

(1992) 09 AHC CK 0111

Allahabad High Court

Case No: Civil Misc. Writ No. 10929 of 1986

Dr. Hari Nandan Singh

APPELLANT

Vs

U.P. Higher Education Services
Commission and Another

RESPONDENT

Date of Decision: Sept. 3, 1992

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 3 Rule 4

Citation: (1993) 1 AWC 568

Hon'ble Judges: S.D. Agarwala, J; Ravi S. Dhavan, J

Bench: Division Bench

Advocate: S.N. Singh and R.N. Singh, for the Appellant; V.B Singh, J.P. Pandey and K.N. Tripathi, for the Respondent

Final Decision: Disposed Of

Judgement

@JUDGMENTTAG-ORDER

Ravi S. Dhavan, J.

This matter before the Court is on an issue by which the U.P. Higher Education Services Commission has taken the initiative to unilaterally terminate the instructions of its Counsel Mr. Vinod Misra, Advocate, Counsel hitherto has appeared as the Standing Counsel for the Commission. That, Counsel's instructions had been unilaterally terminated, is a matter of record in a letter of the Commission dated 29-9-1988 bearing No. U Shi. Ayog 274-76/88-89

2. A copy of this letter was endorsed (a) to a Counsel who was to act and plead for the Commission henceforth, and, (b) to the Registrar, High Court for information. The purpose of making endorsements to the persons, aforesaid, in this letter of the Commission was deliberate. It was a formal intimation to it's standing Counsel that he was not to act on behalf of the Commission. It was also an intimation to the Counsel who succeeded him that hence forth he was to act. Further, it was a formal

announcement to the Registrar, High Court of the change which had been brought about by the Commission in changing its Counsel. The letter, at the end of it, expresses appreciation and thanks to Mr. Vinod Misra, Advocate for having, the commission's Standing Counsel, for having discharged his services as a Counsel, to the satisfaction of the Commission. It would be appropriate, in matters like this, that the contents of this letter are reproduced:

Mahoday,

U.P. Uchhattar Shiksha Sewa Aayog. Allahabad ke Nirnyanusr Aayog ke virudh dayar Mukadmon ki pairvi ke liye teen warsh poorva aap ki niyukti ke gayi thi.

Ab Aayog dwara lambit mukadmon ki samiksha ke baad haal me liye gaye nirnay ke anusaar muzhe aap ko suchit karne ka nirdesh huwa hai ki Sri. Vijai Bahadur Singh, Adhivakta, Uchcha Nyayalaya Allahabad ko Dinank 1st. October, 1988 se Aayog ke virudh daayar sabhi mukadmon ki pairvi ke liye Adhivakta niyukt kiya jata hai.

Ataheve aap se anurodh hai ki aap ki ore se ya uske virudh daayar wadon ki sampoon filen Sri. Vijay Bahadur Singh. Adhivakta ko hastaantarit karne ke liye Sri. Bholu Prasad Ojha, varishta sahayak ka avilamba suchi sahit uplabdha karaney ki kriya karen. Aap ke jitney bhi bill bakaaya hon unki soochi yathashigra Aayog ko bhijwane ka kashta karen taaki satyapan kar shigra bhugtaan kiya ja sakay Aayog aap dwara ki gayi sewayon evam sahyog ke liya aabhari hai.

Bhavdiya

Sd-D.N Ray

Sachiv

3. When the letter of the Commission was first brought to the notice of the Court by Counsel who had acted and pleaded for the Commission i.e. Mr. Vinod Misra. Advocate, he had sought a discharge from the court on the ground that his client having unilaterally terminated his instructions, as a self respecting Counsel, it may not be appropriate for him to plead on behalf of a client who did not desire to retain him. He drew the attention of the Court to the general principles and the settled law on this subject, as laid down by the Courts on Order III Rule IV of the CPC Thus, this Court on 28-2-1989 passed the following order:

This is an application by learned Counsel Mr. Vinod Mishra who had hitherto appeared on behalf of U.P. Higher Education Services Commission.

Learned Counsel, aforesaid, had brought on record a letter written by the Commission to Counsel that hence forth in the cases of the Commission pending and future, his instructions to appear are being terminated. The Commission engaged another Counsel Mr. V.B. Singh, Advocate. A copy of this letter has been endorsed to the Registrar, High Court for the purpose of information and also to Counsel who has now put in appearance. The intimation to the High Court is for no

other purpose than intimating the Court that Mr. Vinod Mishra, henceforth, does not have instructions to plead. The intimation of the Commission is virtually an application to terminate Counsel's instructions. This can only be permitted by the Court, in effect, under the principles underlying Order III Rule IV of the Code of Civil Procedure.

The Commission has a right as a client to terminate instructions of the Counsel. This right, under the circumstances, exists with a corresponding obligation to be examined by this Court, as Counsel is discharged from the case upon leave by Court.

