

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2731/2009

UNION OF INDIA & ORS.

Appellant(s)

VERSUS

P. P. HARITH

Respondent(s)

WITH

C.A. No.2827/2009

O R D E R

1. The respondent P.P. Harith was appointed as a locally recruited Commercial Assistant in the Embassy of India, Riyadh on 31.1.1985 on pay of SAR 1500 per month plus 15 % of the salary as cost of living allowance on purely temporary basis to be terminated at any time without any notice or without assigning any reason.

2. On 12.9.1998, a complaint was received from one Dr. Abdullah Shebl of M/s Tathmeer International, Riyadh stating that the respondent had diverted a contract between his company and an Indian firm viz. M/s Deepak Woolens Ltd., Bombay and convinced him to make a deal with another Indian firm, viz. M/s Pankaj International, Ludhiana. The contract was for supply of 20,000 pieces of blankets to Saudi Coast Guard. The respondent persuaded Dr. Shebl to give the contract to M/s Pankaj International citing that they were the manufacturer of blankets and could supply blankets at a cheaper price, provided a

commission of US\$ 0.50 per piece was paid to him. He availed a ticket from the businessman to travel India. At the behest of respondent, a deal was made with M/s Pankaj at 9.25 US \$ per blanket. Later it was revealed that he was not a manufacturer and unable to make such blankets. The respondent received a sum of SAR.4200/- as part of commission from Dr. Abdullah Shebl. When the Saudi company did not pay him the full commission, he reportedly threatened and blackmailed the Saudi businessman with threats that he will inform the Saudi authorities of the under invoicing done by him.

3. The respondent was served a Memorandum on 14.9.1998 seeking his explanation on the charges levelled against him. In his reply he stated that he had not collected any amount from Dr. Abdullah and the air passage to India was offered to him by the Saudi gentleman, which he accepted. He denied the charges of threatening and blackmail. After due consideration of his explanation it was decided to terminate his services w.e.f.23.9.1998 with the approval of the Ambassador.

4. The respondent approached the Central Administrative Tribunal saying that he was employed in the civil services under the Union of India and was entitled to the protection under Article 311 (2) of the Constitution of India.

5. The Central Administrative Tribunal in its order dated 09.02.2001 in OA No.1030/1999 held that when order

of dismissal of the applicant is stigmatic as it is based on the charges, according to the respondents, proved after an enquiry and as already stated there was no fair enquiry for the reason that no opportunity was given to the applicant, order could only be said to have been issued in gross violation of the principles of natural justice. Thus the Tribunal quashed the dismissal order dated 23.9.1998 and ordered reinstatement with all consequential benefits.

6. In the meantime, the Memo of charges was served upon the respondent on 16.4.2002 which stated as under that:

"i) he misused his position as Commercial Assistant in the Embassy and misrepresented himself as Commercial Officer to Saudi and Indian businessmen and Saudi Government authorities in Saudi Coast Guard.

ii) conducted his business dealings during office hours of the Embassy and utilized the facilities provided in the Mission for conducting his business dealings for personal gains.

iii) concealed the facts about his dealings with M/s Tathmeer International and Pankaj International and did not inform to Embassy about his involvement in the deal.

iv) by indulging in private business dealings with M/s Tathmeer International Mr. Harith violated the Saudi regulations relating to his employment.

v) developed a nexus with M/s Pankaj International Ludhiana with a motive to get commission from M/s Tathmeer International

vi) received illegal gratification in the form of a sum of SAR 4200/- as commission from M/s Tathmeer International.

vii) received illegal gratification and an undue favour in the form of return air ticket to India

from M/s Tathmeer International.

viii) threatened and tried to blackmail M/s Tathmeer International to extract the balance of his commission."

7. On 29.4.2002 reply to the charges was filed by the respondent.

8. Challenging the order in OA No.1030 of 1999 passed by the Central Administrative Tribunal, the appellants-Union of India and others filed an appeal before the High Court by filing O.P. No.17601/2001 dated 07.02.2002 and the same was disposed of by the High Court confirming the order passed by the Tribunal but declining reinstatement in service and back wages. The operative part of the same is as under:

"14. We, therefore, dispose of the writ petition directing the petitioners to conduct an enquiry at any rate within four months from the date of receipt of a copy of this judgment. For the reasons stated herein before we affirm the order passed by the Tribunal to the extent it quashes the order dismissing the second respondent from service. However, in the peculiar facts and circumstances of this case, we are not inclined to order re-instatement of the second respondent and to pay full back wages. At the same time, we are inclined to pass an order directing the petitioners herein to pay an amount of Rs.10,000/- to the second respondent by way of litigation expenses. We make it clear we are not expressing any opinion on the merits of the case. What is the relief to be granted to the second respondent including the claim for back wages will have to be decided ultimately after the enquiry is conducted, as ordered. The impugned order dated 23.9.1998 is accordingly set aside. The original petition is disposed of as above."

