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DALBIR SINGH PUNIA

.. Petitioner

Versus

STATE OF HARYANA & ORS

... Respondents

PRESENT Mr. M.S. Dalal, Advocate,
for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana.

Mr. Vaibhav Gupta, Advocate, for
Mr. K.K. Gupta, Advocate,
for the respondents No.2 and 3.

VINOD S. BHARDWAJ, J. (ORAL)

The instant writ petition has been filed for seeking issuance of a writ in the nature of certiorari against the letter/communication dated 08.05.2017 (Annexure P-6) issued by the respondents whereby the claim of the petitioner to payment of his legal fees as per Government of Haryana, Department of Administration of Justice, letter dated No.21/2/1991-5JJ(1) dated 02.09.2015, has been denied.

Briefly summarised, the facts of the present case are that the petitioner is a practicing Advocate in District Courts at Kaithal since 1979 and was engaged as counsel by the Haryana School Education Board, Bhiwani, to represent/defend the cases on behalf of Haryana School Education Board, in various Courts at District Kaithal.

A letter of appointment as by the Government of Haryana Standing Counsel/Legal Advisor dated 18.05.2006 was sent to the petitioner specifying the rate at which the matters would be defended/represented by the counsel before the lower Courts. Subsequently, the Haryana School Education Board also sent a letter to appoint the petitioner. The fee was fixed at Rs.2,500/- per case as per the communication dated 30.04.2007. Acceptance of the aforesaid communication was conveyed by the petitioner vide letter dated 05.05.2007.

It has been contended by the learned counsel for the petitioner that the Government of Haryana had communicated/determined revised rate of fee payable to the Law Officers/Panel Advocates for conducting cases of Haryana Government/Boards/Corporations/Autonomous Bodies vide Memo No. 21/2/1991-5JJ(1) dated 02.09.2015. The prescribed fee for an empanelled Advocate for defending matters before the District Courts/Tribunals was fixed at Rs.11,000/- per case inclusive of the clerkage.

Pursuant to the above said letter issued by the State Government, the petitioner submitted the bills in accordance with the revised rates to the respondent Board. However, the same were declined vide communication dated 08.05.2017 (Annexure P-6). The extract thereof reads thus:-

“On the subject cited above, it is informed that your client has given consent for defending the cases in the court on behalf of the Board at lump sum fee as fixed by the Board Office. Letter prescribing fee by the Board office and consent given by your client is enclosed.

Here it is also informed that as per decision taken by the Board office in its meeting held on 5.12.2016 and 6.12.2016 the legal fee as fixed have been increased and payment is being

made in respect of the cases received by the Board office after 5.12.2016 and 6.12.2016.”

Aggrieved of the same, the instant writ petition has been filed. Notice was issued to the respondents Board as well as the Government of Haryana.

Written statement on behalf of respondent No.1 by way of affidavit of Mr. Jagdish Kumar, Under Secretary to Government, Haryana, Administration of Justice Department, had been filed in August 2018, wherein the issuance of the communication dated 02.09.2015 was admitted. It was, however, averred in paragraph No.2 thereof that there is no bar on the Government Boards/Corporations/Autonomous Bodies etc. to fix fee less than the prescribed fee payable to the Law Officers/Panels of Advocates with mutual consent. Hence, the Department of Administration of Justice itself acknowledged through its aforesaid response that the Statutory Boards/Corporations/Autonomous Bodies may agree to any other fee structure through their own decision making process and accepted their autonomy in this regard.

A separate written statement on behalf of the Board of School Education, Haryana, has also been filed in September 2018. The relevant extract of the stand adopted by the respondents No.2 and 3 reads as under:-

“That the claim of the petitioner in the writ petition for granting legal fee as per the Government of Haryana instructions dated 02.09.2015 (Annexure P-2) for conducting cases of Haryana Government / Boards / Corporations / Autonomous Bodies etc. for various courts is neither legally nor factually sustainable in the eyes of law. The respondent

no.2-Board is a Body Corporate having power to enter into any contract in its own name within the meaning of the provisions contained under Section 3 (2) of the Haryana Board of School Education Act, 1969. As such, the terms and conditions for conducting cases by the petitioner in the judicial courts at Kaithal were conveyed by the Board to the petitioner vide Annexure P-1 (at page 15 of CWP) and the same were duly accepted by the petitioner vide his consent (Annexure P-1 at page 16 of CWP). The Board at its own increased the rates of legal fee in its meeting held on 05.12.2016 & 06.12.2016. Admittedly, the petitioner was also paid accordingly for all the cases conducted by him. In the given situation, neither the Government has any business to interfere in such contractual terms and conditions nor the petitioner can compel the Board to follow the said instructions (Annexure P-2). A contract is entered between the two contracting parties and a third party has no roll to interfere in the said terms and conditions agreed between the parties to the contract. For ready reference of this Hon'ble Court, the provisions of Section 3 (2) of the Haryana Board of School Education Act, 1969 are reproduced as under:-

"Section 3 (2)

The Board shall be a body corporate with the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold of, dispose of property and to contract and may by that name sue and be sued".

