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JOGINDER SINGH WASU

v.

THE STATE OF PUNJAB

OCTOBER 29, 1993

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[M.N. VENKATACHALIAH, CJ AND S. MOHAN, J.]

Constitution of India, 1950 : Articles 165, 177—Advocate General—Terms of fees for cases conducted by him—Held, can be altered even during his term—Relationship between Advocate General and State Government—Explained.

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The Advocate General Punjab (Remuneration & Duties) Rules, 1953 : Rule 6(f) : Notification No. 8746-JJ-53/38717 dated 6.7.1953 and amended by Notification No. 12679-2JJ-75/25572 dated 7.8.1975—Terms of fees in relation to cases to be conducted by Advocate General—Subsequent change in—Held, Advocate General cannot say that he shall be continued on the same terms of appointment.

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The appellant was appointed as Advocate General of the respondent-State. In terms of para 6(f) of the Notification No. 8746-JJ-53/38717 dated 6.7.1953, containing the rules framed under Article 165 of the Constitution, his fees was fixed at Rs. 100 for each civil writ case or letters patent appeal arising therefrom even when a number of writ cases were disposed of on the same point of law or facts or the matter was covered by an earlier judgment.

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Subsequently, the appellant received Notification No. 12679-2JJ-75/25572 dated 7.8.1975, which substituted Rule 6(f) of the Advocate General Punjab (Remuneration of Duties) Rules, 1953, to the effect that for each civil writ case, letters patent appeal, and application for certificate of fitness for appeal to the Supreme Court arising from such civil writ case or appeal, the fee would be Rs.100 provided that when a number of such cases were decided by one judgment either because of common question of law or fact being involved therein or on account of the case being covered by an earlier judgment, full fee would be payable only in one case in which the main judgment was delivered and one half of the fee would be payable in each connected case subject to the condition that the fee payable in main case as well as in the connected cases would not exceed Rs. 1000. The

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appellant protested and requested the State Government to keep in abeyance the enforcement of the notification. He submitted the fee-bills for the cases conducted by him from August 1975 to May 1977 according to the original scale of fee. These bills were returned to him with a request to send revised fee-bills in accordance with the notification dated 7.8.1975. Thereupon, he filed a writ petition before the High Court which dismissed the same *in limine*. Hence, the appeal by special leave. A B

It was contended on behalf of the respondent-State that under Article 165 of the Constitution once a power was given to fix the fees, the corresponding power to alter the fees from time to time was equally available and; as the position of the parties was that of an Advocate and a client, it was open to the client to stipulate a particular fee. C

Dismissing the appeal, this Court

HELD : 1.1. The fee in respect of the cases to be conducted by the Advocate General, fixed in para 6(f) under Notification dated 6.7.1953 cannot remain unaltered. Nor can it be said that during his term it cannot be changed at all. Though the appellant came to be appointed on certain terms envisaged under Notification dated 6.7.1953, it cannot be said that the notification can never be amended. The Notification clearly stipulates 'as amended from time to time'. [495-A-B-C] D E

1.2. The relationship between the Advocate General and the State Government is essentially that of an advocate and a client in relation to his appearance in court and arguing the case before the court on behalf of the State. A client may propose the fees. It is open to the advocate to stipulate a higher fee. If that is not agreed to, he cannot compel the client that he must be entrusted with the brief, for him to conduct on the stipulated fee by him. When the State Government is not agreeable to the old fee structure, the Advocate General cannot say that he shall be continued on the same terms of appointment. [494-H, 495-E, G] F

This Court directed that the amount due to the appellant shall be calculated in accordance with the amended Notification dated 7.8.1975, and shall be paid to him together with interest @ 12% per annum. [496-C] G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3202 of 1979. H

A From the Judgment and Order dated 24.5.78 of the Punjab and Haryana High Court in C.W.P.No. 2252 of 1978.

M.S. Gujra and T.S. Arora for the Appellant.

R.S. Yadav and G.K. Bansal for the Respondent.

