

CWP-5294-2021 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CWP-5294-2021 (O&M).
Decided on: March 5, 2021.

Ram Niwas Sharma

.. Petitioner

VERSUS

The State of Haryana and others

.. Respondents

* * *

CORAM: HON'BLE MR.JUSTICE JASGURPREET SINGH PURI

* * *

PRESENT Mr.Jayoti Parshad Sharma, Advocate,
for the petitioner.

JASGURPREET SINGH PURI, J. (ORAL)

Through Video Conference

The present writ petition has been filed under Article 226/227 of the Constitution of India praying for issuance of a writ in the nature of *certiorari* for quashing the impugned order dated Nil (Annexure P-3), passed by Enquiry Officer-cum-Sub Divisional Officer (Civil) Assandh, District Karnal. Further prayer has been made for issuance of a writ in the nature of *mandamus* directing respondent Nos.1 to 3, to pay the counsel fee amounting to Rs.88,000/- and to take legal action against respondent Nos.4 and 5 for tampering with the record.

The learned counsel for the petitioner has submitted that

CWP-5294-2021 (O&M)

the petitioner being an Advocate was engaged to defend the Gram Panchayat by filing 8 cases on behalf of the Gram Panchayat on 8.2.2017, but thereafter, another counsel was engaged. He has submitted that the legal fee of the petitioner has not been paid till date and therefore, he has sought a direction from this Court for the release of the legal fee. He has further submitted that since there was tampering with the record/Vakalatnama, an application was submitted before the Deputy Commissioner, Karnal, but till date no action has been taken on the same. He has further submitted that the impugned order (Annexure P-3), was erroneous and therefore, the same is liable to be set aside.

I have heard the learned counsel for the petitioner.

So far as the payment of legal fee to the petitioner as counsel is concerned, jurisdiction under Article 226 of the Constitution of India, cannot be invoked for this purpose and therefore, the writ petition is not maintainable. The law has been settled by the Hon'ble Supreme Court in **Improvement Trust, Ropar through its Chairman Vs. S.Tejinder Singh Gujral and others, 1995 Supp. (4) SCC 577**, the relevant portion of the aforesaid judgment is reproduced as under:-

“We find that the High Court had allowed the writ petition filed by the respondent-advocate for the recovery of his professional fees from the petitioner. No writ petition can lie for recovery of an amount under a contract. The High Court was clearly wrong in entertaining and allowing the petition. There is no separate law for the advocates. In the circumstances, we set aside the order passed by the learned single Judge

on 26.7.1991 and dismiss the writ petition. The result is that the letters patent appeal pending before the Division Bench of the High Court would also come to an end. The appeal is allowed.”

The Hon'ble Supreme Court in **New India Assurance Co. Ltd. Vs. A.K. Saxena, 2004 (9) SCC 117**, has held that when there is a disputed question of fact, then such kind of prayer cannot be made before the writ Court. The relevant portion of the aforesaid judgment is reproduced as under:-

4. *“Learned counsel for the respondent insists that full fees for all the matters must be paid to him. Learned senior counsel for the appellants states that no fees is payable to the respondent. In our view, it is not for this Court, as it was not for the High court, to adjudicate upon such a disputed question of fact. The High Court should not have given the directions it did also because at the time the High court passed the impugned order, a writ petition No. 27380 of 2001 was pending. In this writ petition the respondent had claimed payment of his fees.*

5. *This case is fully covered by a decision of this Court in R.D. Saxena V. Balram Prasad Sharma reported in [2000] 7 SCC 264 : 2000 (4) RCR (Civil) 439 (SC) wherein this Court has held that advocates have no lien over the papers of their clients. It is held that at the most the advocate may resort to Legal remedies for unpaid remuneration. It has been held that the right of the litigant to have the files returned to him is a corresponding counterpart of the professional duty of the advocate and that dispute regarding fees would be a lis to be decided in an appropriate proceeding in*

Court.”

In view of above, so far as the prayer of the petitioner with regard to payment of legal fee is concerned, the same cannot be considered by this Court in extra ordinary jurisdiction under Article 226 of the Constitution of India and petitioner may, if so advised, take recourse to appropriate remedy before appropriate forum, in accordance with law.

So far as the second prayer with regard to tampering with record/vakalatnama is concerned, an application was filed by the petitioner before the Sub Divisional Officer (Civil), Assandh, but vide Annexure P-3, the Sub Divisional Officer (Civil), Assandh, has passed a detailed order in which it has been stated that both the parties were heard by the Sub Divisional Officer (Civil), Assandh, and there is no evidence of tampering with the record. The petitioner thereafter, filed another application before the Deputy Commissioner, Karnal vide Annexure P-4, which according to the learned counsel for the petitioner is still pending. The petitioner is always within his rights to pursue any other remedy permissible to him under the law including the application if any filed before the Deputy Commissioner, Karnal.

Consequently, the present petition is devoid of any merits and the same is hereby dismissed. There shall be no order as to costs.

**March 5, 2021,
raj arora**

**(JASGURPREET SINGH PURI)
JUDGE**

Whether speaking / reasoned
Whether reportable

Yes / No
Yes / No