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HIGH COURT OF DELHI AT NEW DELHI

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Ex.F.A. No.19/2013 & C.M. No.12640/2013

Decided on : 22nd April, 2016

JAMIA HAMDARD & ORS.

..... Appellants

Through: Mr. Saket Sikri & Mr. Vikalp Mudgal,
Advocates.

Versus

M M NOMAI

..... Respondent

Through: Ms. Geetika Sharma, Advocate.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is an execution first appeal filed by the appellant against the order dated 1.8.2013 passed by the learned Civil Judge rejecting the objections of the appellant.
2. Briefly stated that facts of the case are that respondent No.1 filed a suit bearing No.435/03 seeking a declaration to the effect that the order of his dismissal dated 13.1.1993 is wholly illegal, unlawful and has no validity in the eyes of law. He also prayed for reinstatement with full back wages and other consequential benefits till the date of actual reinstatement. Despite the fact that the order of dismissal was passed on 13.1.1993, it seems that the suit was filed belatedly. Be that as it may, on 30.11.2004, the learned trial court decreed the suit of respondent No.1/plaintiff declaring the order of dismissal dated 13.1.1993 as null and void on account of the fact that the principles of natural justice were not

followed. However, the appellant was given liberty to take a fresh decision on the basis of the inquiry report conducted against respondent No.1 within a period of three months from the date of passing of the judgment. It was also directed by the learned Civil Judge that as the order of dismissal has been set aside, the respondent No.1/plaintiff is entitled to all the back wages and allowances from the date of dismissal, that is, 5.1.1993 till the date of actual reinstatement. However, it was directed that this judgment shall come into operation after a period of three months and in the meantime, the appellant was permitted to take a fresh decision with regard to imposition of punishment. The exact language of the judgment passed by the trial court is as under :-

“14. The plaintiff has filed the present suit on the ground that the enquiry conducted by the defendant No.4 is bad and the order of dismissal of the plaintiff is also bad. The plaintiff prayed that a decree of declaration be passed in favour of the plaintiff and against the defendant thereby declaring the termination letter dated 5.1.93 as null and void. The plaintiff has failed to prove that the enquiry report as conducted by the defendant No.4 is bad and the issue No.2 was decided against the plaintiff. The plaintiff has successfully proved the issue No.3 that the order of dismissal of the plaintiff is bad on the ground that it is passed in violation of principle of natural justice. The plaintiff has also proved the issue No.4 whereby he is entitled for the relief of declaration against the defendant. Therefore, in the present facts and circumstances I am of the considered opinion that the plaintiff is entitled for the relief of declaration as prayed. The suit of the plaintiff is decreed for the relief of declaration declaring that the dismissal order passed by the defendant No.1 vide letter bearing No.JH/FM-1/P13/84 dated 13.1.93 is null and void and having no validity in the eyes of law. However, the plaintiff has failed to prove issue No.2 and the enquiry proceedings

conducted by the defendant No.4 remained valid. Therefore, the defendants are at liberty to take the fresh decision on the basis of the enquiry report conducted by the defendant No.4 afresh by the appropriate authority within the period of three months from the date of passing the judgment.

The plaintiff has prayed for the consequential relief that the defendant No.1 be directed to reinstate the plaintiff in the services with full back wages and all other accruing benefits from the date of dismissal, i.e., 5.1.93 till the actual date of reinstatement. The plaintiff has successfully proved the issue No.3 that the order of dismissal dated 13.1.93 is null and void, therefore, the suit of the plaintiff is also decreed for the relief and the defendant No.1 is directed to reinstate the plaintiff in the services with full back wages and all other accruing benefits from the date of dismissal, i.e., 5.1.93 till the actual date of reinstatement. However, this order shall become effective only after the expiry of three months from the date of passing the judgment.

