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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 23.08.2018

+ W.P.(C) 3574/2014

O.P. FAIZI

..... Petitioner

Through: Mr. S.N. Bhardwaj, Adv.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Ms. Suparna Srivastava, Standing
Counsel for UOI.
Mr. Ramesh Singh, Standing Counsel
for GNCTD.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

RAJENDRA MENON, CHIEF JUSTICE (ORAL):

1. Seeking a writ of mandamus, petitioner, a practising Advocate and an elected member of the Bar Council of Delhi has filed this petition in public interest seeking the following two reliefs:

“(i) Issue a writ of Mandamus, or any other appropriate writ, direction or order thereby directing the Respondents Nos.1 and 2 to take a considered and conscious decision for amending Schedule-I to the Advocates’ Welfare Fund Act, 2001, for upward revision and review of the quantum of payment to which Advocate Members of the Welfare Fund are entitled on cessation of practice;

(ii) To issue a Writ of mandamus, or any other appropriate writ, direction or order thereby directing the Respondents Nos.1

and 2 to appropriate sufficient and reasonable amount of grant every year as their contribution to the Advocates' Welfare Fund under Section 3(d) of the Advocates' Welfare Fund Act, 2001, in the light of the fact that vide an order passed on 25.02.2011, the State of Tamil Nadu has decided to sanction annual grant upto Rs.2.50 crores for the Tamil Nadu Advocates' Welfare Fund;”

2. The case of the petitioner is that the Advocates' Welfare Fund Act, 2001 was enacted by the Central Government *inter alia* providing for constituting a welfare fund for the benefit of Advocates. It is a Central Act and by virtue of Section 38 the same applies to States in which there is no special or separate enactment by the concerned State Government with regard to the subject in question. Schedule II of the Central Act details the particulars of various State enactments already covering the field. As per the enactments indicated in Schedule II, the Government of NCT of Delhi has not been mentioned therein and therefore it can be safely construed as stated by the petitioner that there is no enactment on the subject in question by the Government of NCT of Delhi and consequently the Central Act of 2001 applies to the Government of NCT of Delhi. Section 2(b) of the Act of 2001 defines the Appropriate Government and according to this the State Government in the case of an Advocate admitted on the roll of the Bar Council of a particular State would be the Appropriate Government. Further, cessation of practice is defined in Section 2(c) to mean removal of an Advocate's name from the State roll by virtue of the eventualities contemplated under Section 26(A) of the Advocates Act, 1961 (hereafter referred to as 'the Act') happening. Section 26(A) of the Act further provides for removal from the roll by the State Bar Council the name of an Advocate who is dead or from whom a request is received to that effect.

That being so, it is canvassed that cessation of practice includes not only removal from the rolls on account of death of the Advocate concerned but also eventually cessation of practice by an Advocate enrolled with the State Bar Council.

3. Section 3 of the Central Act, namely, the Advocates' Welfare Fund Act, 2001 mandates every Appropriate Government to make appropriation of funds in its budget for giving grant to the Advocates' Welfare Fund.

4. Further, the fund created under the Central Act is managed by the Trust Committee called the Advocates' Welfare and Trust Committee. For the present, the Additional Solicitor General of India is the Chairperson of the Committee and the Secretary of the Bar Council of India is the ex officio Secretary.

5. Section 21 of the Central Act deals with the issue of payment to be made on cessation of practice by an Advocate and for the sake of brevity the benefit to be granted under Section 21 of the Act as detailed therein reads as under:

“21. Payment of amount on cessation of practice.

(1) Every advocate who has been a member of the Fund for a period of not less than five years shall, on his cessation of practice, be paid an amount at the rate specified in Schedule I

Provided that where the Trustee Committee is satisfied that member of the Fund ceases to practice within a period of five years from the date of his admission as a member of such Fund as a result of any permanent disability, the Trustee Committee may pay such member an amount at the rate specified in Schedule I.

(2) Where a member of the Fund dies before receiving the amount payable under sub-section (1), his nominee or legal

heir, as the case may be, shall be paid the amount payable to the deceased member of the Fund.”