9. In the appeal filed against the said decision, on 14/16.2.2002, this Court was informed by the employer that

enquiry has been completed and order remains to be passed. This Court vide order dated 02.11.2004 in Civil Appeal Nos.134-135/2003 observed that the employee would be entitled to payment of subsistence allowance from the date of first termination order i.e. from 23.09.1998 till further order is passed in the fresh enquiry conducted against the appellant and back wages would be decided at the time when the final order is passed.

10. On 12.01.2005 termination order was passed. However, it is apparent that no enquiry had been conducted before passing the order as directed by the High Court and as noted by this Court in order dated 02.11.2004.

11. Vide order dated 03.07.2006 this Court on an application for clarification of order dated 02.11.2004 held as under:

“However, it appears that neither the subsistence allowance nor the arrears of subsistence allowance were paid to the appellant in spite of the order passed by this Court. We leave open the question to be decided by the Central Administrative Tribunal where the matter is pending for consideration. The appellant would be at liberty to raise the quantum of subsistence allowance as also extent of the arrears of subsistence allowance which is payable to him.”

12. On 07.03.2007, the respondent herein filed an original application OA No.660/2005 before the Central Administrative Tribunal praying that dismissal order dated 12.1.2005 be quashed. The appellants refuted the contentions raised by the respondent in Original Application No.660/2005. In his reply, the respondent

reiterated that no notice was given to him about the enquiry and the no enquiry was conducted which was in violation of principles of natural justice.

13. OA NO.660/2005 filed by the respondent was allowed on 7.3.2007 and the Tribunal ordered his reinstatement. Learned Tribunal arrived at the conclusion that in the instant case the order of dismissal has to be set aside and the respondent to be reinstated in service with full back wages as subsistence allowance and payment of consequential pay and allowance in accordance with law.

14. Aggrieved by the said order this appellant filed Writ Petition [C] No.24996/2007 before the High Court which was dismissed by the Division Bench of the High Court with costs vide judgment and order dated 10.04.2008.

15. After hearing the parties at length, we are of the opinion that the enquiry was not held even after a categorical order was passed by the High Court. After the order was passed by the High Court, it was incumbent upon the employer to conduct enquiry but that was not done. The Tribunal rightly held that there was no further enquiry and order had been issued in the violation of the principles of natural justice.

16. Coming to the question of back wages, after the first termination order was passed in 1998 the employee was not located at Riyadh. He came back to India and was no more staying in Riyadh. Higher salary that used to be given by way of allowances at Riyadh i.e. in a foreign country

could not be claimed while remaining in India. After the termination, as the employee came back to India he was obviously not entitled to higher salary as he would have obtained in Riyadh.

17. In any view of the matter, in facts and circumstances of case as relief has been granted on technical ground, we direct that salary payable in India for similar work shall be paid to him not what he would have actually earned in Riyadh and no extra and higher salary or allowances as is paid while living in a foreign country would be paid to him.

18. Let the amount be paid within three months from today.

19. With the aforesaid directions, the Civil Appeal is partly allowed.

C.A. No. 2827/2009

This appeal is also disposed of in terms of the above order.

.....J.
[ARUN MISHRA]

.....J.
[NAVIN SINHA]

.....J.
[INDIRA BANERJEE]

NEW DELHI;
FEBRUARY 13, 2019.

ITEM NO.109

COURT NO.4

SECTION XI-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No.2731/2009

UNION OF INDIA & ORS.

Appellant(s)

VERSUS

P. P. HARITH

Respondent(s)

IA NO.11- APPLICATION FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS
WITH

C.A. No. 2827/2009 (XIV)

Date : 13-02-2019 These matters were called on for hearing today.
CORAM :

HON'BLE MR. JUSTICE ARUN MISHRA
HON'BLE MR. JUSTICE NAVIN SINHA
HON'BLE MS. JUSTICE INDIRA BANERJEE

For Appellant(s) Ms. Binu Tamta, Adv.
Mr. Abhishek Kumar, Adv.
Mr. B.V. Balram Das, Adv.
Mr. B. Krishna Prasad, AOR

For Respondent(s) Mr. P. S. Sudheer, AOR
Mr. Rishi Maheshwari, Adv.
Ms. Anne Mathew, Adv.
Mr. Bharat Sood, Adv.
Ms. Shruti Jose, Adv.

Mrs. Nasreen Alam, Adv.
Mr. Shakil Ahmed Syed, AOR
Mr. Mohd. Parvez Dabas, Adv.
Mr. Syed Ahmad Daanish, Adv.
Mr. Uzmi Jameel Husain, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The Civil Appeal is partly allowed in terms of the
signed order.

Pending application stands disposed of.

C.A. No. 2827/2009

This appeal is also disposed of in terms of the
signed order in Civil Appeal No.2731/2009.

Pending application, if any, stands disposed of.

(ASHA SUNDRIYAL)
COURT MASTER

(JAGDISH CHANDER)
BRANCH OFFICER

[signed order is placed on the file]