Mr. Vinod Mishra, Advocate has placed on record that regard had been to the circumstances his instructions having been terminated, as self-respecting lawyer he has no choice except to accept the situation that his instructions have been terminated. On this aspect there is no issue and Mr. V.B. Singh, Advocate in pursuance of the letter of the Commission dated 29th September, 1988 has taken over the brief as the Commission's Counsel.

Mr. Vinod Mishra Advocate while placing the letter of Commission on record requests the Court for full fee as settled with him in the case.

Let the Commission have an opportunity to say what it desires to say.

This matter will be considered by the Court in Chambers when listed next.

Dated 28-2-1989

Hon. K.C.A., J.

Hon. R.S.D., J.-

4. From the record, this Court finds that even after 28-2-1989, this Court had again permitted further indulgence to the Commission to file its reply or objection to the application of Counsel, Mr. Vinod Mishra, Advocate drawing the attention of the Court to the letter of the Commission dated 29-9-1988. The Court had granted more than one opportunity to the Commission, but an objection on behalf of the Commission on Counsel's application is not forthcoming. This implies that there is neither any issue on the letter dated 29-9-1988, which was written by the Commission, to Counsel nor any issue that there may be allegations against Counsel; there could not be any, as the letter itself records an appreciation for the good work done by Counsel for the commission.

5. In these circumstances, logically the settled law takes over. For the last half century on occasions like this, various High Courts have been consistent in declaring that if Counsel's instructions are unilaterally terminated at the initiative of the client, the discharge of Counsel can only be by leave of Court, but Counsel will be entitled to full fees. But, in such circumstances while a client may have the luxury of changing as many Counsel as he may desire to choose but every one of them whose

instructions be terminated unilaterally without a cause may be entitled to full fees. Should the fees be not settled the Court would determine it on the principle of quantum-merit. Such is not an aspect in the present case. The corollary to this settled principle on the discharge of the Counsel is that if Counsel wants to abandon a client, he may seek a discharge from the Court but he would not be entitled to fees. No Counsel will withdraw from a case except by leave and permission of the Court, no matter what that client may say And, no Counsel should enter a case in which a Counsel stands engaged except with the prior permission of the lawyer who already appears. A violation of the principle would be unprofessional conduct by Rule 39 of the Standards of Professional Conduct and Etiquette framed by the Bar Council of India. Further should there be allegations of misconduct against Counsel, the court may examine the content of the allegations for their veracity and truth, and the order of the Court will rest on the circumstances. All these principles have now been settled by the various High Courts. [Bishwanath Singh Vs. Jannath Pandey and Others, .](#)

6. In the present case, there are no allegations against Mr. Vinod Mishra, Advocate, who appeared as the Standing Counsel for the Respondent, the U.P. Higher Education Services Commission, Allahabad.

7. Lately, in a matter, the Supreme Court even went to lay down the principle that a writ petition by Counsel seeking a claim on his fees may be entertained and considered by High Court and that the request by Counsel for directions in the matter relating to Counsel fees ought to be examined by the High Court. While upholding Counsel's claim of fees the Supreme Court also gave directions that the fees due would be paid to the Counsel with interest at the rate of twelve percent. [Govt. of Tamil Nadu and another Vs. R. Thillaivillalan, .](#)

8. In the present case, the fees which is outstanding is Rs. 667/- plus Rs. 100/- as clerk's fees. This is the balance which remains, out of a total of Rs. 1150/-. One third of Counsel's fee had been paid earlier.

9. Thus, regard being had to the circumstances and the settled law, the Commission, as a client, having sought unilaterally discharge of the Counsel, which this Court permits, is under an obligation to pay an amount of Rs. 767/- which remains outstanding. This payment is to be cleared within a fortnight of the receipt of a certified copy of this order by the Secretary of the Commission either from its Counsel Mr. V.B. Singh or by Mr. Vinod Mishra. The outstanding fee aforesaid shall be tendered to Mr. Vinod Mishra, Advocate Counsel discharged by the U.P. Higher Education Services Commission, U.P. upon payment of the Counsel's fee, as aforesaid Mr. Vinod Mishra will bring this matter to the notice of the Registrar, High Court. There after, his name will not be printed in the cause list.

10. Before parting with this matter, this Court draws the attention of the Commission that the letter dated 29-9-1988 which it wrote to its Counsel Mr. Vinod

Mishra, Advocate was in generality for all the cases which had been conducted by its Counsel. As already observed there are no complaints against Counsel, aforesaid. A copy of the letter was endorsed to the succeeding Counsel and the Registrar, High Court. The purpose of intimation by endorsement was clear. Thus, this Court would expect the Commission that the matter of seeking discharge of Counsel aforesaid, from its cases and diverting them to other Counsel puts the Commission on a similar obligation in other cases. These matters should be finally settled by the Commission and this Court ought not to have an occasion to deal with any such matter in so far as the Commission and its Counsel Mr. Vinod Mishra is concerned. The principle in this case, inevitably would apply to all the cases from which the Commission has sought discharge of Counsel Mr. Vinod Misra, by unilaterally terminating his instructions.