IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16419 of 2022

Dr. Mohammad Zafar Alam Son of Late Mohammad Yasim Jafri, Resident of Naz Manjil, Loharwa Ghat, P.O. Gulzarbag, P.S. Alamganj, District- Patna.

... ... Petitioner/s

Versus

1. The Union of India through the Ministry of External Affairs, Government of India, New Delhi.
2. The Foreign Secretary, Government of India, Akbar Bhawan, New Delhi.
3. The Principal Chief Controller of Accounts, Ministry of External Affairs, Government of India, New Delhi.
4. The Director of Audit, External Affairs, AGCR Building, I.P. Estate, New Delhi.
5. The Administrative Officer, Local Cadre Section, Ministry of External Affairs, Government of India, Akbar Bhawan, New Delhi.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. S. B. K. Manglam, Advocate
		Mr. Awnish Kumar, Advocate
For the Respondent/s	:	Mr. Anshuman Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

Date : 29-01-2024

Heard Mr. S.B.K. Manglam, learned counsel along with Mr. Awnish Kumar, learned counsel appearing on behalf of the petitioner and Mr. Anshuman Singh, learned counsel representing the Union of India.

2. The petitioner, who was initially appointed as a clerk in the office of Consulate General of India at Jeddah in the Kingdom of Saudi Arabia on 14.02.1987, and after serving the office of Consulate General for almost 32 years, superannuated on 31.12.2019, when he had completed 60 years of age, has filed the writ petition by invoking the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India,

seeking a direction upon the respondent authorities to ensure payment of gratuity, in view of the policy decision of the Ministry of External Affairs, addressed to the Head of Chancery under Letter dated 12th October, 2012 along with the instructions contained in Model Contract Form and more particularly Clause No. 10 (C) thereof, where provision has been made for payment of one month salary for each completed years of service.

3. It is the case of the petitioner having been superannuated on 31.12.2019, after serving Consulate General of India for more than three decades, had submitted his requisite forms for payment of is post retiral benefits and in pursuance thereof, though he has been paid his all retirement benefit on the basis of last pay drawn by him, however, while calculating the amount of gratuity payable to the petitioner, the respondent authorities had committed a mistake and it was calculated on the basis of average of basic pay drawn by the petitioner in the last 12 months of his service.

4. Mr. Manglam, learned counsel for the petitioner referring to Model Form of Contract as contained in the Letter dated 29.11.1975 issued by the Ministry of External Affairs has submitted that for the purposes of payment of gratuity to the employees serving the Ministry of External Affairs, a Model

Contract Form was issued by the Ministry of External Affairs, New Delhi dated 07.01.2011, whereas, Clause 10 of the said Form provides for termination of employment, Clause 10 (C) provides for the terminal benefits, which clearly stipulates that: one month's salary for each completed year of service for employee without any monetary ceiling in the amount of gratuity was decided to be paid by the Ministry of External Affairs. He further submits that in fact, in order to reduce the chances of dispute regarding payment of terminal benefits to the employees of Local Staff in many Mission, the Ministry of External Affairs in order to give clear idea of their rights and obligations to the employees of the Mission in respect of such employment, the Ministry has formulated a Model Contract containing the terms and conditions of employment which the diplomatic Mission might enter into with their Indian employees in order to ensure that both sides are aware of their rights and obligations arising under such employment. The said letter was issued by the Ministry of External Affairs on 29.11.1975, addressed to all foreign diplomatic Missions in India.

5. After highlighting, the aforesaid letter as well as the Model Form of Contract he vehemently submitted that the petitioner had since served out 32 years of his service, he was

entitled for payment of 32 months salary by way of an amount of gratuity to be calculated on the basis of last salary drawn by the petitioner, however, in complete ignorance of the Clause 10 (C) as referred hereinabove, the respondents have though paid gratuity of 32 months, but so far amount of gratuity is concerned, it has been calculated on the basis of pay scale, which the petitioner was drawing on the date of his retirement and not on the basis of gross salary, which the petitioner was drawing on the date of his retirement. He next submitted that not for reliance but for reference, the petitioner on being aggrieved had also approached before the Court's of Saudi Arabia by preferring Case No. 421271180 whereby, the Court's of Saudi Arabia directed the respondents to pay the claimant an amount of Rs. 80577 Saudi Riyal and 1825 Saudi Riyal to the petitioner by way of remaining end of service gratuity and amounts towards airfare.