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The Judgment of the Court was delivered by

MOHAN, J. The appellant was appointed Advocate General of the State of Punjab by the President of India by Notification No. 1178-2JJ-72 dated 24th January, 1972. The terms of appointment are that he would be paid salary of Rs. 1,500 per month and that in the matter of his duties and other terms he will be governed by the rules framed under Article 165 of the Constitution of India vide Notification No. 8746-JJ-53/38717 dated 6th July, 1953 amended from time to time. Clause (f) of para 6 of the 1953 Notification reads thus :

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"(f) In Civil Writ cases and in letters patent Appeals arising therefrom which shall not be considered as civil miscellaneous cases, the fee shall be one hundred rupees for civil writ or letters patent appeal."

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Thus, the fee of the Advocate General was fixed at Rs. 100 for each writ petition. Even though a number of writ petitions are disposed of on the same point of law or facts or even when the matter is covered by an earlier judgment he would be entitled to the fee amounting to a sum equivalent to the number of writ petitions disposed of, multiplied by Rs. 100.

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The appellant was receiving fees as per these stipulations for over three years. However, on 27th August, 1975 he was visited with the following communication :

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**"HOME (JAILS & JUDICIAL) DEPARTMENT
NOTIFICATION**

The 7th August, 1975.

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No.: 12679-2JJ-75/25572. - In exercise of the powers conferred by Article 165 of the Constitution of India and all other powers

enabling him in this behalf, the Governor of Punjab is pleased to make the following rules further to amend the rules regulating the remuneration and duties of the Advocate General published with Punjab Government Notification No. 8746-JJ-53/38717, dated the 6th July 1953 (hereinafter referred to as the Advocated General Punjab Remuneration and duties) Rules, 1953, namely :

1. These rules may be called the Advocate General Punjab (Remuneration and Duties) (First Amendment) Rules, 1975.

2. In the Advocate General Punjab (Remuneration and Duties) Rules, 1953, in rule 6 or clause (f), the following shall be substituted namely :

"(f) in civil writ cases, letter patent appeals and in applications for getting certificate of fitness for appeal to the Supreme Court arising from such civil writ cases and appeals, which shall not be considered as civil miscellaneous cases the fee shall be one hundred rupees per such civil writ or letters patent appeal or application, as the case may be - provided that in respect of such cases-

(a) which are decided by one judgment on account of common questions of law or fact being involved; of

(b) which are decided on the basis of an earlier judgment on account of being covered by that judgment; full fee shall be payable only in one case in which main judgment is delivered and one half of the fee shall be payable in each connected case subject to the condition that total fee payable in the main case as well as in the connected cases shall not exceed one thousand rupees.

R.P. Ojha
Secretary to Government, Punjab,
Home Department."

As a result of this, the fee payable in cases where it is decided by one judgment, in batch cases, or on the basis of an earlier judgment on account of the matter being covered, would be only Rs. 100. In any event, the total fee was not to exceed Rs. 1,000 where the matters are covered by a prior judgment. The appellant protested to the Chief Minister about the

A alteration of fee structure which resulted in substantial reduction and requested that the enforcement of the Notification may be kept in abeyance. A further reminder in this regard was issued on October the 1st, 1975.

B As a result of these, a meeting was convened on 14th July, 1976 by the Home Secretary to Government of Punjab to consider the issue in the presence of the appellant. Several suggestions were made in the course of a detailed discussion. The appellant, however, insisted on the restoration of original terms. By a communication dated 8/10th September, 1976 he conveyed his views to the Secretary, Home Department, Government of Punjab. The appellant would have it that the terms for restoring fee structure found favour with the Government. To that effect a proposal was made by the Home Department and was submitted to the then Chief Minister who accepted the proposal to revoke the Notification dated 7th August, 1975 and file was marked to the Secretary for issue of orders. But, the Law Department advised that the matter be placed before the Cabinet. **D** The Cabinet resolved that a Sub-Committee might look into the matter and report back to the Cabinet. At this stage, the Congress Government went out of office on April, the 30th, 1977.

E With the exit of Congress Government, the State of Punjab came under President's Rule. The appellant offered to resign his post. However, he was requested to continue till the formation of the new Government. Eventually, his resignation was accepted on June 24, 1977. Even before this, on June 8, 1977 the Governor on the advice of his Adviser, took a decision to scrap the resolution of the Cabinet and to refer the matter to the two-member Sub-Committee in relation to the fixation of fee of the Advocate General. **F** The appellant protested against this by his letter dated 10/14th June, 1977. After the formation of the new Government, the matter was taken up by the appellant with the new Government. He also requested the successor Advocate General to take up the matter with the Chief Minister in July, 1977. **G**

The bills on account of the writ petition conducted by the appellant for the months of August 1975 to May 1977 which were prepared according to the original scale of fees were returned by the Under Secretary (Home) to the appellant on August 17, 1977. He was asked to present the bills **H** according to the terms of the Notification dated 7th August, 1975. There-

after the appellant spoke to the Advocate General, Punjab. He also wrote a letter to him on 15th November, 1977. The further letters dated February 16, 1978 and March 25, 1978 also proved fruitless. The appellant received a cryptic reply on 5.5.78 to the following effect :

"From

The Home Secretary to Government, Punjab.