The schedule of legal fee approved by the Board in its meeting held on 07.11.2005 & 30.04.2007 is detailed as under:-

<i>Sr. No.</i>	<i>Name of the Court</i>	<i>Legal fee per case (all inclusive)</i>	<i>Legal Fee in connected matter</i>
<i>1</i>	<i>District Court</i>	<i>Rs.4000/-</i>	<i>Rs.1000/-</i>

2	Labour Court	Rs.4000/-	Rs.1000/-
3	D.C.D.R.F.	Rs.4000/-	Rs.1000/-
4	Lower Court	Rs.2500/-	Rs.625/-

The schedule of legal fee was revised by the Board in its meeting held on 05.12.2016 & 06.12.2016 as under:-

<i>Name of the Court</i>	<i>Legal fee per case (all inclusive)</i>	<i>Legal Fee in connected matter</i>
<i>District Court/Tribunals/Commissions/ Forums/Lok Adalat etc. At Chandigarh or District Head Quarters/Tehsil & Sub-Tehsil Level in the State of Haryana</i>	<i>Rs.6000/-</i>	<i>Rs.1500/-</i>

The petitioner has been paid the legal fee (all inclusive) strictly as per the aforesaid schedules in all the cases wherein the petitioner was engaged from time to time. In the given situation, the petitioner has no right to claim legal fee as per the Government instructions which is not binding on the Board unless and until the same are adopted by the Board. But herein, the Board instead of adopting the Government instructions has laid down its own schedule of fee within its resources. If the same were not acceptable to the petitioner, the petitioner could have refused to be engaged in the cases of the Board. Nobody compelled the petitioner to conduct the Board's cases. As such, the writ petition deserved outright dismissal.”

No rejoinder to the written statements was filed despite lapse of more than four years.

Learned counsel appearing on behalf of the petitioner contends that the respondent- Haryana School Education Board, Bhiwani, was

obligated to release the payment in terms of communication sent by the Government of Haryana, Department of Administration of Justice and that they have chosen not to abide by the rate of fee prescribed by the Haryana Government and have paid lesser fee to the petitioner. He further submits that the petitioner has thus been unfairly treated and has been paid less remuneration for the services offered by him than is being offered to any other person.

Per contra, learned counsel for the respondents has submitted that they have not released any payment other than the payment in accordance with the decision taken by the competent Authority of the Board and the rates approved by it. It has been pointed out that the schedule rates were increased by the Board in its meeting held on 05.12.2016 and 06.12.2016 and that in fact the petitioner has been paid the dues in accordance with the revised rates approved by the Board. It is further submitted that the Government cannot compel the Boards to follow the said instructions and to direct incurring of any fiscal expenditure. The same is exclusively within the domain of the Board, which is a separate juristic entity under the Haryana Board of School Education Act, 1969 having its own authority to take decisions for itself.

I have heard the learned counsel appearing on behalf of the respective parties and have gone through the documents appended with the present petition.

It has remained uncontroverted that the petitioner had accepted the appointment as Counsel for the respondent-Board on the fee as offered by the Haryana Board of School Education. It is not the case of the petitioner that the fee which was initially offered to the petitioner along

with the communication dated 30.04.2007 was as per the guidelines/directions issued by the Government of Haryana and that any such guidelines/directions issued by the Government of Haryana are *per se* binding against the Autonomous Bodies and that no separate decision making or approval by such Statutory Boards/Corporations/Autonomous Bodies is required. Hence, the Board had engaged the petitioner at their own schedule of rate. Furthermore, the respondent No.1-Department of Administration of Justice, has itself acknowledged the fact that the autonomous bodies are competent and within their powers to determine any other fee at variance than the schedule fee recommended by the Department itself. No rejoinder controverting the aforesaid stand was ever filed by the petitioner even though the written statements was filed way back in August 2018. The aforesaid specific stand was also reiterated by the respondent No.2-Haryana School Education Board and it was specifically averred that the Board has been entering into its own individual arrangements and that the rate of fee is paid as per the decision taken by the Board instead of the communication sent by the Government of Haryana. No document has been filed by the petitioner to either demonstrate that the aforesaid communication (Annexure P-2) was enforceable against the respondent No.2-Board or to demonstrate that any discrimination has been meted out to the petitioner by placing on record any evidence to suggest that the respondent No.2-Board had, in fact, been making payments of the fee on the strength of the communication (Annexure P-2) to other counsel defending the Board before any other District Courts.

In the absence of any such document on record to counter the stand of the respondent No.2-Haryana School Education Board and coupled

with the fact that the petitioner accepted to defend the Board on the terms and conditions as offered by them, he cannot now, at this stage, seek unilateral revision of the rates because another communication has been sent by the Government of Haryana. The terms of engagement having been agreed upon by both the parties cannot be modified to the disadvantage of one of the parties without its express consent. Once the engagement was governed by a mutually agreed rate of fee and not on a rate to be determined by the State Government from time to time, issuance of any such communication cannot create any binding financial liability against the respondent-Haryana School Education Board. An Autonomous body having its independent management is competent to take its own decisions. The same is also not disputed by the Government. Hence, the communication dated 02.09.2015 is not claimed to be binding on the respondent-Haryana School Education Board even by the Government and as such, the communication is at best directory and acts as a guideline for the respective bodies to take a decision.

The petition thus lacks merit and is accordingly dismissed.

January 30, 2023
raj arora

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No