

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.5707 of 2018

ORDER:

Heard the learned counsel for the petitioner and the learned Government Pleader for Law and Legislative Affairs appearing for respondents.

2. The petitioner is an Advocate practising at Rajampet in Kadapa District. He was appointed by 1st respondent vide G.O.Rt.No.873 Law (L.3) department dt.19.5.2011 as an Assistant Government Pleader for the Senior and Junior Civil Judges' Courts, Rajampet, YSR Kadapa District to look after the civil cases on behalf of the Government for a period of 3 years. His conditions of service and honorarium were to be governed by G.O.Ms.No.187 dt.06-12-2000 and he was to be paid a consolidated honorarium of Rs.9000/- per month.

3. He took charge on 23-05-2011. His three year term expired on 24-04-2014.

4. However, no alternative arrangements were made by the respondents and no new incumbent was appointed after 24-04-2014.

CONTENTIONS OF PETITIONER

5. Petitioner claims that he was asked by 2nd respondent to continue as Assistant Government Pleader till alternative arrangements are made and accordingly he continued till 07-12-2014.

He contends that he conducted all the cases of the State Government in all the Courts including the Lok Adalat held at Rajampet, Kadapa, and that he filed suits, counter affidavits, Written Statements and defended the State by conducting trials also.

6. According to the petitioner, only on 03-12-2014, the 2nd respondent issued proceedings appointing one T.Lakshmi Narayana, Advocate, as an Assistant Government Pleader as an interim arrangement and the said person assumed charge on 08-12-2014; however, the respondents had not paid honorarium or any amount to him from 01-04-2014 till 07-12-2014 i.e. 8 months and 6 days.

7. Petitioner contends that after he handed over charge, he made representations to 2nd respondent and also met 2nd respondent on several occasions for payment of honorarium for the said period amounting to Rs.1,47,000/- and there is no response from the 2nd respondent. He also contends that he addressed letter dt.01-06-2017 requesting 2nd respondent to pay him the said amount, but the 2nd respondent did not do anything.

8. Counsel for Petitioner contends that petitioner did not intend to provide his services gratuitously to the respondents; the State, having availed of the same, is bound to compensate him by paying adequate remuneration for the said period; and it's inaction in

this regard is illegal, arbitrary and violates Articles 14 and 300-A of the Constitution of India.

9. Counsel for the petitioner reiterated the said contentions and pointed out that that the Tahsildar, Penagalur addressed a letter dt.24-01-2014 to him to give legal opinion in A.S.No.1 of 2013 pending on the file of the Senior Civil Judge, Rajampet; and even the 2nd respondent had addressed a letter on 26-02-2014 to the Tahsildar of Obulavaripalle Mandal stating that he received notice and summons from the Court of Senior Civil Judge, Rajampet in I.A.No.44 of 2014 in O.S.No.16 of 2014 filed against him by one Thalapula Lakshumma and asked the petitioner to file the Written Statement.

THE STAND OF THE RESPONDENTS

10. Counter affidavit is filed by the respondents refuting the contentions of the petitioner.

11. It is stated that the petitioner was appointed vide G.O.Rt.No.873 dt.19-05-2011 as Assistant Government Pleader for the Senior and Junior Civil Judges' Courts, Rajampet, YSR District, to look after the civil cases on behalf of Government for a period of three years from the date of assumption of charge of the post or till the termination of his service whichever is earlier and his conditions of service and honorarium were according to the G.O.Rt.No.187

dt.06-12-2000 and he was paid a consolidated honorarium of Rs.9,000/- p.m.

12. It is admitted that one T.Lakshmi Narayana, Advocate, was appointed temporarily as Assistant Government Pleader by the 2nd respondent on 03-12-2014 till an Assistant Government Pleader is appointed by Government on regular basis for administrative convenience and the said Advocate took charge of the said post on 08-12-2014. It is stated that this action of the 2nd respondent was ratified by the Government subsequently.

13. It is stated that honorarium of Rs.9,000/- per month was paid to the petitioner from the date of his joining as Assistant Government Pleader, Rajampet i.e. from 23-05-2011 to 31-01-2014 in different spells as per the sanction of budget by the Government. It is stated that vide G.O.Ms.No.174 dt.31-01-2014, the honorarium was enhanced from Rs.9,000/- to Rs.18,000/- with effect from 01-02-2014 onwards and that for the period 01-02-2014 to 01-04-2014, a sum of Rs.45,600/- was paid to the petitioner vide 2nd respondent proceedings dt.27-01-2015. It is further stated that for the subsequent period from 02-04-2014 to 22-05-2014, an amount of Rs.30,193/- sanctioned by 2nd respondent on 07-08-2015 was paid to the petitioner on 28-08-2015 by a NEFT transaction.

14. However, for the period after 22-05-2015 till 07-12-2015, it is contended that the 2nd respondent never extended the term of the

petitioner as Assistant Government Pleader, Rajampet and it is denied that petitioner was asked to continue by 2nd respondent as Assistant Government Pleader till the alternative arrangement is made. It is denied that the petitioner attended the Courts of the III Additional District Judge, Senior Civil Judge, Junior Civil Judge, Rajampet, as contended or filed any suits, counter affidavits, Written Statements etc. therein and it is alleged that the petitioner attended the said Courts *without instructions* from the competent authority. It is therefore contended that the petitioner is not entitled to any remuneration/honorarium from 22-05-2014 till 04-12-2014.

