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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 4327/2014

SARWAN KUMAR

..... Petitioner

Through: Mr. Parvinder Chauhan and
Ms. Aakriti Garg, Advocates.

versus

UNION OF INDIA AND ANR

..... Respondents

Through: Mr. Manish Mohan, CGSC with
Mr. Jatin Teotia and Mr. Nikhil
Hemrajani, Advocates.

CORAM:

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

ORDER

08.04.2024

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1. The present petition is filed under Article 226 of the Constitution of India with the following prayer:-

(i) Issue writ, order or direction in the nature of certiorari thereby calling forth to this Hon'ble Court the records of the Respondent No. 1 pertaining to the issue involved in the present writ petition especially the records pertaining to the denial of sanction to the petitioner u/s 86 of CPC for filing suit (s) against the Respondent No. 2 for realization of service benefits including gratuity, insurance, pension and compensation for illegal termination of services of the petitioner;

(ii) After perusal of the records so called forth, set aside/ quash the aforesaid order dated 24th April 2014;

(iii) Issue writ, order or direction in the nature of mandamus thereby directing/ commanding the respondent No. 1 to grant sanction/ permission/consent to the petitioner to sue the respondent No. 2 for realization of service benefits including gratuity, insurance, pension and compensation for illegal termination of services of the petitioner;



(iv) Grant cost of litigation and exemplary cost to the petitioner for dragging him in litigation for his legitimate claim.

(v) Pass such other or further order (s)/direction(s) as deem just and proper in the interest of justice

2. It is stated in the petition that the petitioner was working as a Chauffeur in the Embassy of Republic of Suriname since March, 2002 and vide letter dated 12.07.2002, the terms of the salary and other perks payable to the petitioner were settled. The petitioner has discharged his duties to the best of his abilities and satisfaction of the respondent no. 2. The respondent no. 2 without assigning any reason has terminated the services of the petitioner vide an oral order dated 06.08.2012 which was passed arbitrarily and without following the principles of natural justice. The oral termination of the services of the petitioner was in violation of the terms of condition dated 07.01.2011 issued by the respondent no. 1 to all the Diplomatic Missions/Posts and UN and other Intergovernmental Agencies in the territory of India. The petitioner claimed to be entitled for gratuity and provident fund in terms of the letter/communication dated 20.05.2002 issued by the respondent no. 1 through Ministry of External Affairs. The petitioner also got issued a legal notice dated 19.08.2012 to the respondent no. 2 which remained un-responded.

3. The petitioner to file a suit or to initiate appropriate legal proceedings against the respondent no. 2 was required to obtain sanction as per section 86 of CPC from the respondent no. 1. The petitioner vide application dated 16.10.2012, sought permission of the respondent no. 1 to sue the respondent no. 2 to realize his service benefits including gratuity, insurance, pension and compensation for illegal termination of his service. The petitioner



received a letter dated 15.04.2013 under the signature of Sh. P. K. Sahu, Protocol Officer - III, Ministry of External Affairs of the respondent no. 1 whereby, the petitioner was asked to provide the details of the dues payable by the respondent no. 2. Thereafter, the petitioner submitted the representation dated 14.10.2013 and the legal dues claimed by the petitioner as mentioned in detail in para no. 17 of the petition which comes around Rs.70,82,345/- (Seventy Lacs Eighty Two Thousand Three Hundred and Forty Five) along with interest @ 18% per annum pendente lite and till actual payment.

4. The respondent no. 1 failed to take any decision which constrained the petitioner to file the writ petition bearing no. 1307/2014 titled as **Sarwan Kumar V Union of India & another** which was decided/disposed of by this Court vide judgment dated 25.02.2014 whereby the respondent no. 1 was directed to take a decision qua the representation submitted by the petitioner. Thereafter, the petitioner received the communication dated 24.04.2014 whereby the permission sought by the petitioner to sue the respondent no. 2 was rejected. Hence, the petitioner filed the present petition.

5. The respondent no. 1 filed a counter affidavit wherein it is stated that the petitioner was given a personal hearing on 14.04.2014 and was also informed about the position that the Government of India/Ministry of External Affairs can only advise the Foreign Missions on such matters and cannot enforce any decision on them. He was further intimated that his claim was considered to be exorbitant. It was also informed to the petitioner that the 'model employment contract' which was circulated to all the Foreign Missions in India was only recommendatory in nature and not binding on



the Missions. The Diplomatic Missions enjoy immunity being representatives of sovereign States. The respondent no. 1 through the Ministry of External Affairs, has considered the request made by the petitioner and it was decided not to grant permission under section 86 of CPC to sue the Embassy of Suriname as the claim made by the petitioner was found to be highly exorbitant and unsustainable. The respondent no. 1 also disputed other factual position.

