

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19/03/2018

Delivered on: 14/09/2018

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P.No.29562 of 2013 &

M.P.No.1 of 2013

V.N.Mohanraj

.. Petitioner

Vs.

1.The Managing Director,
C.M.W.S.S.B, No.1,
Pumping Station Road,
Chennai - 600 002.

2.The General Manager,
C.M.W.S.S.B., No.1,
Pumping Station Road,
Chennai - 600 002.

.. 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 herein to make payment as per the petitioner's fee bill dated 06.12.2005 within 12% interest from the date of the bill.

For Petitioner : Mr.Doraisamy, Senior Counsel
For Mr.N.Ishtiaq Ahmed

For Respondents : Mr.N.Ramesh
Standing Counsel

O R D E R

Heard Mr.Doraisamy, learned Senior Counsel, representing Mr.N.Ishtiaq Ahmed, learned counsel for the petitioner; Mr.N.Ramesh, learned Standing Counsel for the respondents and perused the materials available on record.

2. The petitioner has come forward with this Writ Petition praying for issuance of Writ of Mandamus, directing the respondents to make payment as per the petitioner's fee bill dated 06.12.2005 along within 12% interest per annum.

3. The undisputed facts are that the petitioner is a practicing Lawyer in Chennai and was appointed as a Panel Advocate for the respondent-Board for the year 2002-2006. The

petitioner was entrusted with O.A.No.309 of 2005 on the file of the Original Side to defend respondent-Board. Against an interim order passed in the Original Application, an appeal was preferred before the Division Bench in O.S.A.No.81 of 2005, which was disposed of on 29.04.2005. The Original Application was withdrawn on 08.11.2005 as settled out of Court. Thereupon, the petitioner raised a bill on 06.12.2005 claiming Rs.10,91,789/-. Since there was no response, a reminder was sent on 10.10.2006. Despite the same, the bill amount was not paid and hence, the present Writ Petition.

4. A common counter affidavit has been filed by the respondents denying the allegation of the petitioner and it is stated that in O.A.No.309 of 2005, a dispute arose between the contractor and sub contractor and a Single Judge has passed an interim order on 18.04.2005 in Application No.1440 of 2005. Against the order an appeal in O.S.A.No.81 of 2005 was preferred and the Board has entrusted the case to the petitioner. The O.S.A. was disposed of on 29.04.2005 directing the sub contractor to furnish a bank guarantee for a sum of Rs.5 Crores to the Board and on compliance of the said condition, the Board was directed to make payment of Rs.10 Crores to the first respondent. The petitioner engaged Mr.V.Raghupathi, the then Government Pleader to defend the case and the Board had paid a sum of Rs.45,000/- to Mr.V.Raghupathi and Rs.20,000/- to the petitioner.

5. It is further stated that a settlement was reached between the contractor and sub contractor and by filling a Memo of withdrawal, O.A.No.309 of 2005 was dismissed on 08.11.2005. According to the respondents, the petitioner is entitled to claim fees as stipulated in the proceedings in B.P.Misc.No.31 of 2000 P&A (LC) Dept., dated 11.08.2000 of the Board and as per the Resolution of the Board No.273/2000, dated 31.07.2000, Rs.1,500/- is payable for original applications, including miscellaneous applications which was also stated in the letter in and by which, the service of the petitioner was engaged by the respondent Board and hence, the claim is liable to be rejected.

6. A rejoinder was filed by the petitioner stating that the Board Resolution No.273 of 2000, dated 31.07.2000 makes it clear that legal fee for the original petition filed in High Court, the total fees payable as per the Legal Practitioner's Fees Rules and High Court Fees Rules. For better appreciation, the Resolution is extracted hereunder:-

"Legal fees for original petition filed in High Court - total fees payable as per Legal Practitioner's Fees Rules and High Court Fee Rules."

