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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No. 3662/2012

26th April, 2013

SYED ASHRAF HASNAIN RIZVI

.....Petitioner

Through: Mr. S.N.Mehrotra and Mr. Falak
Mohammand, Advocates.

VERSUS

UNION OF INDIA

..... Respondent

Through: Mr. Neeraj Chaudhari, CGSC and Mr.
Ravjyot Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. The petitioner was appointed as an English Typist in the Embassy of Iran, New Delhi. The last post held by him was Secretary in the Science and Education on permanent basis.

2. On account of his termination from services, and which termination the petitioner contended to be illegal, petitioner after obtaining permission under Section 86 of Code of Civil Procedure, 1908 (CPC) had instituted a civil suit against the Embassy of Iran. This civil suit was decreed for an amount Rs.7,89,600/- alongwith interest at 10% per annum and other related reliefs.

3. When the petitioner thereafter approached the Union of India under Section 86 CPC for permission to execute the decree, that permission was denied. Thereupon, the petitioner approached this Court and filed W.P.(C) No. 3625/2008. A learned Single Judge of this Court found the refusal of permission bad in law, and therefore, directed the Union of India to give permission. Union of India preferred an appeal being L.P.A. No. 489/2010, which was decided on 11.7.2011. The writ petition was only allowed to the limited extent whereby the sanction which was asked for execution of the money decree instead of being granted by the Court was effectively directed to be granted by the appropriate authority under Section 86 CPC. Since, the observations of the Division Bench in this regard are relevant, it would be necessary to reproduce some of the paras of the judgment, and which read as under:-

“15. In view of the aforesaid, we are of the considered opinion that the purpose of the provision is to do justice between the parties following the principles of natural justice. When the respondent had sought permission to sue for his grievances on account of illegal termination and the permission had been granted for restitution of a legal suit for getting the retirement benefits, the illegal termination was required to be questioned. If the termination is not held to be illegal, the question of retiral benefit would not arise. As an ancillary relief, the prayer for compensation for termination was made. The said prayer is inextricably connected with the consent accorded. In view of the aforesaid, the denial of permission under Section 86(3) is untenable.

16. At this juncture, we may refer to Article 11 of the United Nations Convention, 2004, which is as follows:

“1. Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to a contract of employment between the State and an individual for work performed or to be performed, in whole or in part, in the territory of that other State.

2. Paragraph 1 does not apply if:

a. The employee has been recruited to perform particular functions in the exercise of government authority;

b. the employee is:

(i) a diplomatic agent, as defined in the Vienna Convention on Diplomatic Relations of 1961;

(ii) a consular officer, as defined in the Vienna Convention on Consular Relations of 1963;

(iii) A member of the diplomatic staff of a permanent mission to an international organization or of a special mission, or is recruited to represent a State at an international conference or

(iii) any other person enjoying diplomatic immunity;

c. the subject matter of the proceeding is the recruitment, renewal or reinstatement of an individual;

d. the subject matter of the proceeding is the dismissal or termination of employment of an individual.....”

17. Article 11(b) enables the aggrieved person to challenge his dismissal or termination after obtaining permission and paragraph 1 of the Article 11 does not apply. There is no prohibition that an additional prayer for compensation cannot be added to the issue of illegal termination. The permission sought and the sanction accorded would clearly make out that there was no denial in that regard.

18. The other issue that emerges for consideration is whether the learned Single Judge is justified in issuing a mandamus in the manner he has done. Learned counsel for the appellant has commended us to the decision in *Union of India and Another versus Bilash Chand Jain and Another*, (2009) 16 SCC 601, wherein their Lordships have opined thus:

“A perusal of the judgment of the learned single Judge shows that the learned Single Judge has, while allowing the writ petition, directed the Ministry of External Affairs, Union of India to give consent under Section 86(3) CPC for executing the decree. That judgment has been upheld by the Division Bench of the High Court. We are of the considered opinion that even if the High Court was of the view that the order of the Central Government dated 23-3-1992 refusing to give consent to execute the decree was arbitrary or illegal, at most what the High Court could have done was that it could have remanded the matter to the Ministry of External Affairs, Union of India to reconsider the matter in accordance with law instead of itself directing the Central Government to give consent under Section 86(3) CPC.”

19. In view of the aforesaid pronouncement of law, the issue of writ of mandamus by the learned single Judge commanding the competent authority to accord permission is not justified. The matter should have been remitted to the Central Government to reconsider the matter. Therefore, we remit the matter to the Union of India to reconsider the matter in accordance with law after following the principles of natural justice. We may note with profit that the embassy has already paid Rs.84,000/- to the respondent. We have noted so as the learned counsel for the respondent has apprised us that the embassy was going to pay the entire amount but did not pay as there was interdiction by the appellant.

20. Resultantly, the appeal is allowed in part and the direction issued by the learned single Judge to pass an order of consent is set aside and the matter is remitted to the Union of India to reconsider the same. The Union of India shall take appropriate decision within a period of three months from today. There shall be no order as to costs.”

4. A reading of the aforesaid paras shows that no doubt a fresh order had to be passed after following the principles of natural justice, but the order had to be passed in view of the observations made by the Division Bench, and which observations relied upon the judgments of the Supreme Court quoted by the Division Bench. It cannot be disputed that the appropriate authority in this case is

exercising a quasi judicial function as regards the grant or refusal of the permission under Section 86 CPC. Constitution Bench of the Supreme Court in the case of ***S.N.Mukherjee Vs. Union of India,1990(4) SCC594*** way back has observed that it is necessary to pass a speaking order giving reasons inasmuch as only the reasons would show as to how the decision is or is not justified and also for the aggrieved person to know why the decision has been passed against him. Constitution Bench has also observed that a speaking judgment is necessary because appellate Courts/Higher courts will then know the reasons which weighed with the authority which passed the decision.

5. A reference to the impugned order dated 16.3.2012 shows that the only discussion in the said order for refusing the consent prayed for by the petitioner reads as under:-

“In the light of the directions from the Hon’ble High Court, the matter has been reconsidered by the Union of India [represented by the Ministry of External Affairs] taking the prevailing international Conventions and the State practice on the subject matter and accordingly reiterates its decision vide letter No. D.III/465/23/2002 dated 4th April, 2008.”

6. Surely, this type of conclusion is a travesty of justice, especially in view of the specific direction of the Division Bench of this Court in the judgment dated 11.7.2011. In fact, if we look at the issue strictly, the impugned order dated 16.3.2012 may also possibly amount to contempt of Court because the order hardly

at all does justice to the principles of law and the directions specifically given by both the learned Single Judge and the Division Bench in the earlier cases. The impugned order being thus not in compliance of the judgment dated 11.7.2011 is accordingly set aside.

7. In view of the above, the writ petition is allowed with costs of Rs. 25,000/- to be paid to the petitioner within four weeks from today. The respondent is now directed to ensure that the appropriate authority passes an order in terms of the legal position enunciated by the Supreme Court under Section 86 CPC and which judgments have been quoted by the Division Bench in its judgment dated 11.7.2011. The appropriate authority will pass a speaking order giving reasons after hearing the petitioner, and the petitioner will be entitled to file written submissions which the appropriate authority will have to deal while passing a speaking order. The decision be now taken by the appropriate authority positively within a period of two months from today.

8. The writ petition is allowed and disposed of accordingly. All pending applications stand disposed of as such.

APRIL 26, 2013

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VALMIKI J. MEHTA, J.