15. Learned Government Pleader for Law and Legislative Affairs reiterated the said contentions.

POINT FOR CONSIDERATION

16. Therefore the question which arises for consideration is *“Whether the petitioner is entitled to compensation/remuneration for professional services rendered by him for the period 22-05-2014 till 04-12-2014 and if so, on what basis?”*

17. From the facts narrated above, it is clear that the petitioner was appointed as Assistant Government Pleader for the Senior and Junior Civil Judges’ Courts, Rajampet, YSR District, to look after the civil cases on behalf of Government for a period of three years vide G.O.Rt.No.873 dt.19-05-2011; and he worked as Assistant Government Pleader without any complaint from

22-05-2011 to 7-12-2014, though his 3 year tenure ended on 22-05-2014. It is also true that there is no written order issued by 2nd respondent asking him to continue his services after 22-05-2014.

18. It is not in dispute that interim arrangement by appointing Sri T.Lakshminarayana, Advocate, as Assistant Government Pleader for the said post was made by 2nd responded only on 03-12-2014 and the said Advocate, then took charge from the petitioner as Assistant Government Pleader in the said Courts on 08-12-2014.

19. It is not the case of the respondents that between 22-05-2014 and 07-12-2014, they had requested petitioner to hand over the files to the 2nd respondent or to any other Advocate. It is also not their case that they instructed the petitioner not to attend to cases filed by or against the State which were pending in the Senior and Junior Civil Judge's courts at Rajampet. Having kept quiet during the period 22-05-2014 to 07-12-2014, the respondents cannot take advantage of the services rendered by petitioner, and deny him adequate remuneration for the same.

20. Had the petitioner stopped rendering service as Asst. Government Pleader on the ground that he was not instructed to do so by 2nd respondent, there was every possibility of causing of serious damage to the public interest. There was also risk of being accused of professional misconduct rendering him liable for disciplinary action under the Advocates Act, 1961. Therefore, the petitioner continued to

appear and represent the State Government in the cases and no grievance can be made by the respondents for this conduct of petitioner.

21. As held by the Supreme Court in **R.D. Saxena Vs. Balram Prasad Sharma**¹, *the cause in a Court or Tribunal is far more important for all concerned than the right of a lawyer for the remuneration in respect of the services rendered for espousing the cause on behalf of the litigant*. The Court held that even if there is no lien on the litigation papers of his client *an advocate is not without remedies to realize the fee which he is legitimately entitled to*.

22. In **B.Sunitha Vs. State of Telangana and another**², the Supreme Court held that relationship between lawyer and his client is highly fiduciary in nature and *advocate is in the position of trust*.

23. In the instant case, the petitioner assisted in the protection of the State's interests till 07-12-2014 from 20-05-2014 in the litigation to which it was a party in the Courts at Rajampet and their disposal. He has thus faithfully acted in discharge of his fiduciary obligation to the State by considering it to be more important than his right for remuneration.

24. The respondents cannot be allowed to take advantage of their own wrong in not making alternative arrangements (by taking away the files from the petitioner and entrusting it to another advocate

¹ (2000)7 S.C.C. 264

² (2018) 1 S.C.C. 638

of their own choice), utilizing the services of the petitioner to protect the State's interests from 22-05-2014 to 04-12-2014, without any corresponding obligation to pay his remuneration for the said period.

25. Instead of showing gratitude to the petitioner for acting on behalf of the respondents for protecting the State Government's interests in the litigation pending in the Courts of Senior Civil Judge and Junior Civil Judge, Rajampet, the respondents shockingly seek to take advantage of the same on the pretext of non-issuance of an order of extension of his term. Such an attitude is to be strongly deprecated.

26. Under Section 70 of the Indian Contract Act, 1872, where a person lawfully does anything for another person not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of the thing so done. Such a case, where a claim for compensation is made under Section 70 by one person against another, is one not on the basis of any subsisting contract between the parties, but it is on the basis of the fact that something was done by the party for another and the said work has been voluntarily accepted by the other party. (**State of West Bengal Vs. B.K. Mondal**³)

27. This principle of law applies to the case of the petitioner and therefore, I hold that the petitioner is entitled to adequate remuneration from 22-05-2014 to 04-12-2014 since he never intended to provide his services gratuitously.

³ AIR 1962 SC 779

28. The question arises next is as to “*what should be the adequate compensation/remuneration?*”

29. It is admitted by the respondents in para-6 of the counter affidavit that the honorarium paid to Assistant Government Pleaders in the courts of the Senior Civil Judge in the Districts was raised to Rs.18,000/- per month with effect from 01-02-2014 by G.O.Rt.No.174 dt.31-01-2014 and that the petitioner was paid at the said rate up to 22-05-2014.

30. Therefore, in my considered opinion, the petitioner would be entitled to honorarium/compensation @ Rs.18,000/- per month for the period from 22-05-2014 to 04-12-2014 also. The respondents are therefore directed to pay the compensation to the petitioner at the said rate with interest at 9% per annum from 04-12-2014 till the date of payment for the services rendered by him.

31. Accordingly, the Writ Petition is allowed as above with costs of Rs.5,000/- (Rupees Five Thousand only).

32. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 05-06-2018

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