7. In (2015) 4 MLJ 19 [Chief Secretary v. Bhavani Subbaroyan], the Division Bench of this Court has held that a Special Government Pleader is entitled to claim professional fee as per Section 2(i)(c) of the High Court Fee Rules and the relevant paragraphs would run thus:-

"17. Therefore, we are of the considered view that the respondent is entitled to claim her professional fee in respect of the four pending matters only after the disposal of the said matters. As per Rule 9-A, she should share the professional fee payable under section 2(i)(c) of the High Court Fee Rules for the said matters along with the other Special Government Pleader or the Additional Government Pleader, who appeared in the matters previously or subsequently. The respondent is entitled to claim interest at the rate of 12% per annum, so far as the bills in respect of the matters which were already disposed of. The appellants are directed to pay the professional fee to the respondent along with requisite interest in respect of cases which were already disposed of, within a period of three weeks from the date of receipt of a copy of this judgement and they are further directed to settle the professional fee of the respondent in respect of the pending suits, within a period of three months from the date of disposal of each of the civil suit. With the above modification, the writ appeal is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

18. Before parting with, we would like to add that in a matter of claim of fees, for the work done by the Law Officers of the Government, many times, we experience that they are before this Court, claiming that their fees are not paid and approaching this Court for a direction to disburse their professional fees. This kind of situation is not good for the effective functioning of officers, either during their period or even thereafter. Therefore, every Stakeholders, involved in this process, should consider this position, frame necessary Rules and Regulations in the manner, as expected. In addition to what is already available in respect of certain areas, a comprehensive Rules may be framed for this purpose by regulating every aspect of this matter. We expect the appropriate authorities to act complying with the above observation and do the needful."

8. In the matter on hand, indisputably, the respondent Board had engaged the service of the petitioner to defend the Board in O.A.No.309 of 2005. It is an admitted fact that the petitioner filed a counter and he has been contesting the case and an

appeal arising out of the order passed in the interim application, the petitioner engaged the service of the then Government Pleader Mr.V.Raghupathy.

9. A perusal of the records would reveal that the respondents refused to make the bill amount on that ground they are not beneficiaries of the order and the Board was only a formal party in a dispute between the contractor and sub contractor. It is to be noted that since the Board engaged the service of the petitioner, the respondent Board cannot permit to be contended that the Board was only a formal party and it is not a beneficiary. If the Board was only a formal party, the respondents should have defended the case on their own without engaging the service of the petitioner. It is also admitted in the counter that based on the direction issued in the Original Side Appeal, the learned Judge directed the sub contractor to furnish bank guarantee in favour of the Board. The Resolution dated 31.07.2000 extracted supra would make it clear that the petitioner is entitled to claim the legal fee for the Original Application filed in High Court as per the Legal Practitioner's Fees Rules and High Court Fees Rules. Hence, the respondents have no right to delay and dispute the genuine claim made by the petitioner.

10. This Court has repeatedly deprecated the practice of adopting delaying tactics in paying the professional fee 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. The same Judge in the decision 2012 (2) CTC 405 [K.V.Venkatapathi (deceased) v. CMWSSB], has observed 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."

11. In view of the above finding and also following the decision referred above, in my considered opinion, the petitioner is entitled to succeed in the Writ Petition. The respondents are directed to settle the bill amount along with interest at the rate of 9% within a period of three months from the date of receipt of a copy of this order. Accordingly, the Writ Petition is allowed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Managing Director,
C.M.W.S.S.B.,
No.1, Pumping Station Road,
Chennai - 600 002.

2.The General Manager,
C.M.W.S.S.B.,
No.1, Pumping Station Road,
Chennai - 600 002.

+1cc to Mr.Istiaq Ahmed, Advocate, S.R.No.63896
+1cc to Mr.N.Ramesh, Advocate, S.R.No.63870.

W.P.No.29562 of 2013 &
M.P.No.1 of 2013

KS (CO)

rrs 10/10/2018