*Sd/-
(Devender Kr. Jangala)
Civil Judge: Delhi”*

3. Pursuant to the aforesaid judgment, the appellant took a decision and passed a fresh order of dismissal on 25.2.2005 dismissing respondent No.1 with effect from 5.1.1993. This dismissal order though passed on 25.2.2005 but sought to be effected from 5.1.1993 in effect reiterating the order of dismissal which had been passed earlier. This order was not challenged by respondent No.1 and therefore, it attained finality. On 25.4.2005, that is, after expiry of more than three months as stipulated by the learned Civil Judge, respondent No.1 filed an execution petition bearing No.17/2005. The said execution petition was dismissed on 8.9.2006 on the ground that no quantified amount of recovery was

mentioned in the execution petition. After expiry of two years, a fresh execution petition was filed seeking enforcement of the decree dated 30.11.2004. The present appellant filed various objections to the execution application. Primarily, one of the main grounds assailing the execution of the decree was that as on 25.2.2005, a fresh order of dismissal terminating the services of respondent No.1 with effect from 5.1.1993 has been passed, therefore, respondent No.1 is not entitled to any amount whatsoever.

4. On 12.5.2008, the learned Civil Judge directed release of a sum of Rs.5 lacs to respondent No.1 and on 1.8.2013, it passed an order attaching the bank account of the appellant to the tune of Rs.30,97,056/-. It may be pertinent here to reproduce the exact language used by the learned Civil Judge executing court while passing the impugned order.

“15. Judgment debtor has conducted fresh enquiry dated 25.2.2005 which is well within the period of three months from the date of passing of the judgment and decree in question dated 30.11.2004 whereby again the services of decree holder have been terminated w.e.f. the date of earlier decision of the executive council dated 5.1.1993. As a matter of fact, the plaintiff has not challenged the fresh enquiry report dated 25.2.2005 on any of the grounds before appropriate forum. But even if, vide fresh enquiry report dated 25.2.2005, the decree holder has been dismissed from the services w.e.f. 5.1.1993, still the decree holder is entitled to back wages in terms of judgment and decree dated 30.11.2004, upto the period 25.2.2005. It is correct that the plaintiff/decreed holder has not been reinstated by the judgment debtor. The direction of the learned trial court was to the effect that the plaintiff-decreed holder shall be entitled to the back wages and all other accruing benefits and this order was to be effective only after the expiry of three months from the date of passing the judgment

30.11.2004. The judgment and decree of learned trial court does not say that in case on fresh enquiry, the decree holder is not reinstated in that eventuality, the decree holder shall not be entitled to the back wages and other accruing benefits. As per settled proposition of law any order of dismissal of an employee cannot be effective from the retrospective date. The factum of non-reinstatement of decree holder on the roll of the JD is a thing apart for which the decree holder can avail appropriate remedy, but he cannot be deprived off the back wages and benefits from upto 25.2.2005 in the garb of an administrative office order dated 25.2.2005. Therefore, contention of learned counsel for the judgment debtor that since vide fresh enquiry dated 25.2.2005, the services of the decree holder have been terminated w.e.f. 5.1.1993 and therefore, decree holder is not entitled to any back wages and accruing benefits, is not upto the mark of law. Further, by an administrative order dated 25.2.2005, the judgment debtors cannot overcome a judicial order and decree dated 30.11.2004. The case law being relied upon by learned counsel for judgment debtor is not applicable to the facts and circumstances of the present execution petition.”

5. I have heard Mr. Sikri, the learned counsel for the appellant and the learned counsel for the respondent and have also gone through the record. The contention of the learned counsel for the appellant has been that the observations passed by the learned executing court in para 15, that is, the operative portion of the judgment whereby the objections have been dismissed are *ex facie* not borne out from the record. The learned executing court has noted the fact as if the appellant had conducted a fresh inquiry and imposed punishment. It has also observed that the order of punishment which has been passed on 25.2.2005 is an administrative order which cannot overrule the judicial order passed on 30.11.2004. It