To

Shri Joginder Singh Wasu,
Ex : Advocate General Punjab,
86, Sector 2, Chandigarh.

Memo No : 5054-2JJ-78/13944

Dated 5.5.78.

Reference your letters dated 16.2.78 and 25.3.78 regarding clearance of your pending fee bills.

2. You are requested to send revised fee bills in accordance with the amendment issued vide Punjab Government notification No. 12679-2JJ-72/25572, dated 7.8.78.

sd/-

Under Secretary Home,
For Home Secretary to
Government, Punjab. 2/5"

Thereupon, he preferred civil writ petition No. 2252 of 1978. That was dismissed *in limine* by judgment dated 24.5.78. Hence, this appeal by special leave to appeal.

The learned counsel for the appellant submits that under Article 165 of the Constitution of India the appellant was appointed as Advocate General. Having regard to the terms of clause (2) of that Article once an Advocate General is appointed on certain terms in relation to the fees given to him an assurance as to the terms of employment is given. Such terms cannot be interfered with unilaterally. Even assuming that the Governor under Article 165 can make any rule relation to the fees of the

- A** Advocate General, the impugned Notification dated August 7, 1975 cannot have retrospective operation.

B The said Notification dated August 7, 1975 was signed only by the Chief Minister on behalf of the Government. It was never placed before the Cabinet nor was it approved as such. An alteration or amendment of the terms must necessarily be considered and approved by the Cabinet; otherwise it will be invalid. In any event, the impugned Notification was passed behind the back of the appellant and, therefore, it is invalid.

C In opposition to this, learned counsel for the respondent would state where essentially the position of the parties is that or an Advocate and a client it is open to the client to stipulate a particular fee. Should the appellant be unwilling, nothing prevents him from giving up his position as Advocate General. As a matter of fact, where no effort is made in relation to disposal of cases like batch cases or in cases which are covered by earlier decisions the Government thought fit that it will not only be prudent but also just to award one single fee. When the appellant ventilated his grievances a specific conference was convened at a high level and it was found that no revision was warranted. To contend that it is not possible for the Government to alter the fees would amount to ignoring the wording of the Article. Since the Advocate General is to discharge the functions in accordance with the law for the time being in force, once a power is given to fix the fees, the corresponding power to alter the fees from time to time is equally available. There is no necessity for the matter to be approved by the entire Cabinet.

F The Office of an Advocate General is an exalted one. He is the supreme law officer of the State.

Article 165 of the Constitution of India reads as under :

G "165 (1). The Governor of each State shall appoint a person who is qualified to the appointed a Judge of a High Court to be Advocate-General for the State.

H (2) It shall be the duty of the Advocate-General to give advice to the Government of the State upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor, and to

discharge the functions conferred on him by or under this Constitution or any other law for the time being in force. A

(3) The Advocate-General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine." B

This Article corresponds to Article 76 which relates to the Attorney-General for India. In fact, it closely follows Article 76 except for the omission of clause (3) from this Article. Under this Article, the Advocate-General is appointed by the Governor.

The functions of the Advocate-General are mentioned in clause (2). They are as follows : C

(i) to give advice to the Government of a State upon such legal matters as may from time to time be referred to him by the Governor; D

(ii) to perform such other duties of a legal character as may from time to time be assigned to him by the Governor;

(iii) to discharge the functions conferred on him by or under this Constitution; and E

(iv) to discharge the functions conferred on by him or under any other law for the time being in force.

