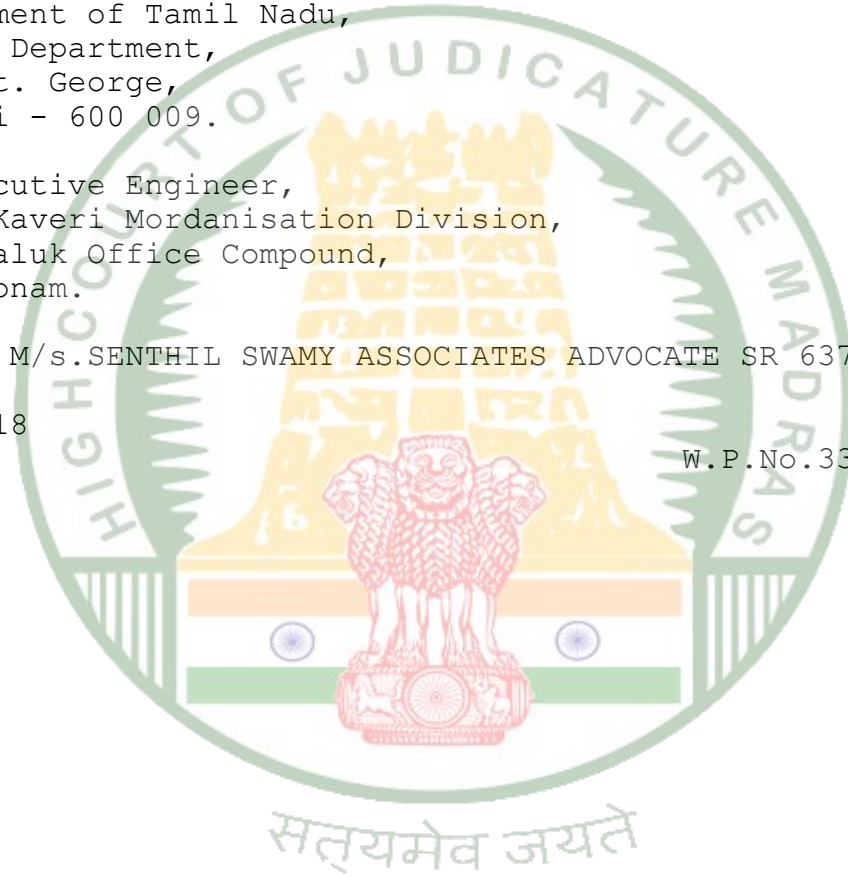
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+ 1 CC TO M/s.SENTHIL SWAMY ASSOCIATES ADVOCATE SR 63708

KR/15/10/18

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