6. The petitioner filed a rejoinder wherein the petitioner stated that as per the respondent no. 2, the petitioner was not employed under the model employment contract, however, at the same time, it has contended that as per the model employment contract, the petitioner would have been entitled to claim the sum of Rs. 2,34,227/- and the petitioner also desired to settle the dispute with the respondent no. 2 amicably. The petitioner also reiterated his previous stance.

7. The counsel for the petitioner stated that the claim of the petitioner as mentioned in the petition was genuine, however, the petitioner is willing to re-asses the claim to Rs. 25 lakhs along with interest @18% p.a. pendente lite and till the actual payment.

8. The counsel for the petitioner during the course of arguments cited **Shyam Lal V Union of India and Others W.P.(C) 10185/2009** decided on 16.09.2010 by Co-ordinate Bench of this Court wherein it was observed that even if the High Court finds that the refusal of the sanction under section 86 CPC by the Union of India is not valid, even in that eventuality, the High Court has to remand the matter to the Union of India to reconsider the matter in accordance with law instead of directing the Government to give its consent under section 86(3) CPC.



9. The Central Government Standing Counsel for the respondent no. 1 during the course of arguments stated that the claim of the petitioner was rejected and it was found to be highly exorbitant and also cited **Harbhajan Singh Dhalla V Union of India** (1986) 4 SCC 678 wherein it was observed as under:-

26. In this case there is no provision of any appeal from the order of the Central Government in either granting or refusing to grant sanction under Section 86 of the Code. This sanction or lack of sanction may, however, be questioned in the appropriate proceedings in court but inasmuch as there is no provision of appeal, it is necessary that there should be an objective evaluation and examination by the appropriate authority of relevant and material factors in exercising its jurisdiction under Section 86 by the Central Government. There is an implicit requirement of observance of the principles of natural justice and also the implicit requirement that the decision must be expressed in such a manner that reasons can be spelt out from such decision. Though this is an administrative order in a case of this nature, there should be reasons. If the administrative authorities are enjoined to decide the rights of the parties, it is essential that such administrative authority should accord fair and proper hearing to the person to be affected by the order and give sufficiently clear and explicit reasons. Such reasons must be on relevant material factors objectively considered. There is no claim of any privilege that disclosure of reasons would undermine the political or national interest of the country.

27. In the aforesaid view of the matter we order as follows:

- 1. Order dated November 26, 1983 at Annexure A to this petition is set aside;**
- 2. Union of India is directed to reconsider the matter;**
- 3. The Central Government should also explore the possibilities with Algerian authority of mutual settlement either by arbitration or by other accepted legal norms;**
- 4. The Union of India should pass reasoned order in accordance with the principle of natural justice and keeping in view the trend**



and the development of the international law as noted hereinbefore.

10. In view of the decision given in **Shyam Lal V Union of India and Others** (*supra*) by this Court, ultimately the decision as per the mandate of section 86 CPC has to be taken by the Ministry of External Affairs, Union of India and the Court cannot give direction to the respondent no. 1/ Union of India through the Ministry of External Affairs to give sanction to the petitioner as per section 86 CPC.

11. The petitioner has reconsidered the claim to the extent of Rs.25 lacs as mentioned in the rejoinder along with interest @ 18% per annum pendente lite and till the actual payment.

12. Accordingly, the present petition is disposed of with the direction to the respondent no. 1 to reconsider the grant of sanction as per section 86 CPC after giving opportunity of being heard to the petitioner particularly when the petitioner is willing to confine his claim to Rs.25 lacs along with interest as mentioned in the rejoinder and also in view of the directions as mentioned in para no. 27 of **Harbhajan Singh Dhalla V Union of India** (*supra*). Let the needful be done by the respondent no. 1 within 08 weeks. It is also expected that the respondent no. 1/Union of India shall make every possible endeavor to explore the possibility for mutual settlement of the claim of the petitioner with the respondent no. 2.

13. The present petition stands disposed of.

DR. SUDHIR KUMAR JAIN, J

APRIL 8, 2024/sk/am