6. From the aforesaid provision and the rate of payment specified in Schedule I to the Act, it is clear that the financial assistance to be given to an Advocate member of the fund on cessation of practice ranges from ₹1,000/- on completion of one year practice to ₹30,000/- after completing 30 years of practice. Further, Section 32 of the Central Act empowers the Appropriate Government to amend the rates specified in the Schedule.

7. Grievance of the petitioner before us in this petition is that the benefit accruing to an Advocate member as is specified in Schedule I is too less in comparison to what is paid by various State Governments under the Welfare Fund. It is pointed out that under the Rajasthan Advocates' Welfare Fund Act, 1987, the maximum amount payable to an Advocate is ₹4.25 lakhs. Similarly, under the Kerala Advocates' Welfare Fund Act, 1980, an Advocate on completing 32 years of practice is entitled to an amount of ₹3 lakhs. It is further averred that the High Court of Patna and Haryana at Chandigarh in Civil Writ Petition (PIL) No. 12680/2012 *H.C. Arora v. Union of India* has issued certain direction to the Government of Chandigarh and Haryana with regard to enhancement of payment under the Welfare Fund Act and it is said that the Government of Haryana has enhanced the welfare fund to ₹4,60,000/- on cessation of practice after completing 40 years of practice. Further, an order passed by the Punjab and Haryana High Court on 11.07.2013 in Civil Writ Petition (PIL) No.12680/2012 is brought on record as Annexure IV to say that the following directions have been issued by the High Court of Punjab and Haryana and based on the same enhancement has been made in the State in question. The directions issued

by the High Court of Punjab and Haryana at Chandigarh on 11.07.2013 reads as under:

“The petitioner, who appears in person, submits that suitable amendments have been incorporated by the Haryana Government, increasing the amount to Rs.4,60,000/- on cessation of practice after completing 40 years in the profession. He submits that qua Punjab the proposal has already been sent with respect to medical claims and death of a member which we are informed is pending consideration before the State of Punjab.

Looking into the inflation which has caused steep increase in the cost of living, in the absence of social security system, we consider it appropriate to direct that the State of Punjab would look into this aspect and endeavour to at least bring it on parity with the State of Haryana.

The decision may be taken within a maximum period of one month from today.

We expect the Union Territory of Chandigarh to act on parity with the aforesaid and take the necessary steps within the same period of time.

Petition accordingly stands disposed of.”

8. Accordingly, in sum and substance it is the case of the petitioner that the amount paid to an Advocate enrolled with the Bar Council of Delhi on cessation of practice is very much on the lower side and now with various factors like cost of living, etc. having increased, the amount needs enhancement and therefore the directions as prayed for. It is further stated that in the NCT of Delhi a one-time payment towards the corpus of ₹1 crore is granted whereas in other States the amount of corpus is paid every year and the amount ranges from ₹1 crore to ₹2.5 crores in various States. Accordingly, contending that there is great disparity in the matter of

granting benefit to Advocates ceasing practice in the State of Delhi, the aforesaid prayers are made.

9. Learned counsel appearing for the petitioner took us through various provisions of the statute, orders passed and the system followed in various States as are indicated hereinabove to canvass his contentions.

10. Respondent – Union of India represented by learned counsel Ms. Suparna Srivastava invited our attention to a Gazette notification Annexure R-1/1 dated 25.10.2001 issued by the Ministry of Home Affairs in exercise of the powers under the statute to say that as far as the Appropriate Government for discharging liabilities and carrying out various activities under the Central Act is concerned, it is the State Government, namely, the Government of NCT of Delhi and the Central Government has no role to play in the matter. As far as the Government of NCT of Delhi is concerned, they filed a short affidavit and by referring to the provisions of Rule 22 of the Delhi Advocates' Welfare Rules, 2001, point out that certain amounts are being collected under the aforesaid Rule and as a one-time contribution ₹1 crore towards the Advocates' Welfare Fund was being contributed by the Government of NCT of Delhi. They only narrate the factual scenario in the backdrop of the statutory provision but on merit with regard to the claim made the entire counter affidavit is silent.

