

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P. No. 3646/2018

Embassy of Italy

versus

The Assistant Commissioner (Secretariat), Islamabad, etc.

Petitioner by: Mr. Wahid Iqbal, Advocate.

Respondents No.3 to 7: In Person.

Date of Decision: 15.02.2021.

MOHSIN AKHTAR KAYANI, J: Through this Writ Petition, the petitioner Embassy of Italy has assailed the order dated 31.08.2018, passed by Assistant Commissioner (Secretariat), Islamabad on the complaint filed by respondents No.3 to 7, whereby the said complaint was declared maintainable.

2. Brief facts referred in the instant petition are that respondents No.3 to 7 filed a joint application to the Director Industries and Labour, Islamabad which was transmitted to the Payment of Wages Authority under Payment of Wages Act, 1936. Notice was issued to the Embassy of Italy on the claim of respondents, whereby it has categorically been objected by the Embassy of Italy that it is a sovereign entity and could not be proceeded against under the law but the stance of petitioner was repelled and it has been declared that proceedings initiated by respondents No.3 to 7 are maintainable.

3. Learned counsel for the petitioner contends that Payment of Wages Authority has not attended to the provisions of law as well as to the legal jurisdiction while adjudicating upon application U/O VII Rule 11 CPC; that complaint filed by respondents is barred by law and Payment of Wages Authority lacks the jurisdiction to pass such order against the sovereign entity in terms of Article 31 of the Vienna Convention on Diplomatic Relations, 1961, whereby Embassy and its officials enjoy the privilege and immunity within the receiving state; that no proceedings in any court of law shall lie against a diplomatic agent U/S 86-A CPC.

4. Conversely, respondents No.3 to 7 in person state that Embassy of Italy being employer is not exempted from application of law as the same is liable for payment of dues to the respondents and no immunity is available unless specifically notified. Respondents have produced different letters and cards disclosing their status being employees of Embassy of Italy which were issued by Embassy of Italy in the years 1995, 1997, 2000, 2002, 2004, etc. Respondents have also produced handbook on Protocol Matters, issued by Ministry of Foreign Affairs, Islamabad and declared the employees entitled for benefits including gratuity.

5. Arguments heard, record perused.

6. Perusal of record reveals that as per complaint filed by respondents No.3 to 7 before the Payment of Wages Authority, they were engaged as Security Guard in the year 1989 and later on Italian

Embassy regulated the contract of these employees through Saad Co. Enterprise Maintenance, however, respondents remained on contract till 2015 and then their services were allegedly transmitted to another company known as Mehreen Security Company on reduced salary. The contents of application clearly spell out that respondents remained in service till 2015, however, there is nothing on record to establish that they performed their services with Italian Embassy till 2015, however, certain reference letters and I.D cards issued by Italian Embassy demonstrate that respondents remained with Italian Embassy as Security Guards but all those documents issued in the year 1995, 1997, 2000, 2002, 2004 & 2005 if accepted those dates as gospel truth, it seems to be time barred.

7. Besides the above referred background, I have gone through the provision of Section 86-A CPC which gives immunity to the diplomatic agent, except in cases relating to any private immovable property situated in Pakistan, succession or any professional or commercial activity, as such the immunity of diplomatic agent may be waived of by sending state in express manner.

8. After incorporation of Section 86-A CPC, Diplomatic and Consular Privileges Act, 1972 was enacted to give effect to Vienna Convention on Diplomatic Relations, 1961 as well as to Vienna Convention on Consular Relations, 1963, which were acceded by Pakistan. There is no cavil to the proposition that in terms of Section 2 of the Diplomatic and Consular Privileges Act, 1972, that Vienna

Convention on Diplomatic Relations, 1961 as well as Vienna Convention on Consular Relations, 1963 have the force of law in Pakistan.

9. Similarly, Diplomatic agent is the head of the mission or a member of the diplomatic staff of the mission in terms of Article 1(e) of the Diplomatic Convention, who is a privileged person in terms of Article 29 of the Diplomatic Convention and as such all the diplomatic agents are not liable to any form of arrest or detention and the receiving state shall treat them with due respect and shall take all appropriate steps to prevent any attack on person, freedom or dignity. Article 31 of the Convention of the Diplomatic and Consular Privileges Act, 1972 gives immunity to diplomatic agent from criminal prosecution as well as from civil and administrative jurisdiction except in cases where real action relating to private immovable property situated in the territory of receiving state or action relating to succession or an action relating to professional or commercial activity has been exercised by the diplomatic agent in the receiving state outside his official functions.

10. By comparing all these provisions, it appears that Section 4 of the Diplomatic and Consular Privileges Act, 1972 read with Article 31 of the First Schedule to the Act discloses the immunity to the petitioner from legal process and as such Embassy of Italy could not be sued in mode and manner as initiated by respondents. Reliance is placed upon 1986 SCMR 907 (Ghulam Ahmad Vs. USA and another).

11. Similar view has also been taken by Lahore High Court in 2000 YLR 1833 (British High Commission Vs. Syed Sajjad Anwar), whereby it was held that under provision of State Immunity Ordinance, 1981 and the Act of 1972, such kind of suits are not maintainable.

12. In view of above reasons, order so passed by the Payment of Wages Authority has been considered, which is in violation of law discussed above, even it has been observed by the Authority that "the Embassy cannot hide himself behind their diplomatic immunity after violating employee's right" in the impugned order is not justiciable, which has been passed without considering the law on the subject, therefore, complaint filed by respondents No.3 to 7 against Embassy of Italy is not justiciable from record, hence, instant petition is allowed and impugned order passed by Assistant Commissioner/Payment of Wages Authority is hereby set aside. Resultantly, the proceedings for recovery under Payment of Wages Act, 1936 are not maintainable; therefore, application filed by the respondent qua their claim under Payment of Wages Act, 1936 is hereby dismissed.

(MOHSIN AKHTAR KAYANI)
JUDGE