It will be seen that the functions of the Advocate-General include the performance of duties of a legal character which may from time to time be referred to or assigned to him by the Governor. F

Under clause (3) the Advocate-General shall hold office during the pleasure of the Governor and shall receive such remuneration as the Governor may determine. Under Section 55(3) of the Government of India Act, 1935, the fore-runner to this Article also, it was provided that the Advocate-General was to hold office during the pleasure of the Governor and was to receive such remuneration as the Governor may determine. Section 55 of the Government of India Act, 1935 reads as under : G

"55. (1) The Governor of each Province shall appoint a person, H

A being a person qualified to be appointed a judge of a High Court, to be Advocate-General for the Province.

B (2) It shall be the duty of the Advocate-General to give advice to the Provincial Government upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor.

(3) The Advocate-General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine."

C Under Article 177 he is conferred the right to audience before the Legislature of a State both in the Assembly and the Council. In fact, he is treated on a par with the Minister. The said Article reads as under :

D "177. Every Minister and the Advocate-General for a State shall have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Assembly of the State or, in the case of a State having a Legislative Council, both Houses, and to speak in, and otherwise to take part in the proceedings of, any committee of the Legislature of which he may be named a member, but shall not, by virtue of this article, be entitled to vote."

E Having regard to his high position when any statement or a concession is made by him the courts have always accepted his statement and acted on that. In *Periyar and Pareekanni Rubber Ltd. v. State of Kerala*, AIR (1990) SC 2192 at 2199- 2200, this Court observed:

F "Any concession made by the Government pleader in the trial Court cannot bind the Government as it is obviously always unsafe to rely on the wrong or erroneous or wanton concession made by the counsel appearing for the State unless it is in writing or instructions from the responsible officer. Otherwise it would place undue and needless heavy burden on the public exchequer. But the same yardstick cannot be applied when the Advocate General has made a statement across the bar since the Advocate General makes the statement with all responsibility."

H The relationship between the Advocate General and State Government is essentially that of an advocate and a client in relation to his

appearance in court and arguing the case before the Court on behalf of the State. No doubt, the appellant came to be appointed on certain terms envisaged under notification dated 6th July, 1953. It did stipulate Rs. 100 for each of the writ petition irrespective of the fact whether it was a batch case or cases covered by the earlier judgments of the court. But we are unable to accept the contention of the appellant that the notification can never be amended. In fact, the notification clearly stipulates "as amended from time to time." Therefore, the fees fixed in clause 6(f) under notification dated 6th July, 1953 cannot remain unaltered. In passing, we may observe to accept the argument of the appellant would mean it cannot be amended even for enhancing the fees. It so happens in this case there is a reduction of fees. That it should remain static for all times to come is an argument which we find difficult to accept. Nor can it be contended that during his terms it cannot be changed at all. No doubt, the appellant was greatly affected by the amendment proposing one set of fees in batch cases as well as cases covered by earlier judgments. It also requires to be noted that a meeting was convened on 14th July, 1976 for rationalisation and revision of fees payable to the Advocate General and the law officers. The matter was discussed at some length. Before these conclusions could fructify into a rule, the then Government fell down. Once, as observed above, the relationship between the parties, namely, the Advocate General and the State is that of an Advocate and a client, a client may propose the fees. It is open to the Advocate to stipulate a higher fee. If that is not agreed to he cannot compel the client that he must be entrusted with the brief for him to conduct on the stipulated fee by him. May be, the State Government, for reasons best known to itself, is not agreeable to the old fee structure. The position of the State vis-a-vis the Advocate General may be described in the words of William Shakespeare :

"Whose worth is unknown,
Although his height be taken."

But the Advocate-General cannot say that he shall be continued on the same terms of appointment. He no doubt asked the State Government as W.S. Gilbert said :

"Take heart of grace,
They steps retrace."

But once that is not forthcoming he will have to bid good bye as Alfred De Musset said :

A "Malgre moi me tourmente :

I can't help it,
the idea torments me."

B We have already referred to the letter dated 5.5.1978 wherein the appellant was requested to send the revised bill for the work done by him. The appellant shall send the revised bill as per that request. Within four weeks from the date of receipt of revised bill, the entire amount due to him shall be calculated in accordance with the amended notification No. 12679-2JJ-75/25572 dated 7.8.1975 and shall be paid to him together with interest @ 12% per annum. We are obliged to award interest since the
C Government had the benefit of use of the said amount for a long number of years.

Subject to the above direction, the Civil Appeal is dismissed. However, there shall be no order as to costs.

R.P.

Appeal Dismissed.