11. We have taken note of the contentions advanced, the statutory provisions as are detailed hereinabove and the manner in which the welfare fund is being operated in various States as has been brought to our notice. As far as the NCT of Delhi is concerned, it is clear that the amount payable is as detailed in Schedule I available at Page 27 of the paper book which goes to show that after cessation of practice, on completing one year the

amount paid is ₹1,000/- which becomes ₹30,000/- if the cessation of practice takes place after 30 years. As far as the State of Rajasthan is concerned under the Rajasthan Advocates' Welfare Fund Act, 1987, after cessation of practice on completing 5 years membership the amount paid is ₹15,000/- which gradually increases with the number of years of practice put by the Advocate prior to cessation of practice and if cessation of practice takes place after 40 years, the amount payable is ₹4,25,000/-. Similarly, with respect to the State of Kerala, the amount payable on 5 years practice is ₹46,875/- and after 32 years of practice it is ₹3 lakhs. We are informed that in Haryana also, the amount has been increased and it is about ₹4,60,000/- on cessation of practice after completing 40 years of practice.

12. From the aforesaid, it is clear that there is disparity in the matter of payment of benefit in various States and as indicated hereinabove in the States of Rajasthan, Kerala, Tamil Nadu and Haryana, examples of which have been placed on record, the amount payable on cessation of practice is on a higher side as compared to Delhi where the maximum amount payable after 30 years of practice is only ₹30,000/- whereas it is ₹3 lakhs in the State of Kerala and about ₹4 lakhs in the State of Rajasthan and Haryana. That being so, *prima facie* we are convinced that a case of disparity is made out by the petitioners and, if that be so, as this Court exercising its jurisdiction under Article 226 of the Constitution of India cannot issue a mandamus to the State Government to fix the amount at a particular rate but at least taking note of the disparity can grant the benefit or relief as prayed for vide Para No.1 which, in fact, is the relief granted by the learned High Court of Punjab and Haryana as is reproduced hereinabove.

13. As was done by the Punjab and Haryana High Court, we are of the considered view that looking to the inflation, the steep increase in the cost of living, the fact about absence of social security to the Advocates, endeavour is required to be made in the NCT of Delhi also for enhancement of the benefit under the scheme and a serious effort to bring it at par at least with some States like Haryana or Rajasthan, is required to be undertaken and there is no reason why such a direction should not be granted. Similarly, with regard to Prayer No.2, we find that only a one-time payment of ₹1 crore was made for creating a corpus under the fund whereas in other States like Tamil Nadu under the Tamil Nadu Advocates' Welfare Fund, as is evident from Annexure P5 an annual grant of ₹2.5 crores is made towards the corpus for managing the fund. This also requires reconsideration by the Government of NCT of Delhi and either the corpus should be increased or an annual grant made on an amount as may be determined which is reasonable and which fulfils the mandate and the purpose for which the Central Act and the fund was created.

14. As it is the Government which is required to consider various aspects of the matter and take an administrative decision, we deem it appropriate to allow this petition to the extent of issuing a mandamus to the respondent No.2 and direct them to consider the grievance of the petitioners and take a conscious decision after adverting to various facts as are detailed hereinabove including the benefit extended under the Act in the States of Rajasthan, Kerala, Tamil Nadu and Haryana and consider taking a decision for upward revision and make a review of the quantum by payment made to the Advocates under the welfare fund. Similarly, an appropriate decision be also taken for considering enhancement of the corpus by taking note of the

annual grants being made in various States like Tamil Nadu and in this respect also which is the prayer made vide prayer clause (2), a conscious decision as directed hereinabove be taken.

15. Accordingly, we direct that within a period of two months from the date of receipt of a copy of this order, the Competent Authority in the Government of NCT of Delhi shall take a decision with regard to the issues in question and if required shall consider consulting the Bar Council of Delhi and other stakeholders, evaluate various issues relevant to the subject in question, approach the issue with a pragmatic view, and, take a decision and communicate it to all concerned. While taking the decision, the benefits granted in various States and other parameters required should also be taken note of and after evaluating all aspects of the matter the decision should be taken. Needless to emphasize that in case the petitioners or anybody has any grievance with regard to the decision as may be taken, they are at liberty to take recourse to such remedy as may be available under law for ventilating their grievance.

With the aforesaid, we dispose of the writ petition.

CHIEF JUSTICE

V. KAMESWAR RAO, J

AUGUST 23, 2018

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