has been contended that the order dated 25.2.2005 is not an administrative order but it is only an order of punishment reiterating the punishment which was imposed on respondent No.1 on 5.1.1993, that is, dismissing him from the services of the appellant and the aforesaid order was not passed to over reach the order dated 30.11.2004. As a matter of fact, this order of dismissal was passed by virtue of order dated 30.11.2004 itself. It has also been contended by the learned counsel that the operation of the order dated 30.11.2004 was sought by the court itself for a period of three months so as to enable the appellant to pass the order. The impugned order dated 25.2.2005 was passed by the appellant within the stipulated period of time reiterating the earlier order of dismissal. Therefore, by grant of monetary benefit to the respondent for the period 5.1.1993 upto 30.11.2004 is in augment to the order of dismissal which has been reiterated by the appellant with effect from 25.2.2005 with effect from 5.1.1993.

6. The learned counsel for respondent No.1 has only raised the point that the respondent has already been granted a sum of Rs.5 lacs which is reported in the first order itself. In addition to this, it has been contended that the court could not have passed an order of dismissal with retrospective effect. For this purpose, it has sought to place reliance on couple of judgments which are *DDA vs. S.C. Gautam*; 189 (2012) DLT 322, *Madanlal Sharma vs. State of Maharashtra & Ors.*; 2004 (1) ALLMR 216, *Bhola Nath Roy vs. State of West Bengal*; (1998) ILR 1 Cal 116, *Sri Assaram Raibhah Dhage vs. Executive Engineer & Ors.*; 1988 (90) BOMLR 511, *Damodar Valley Corporation vs. Provat Roy*; (1957)

ILLJ 223 Cal. and *The Central Bank of India Ltd. vs. P.S. Rajagopalan etc.*; AIR 1964 SC 743.

7. I have carefully considered the submissions made by the learned counsel for the parties and have also gone through the judgments cited by the learned counsel for the respondents.

8. So far as the judgments cited by the learned counsel for the respondents are concerned, they do not apply to the facts of the present case because in the reported judgments what was in issue was either payment of suspension allowance or the suspension of an individual on account of conviction in criminal case or termination of the services of a temporary employee. Therefore, none of the cases which have been cited by the learned counsel for the respondents is near the facts of the present case where only the punishment has been set aside on the ground of violation of principles of natural justice and the matter has been remanded back to the disciplinary authorities with the direction that they must pass a fresh order of punishment. Once the fresh order of punishment is passed in pursuance to the authority granted by the court itself and it is passed not only from the date when it has been passed but with effect from the original date after complying with the principles of natural justice, it is not open to the respondent to claim that he is entitled to back wages. It is still understandable that had the order not been passed within a period of three months, the respondent could have filed an execution petition in those three months and claimed that as the direction of the court has not been complied with and a fresh order has not been passed within the permissible time limit, therefore, there was no order with regard to the imposition of punishment and he is entitled to all

the pay and allowances including the consequential benefits pursuant to the direction given by the court. This has not been the case in the instant matter. Therefore, I feel that the order which has been passed by the executing court is totally unsustainable in the eyes of law. The executing court could have also not observed that the order dated 25.2.2005 is an administrative order. It is not an administrative order. It is an order which has been passed by the disciplinary authority pursuant to the power conferred on it by the court itself to pass a fresh order of punishment. Once this order is passed, it cannot be treated to be an order to over reach the order dated 30.11.2004 because the court itself has authorized the disciplinary authority to pass such an order.

9. Having regard to the aforesaid discussion, I am of the considered opinion that it was totally illegal on the part of the learned Civil Judge to have attached the bank account and rejected the objections of the appellant. I, accordingly, allow the appeal of the appellant and set aside the impugned order dated 1.8.2013. However, so far as the amount of money which has already been attached and paid to the respondent either by virtue of the court order or by way of an attachment to respondent No.1 is concerned, I am not inclined to restore the *status quo ante* for the simple reason that the appellant is a huge organization while as respondent No.1 is a small time employee and therefore, now at this belated stage if he is directed to refund the amount to the appellant then it may cause serious prejudice to him.

V.K. SHALI, J.

APRIL 22, 2016
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