6. Per contra, learned counsel for the Union of India while refuting the contention of the petitioner has submitted that the entire claim of the petitioner is wholly misconceived and fit to be rejected for the simple reason that the functions of Missions/Posts of Government of India abroad are exclusively governed by the law, rules and regulations of Government of

India and not governed with the local laws. This gives Jurisdictional immunity to India Missions/Posts as per the Vienna Convention on Diplomatic Relations (VCDR) and Vienna Convention on Consular Relations, whereby, the Consulate General of India, Jeddah (CGI Jeddah), does not come under the jurisdiction of the local Courts. It is submitted that the payment of Terminal Benefits was made in accordance with Ministriy's Guidelines dated 12.10.2012, which clearly stipulates that only the basic pay drawn at the time of retirement is taken into consideration while calculating the terminal gratuity and Cost of Living Allowance is not part of the basic salary.

7. Referring to the judgment/order of the learned Court of Saudi Arabia, he submits that it appears that the Cost of Living Allowance has been taken into account for calculating the Terminal Gratuity, which is not applicable while calculating the Terminal dues/gratuity of the petitioner. He made emphasis that the Missions/Posts abroad are governed by sending State i.e. Government of India as per the Vienna Convention and that local laws are not binding on the Consulate General of India, Jeddah.

8. Mr. Anshuman, learned counsel for the Union of

India further contended that the reliance of the petitioner is not relevant to the instant case since these communications have been issued by the Ministry to the Diplomatic Missions/Posts and UN and other Intergovernmental Agencies in the territory of India, which is discretionary in nature. Therefore, the petitioner’s claim over his Clause 10 (C) of the said Model Labour Contract is wholly misconceived, moreover, the relevant guidelines of the Ministry in the instant case dated 12.10.2012, which stipulates that basic pay drawn at the time of retirement will be taken into consideration for calculation of the Terminal Benefits.

9. This Court has carefully heard the learned counsel for the respective parties and also perused the materials available on record. From the record, it is evident that the guidelines, as contained in Annexures 1 and 2, were issued by the Protocol Division of Ministry of External Affairs, Government of India to all Diplomatic representatives of other countries in territory of India. The Labour Contract (addendum) in relation to the petitioner, in clear terms, specifies that the grievance of the petitioner, if any, will be settled according to the Government of India Rules and Regulations and not as per the local laws of the Kingdom of Saudi Arabia. So far the

submissions of the petitioner that while calculating the gratuity of the petitioner, the respondent has ignored the Cost of Living Allowance contrary to the Model Form of Contract and the letter dated 29.11.1975, issued by the Ministry of External Affairs, in the opinion of this Court, would only be applicable to locally recruited staff by Indian Consulate Officer in Jeddah, Saudi Arabia.

10. From the reading of Clause 10 (C) of the said Model Labour Contract, which is part of letter dated 07.01.2011 (Annexure 1 to the writ petition), it clearly apprises that it only talks about the terms and conditions of service of locally recruited staff Indian Mission. The Model Contract Form would only be seen as indicating the minimum terms that should be offered to the Indian employees. The Mission would be at liberty to offer larger benefits to their employees than are provided for under the Model contract, if they so wish. It would be relevant to note here that the term Diplomatic Mission/Posts Missions denotes Diplomatic Representatives of other countries in the territory of India in the Form of Embassies/High Commissions and Consulates. Thus, it cannot be said to be applicable to locally recruited staff by Indian Consulate Officer in Jeddah, Saudi Arabia.

11. The respondent Union of India has rightly clarified that the payment of bonus, wherein, it states that the term salary shall mean Basic Pay, is payable to the employees where local labour laws makes it mandatory salary; for the purpose of bonus shall mean Basic Pay + COLA (Cost of Living Allowance). However, that only pertains to payment of bonus and not for payment of Terminal Gratuity. From the reading of the Ministry of External Affairs order dated 12.10.2012, clearly stipulates that only the Basic Pay drawn at the time of retirement is taken into consideration while calculating the Terminal Gratuity and more so, the Cost of Living Allowance is not part of the Basic Salary.

12. Needless to observe that the aforenoted order has not been put to challenge in the present writ petition. Before parting with the final conclusion with respect to jurisdiction of the Saudi Arabia Court on Mission/Posts of Government of India and Saudi Arabia is concerned, it may be noted that the Mission/Posts of Government of India abroad are governed by the Rules and Regulations of Government of India and not the local laws. This certainly gives immunity to Indian Missions/Posts as per the Vienna Convention on Diplomatic Relations whereby, the Consulate General of India, Jeddah does

not come under the jurisdiction of the local Courts.

13. In view of the discussions made hereinabove, this Court does not find any merit in the present writ petition and accordingly, the same stands dismissed.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.02.2024
Transmission Date	NA