

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P. Nos.D-2781 & 2782 of 2024

Date	Order with signature of Judge
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HEARING OF CASE:
1. For order on office objection at flag 'A'.
2. For hearing of main case.

Dated; 3rd June 2024

Petitioner Aamir Ali present in person in CP No.D-2782/2024.

Mr. Saifullah, Asst. A.G. alongwith Ms. Deebea Ali Jaffri, Asst. A.G. Sindh.

Office Superintendent, Mr. Kareem Bakhsh Junejo, Judicial District Larkana alongwith Mr. Waheed Ali Soomro, Clerk is present on behalf of District & Sessions Judge, Larkana.

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Petitioner Aamir Ali present in Court in C.P. No.D-2782/2024 submits that he will himself proceed with the matter. However, no one has shown appearance on behalf of the petitioner in C.P. No.D-2781/2024.

This larger bench has been constituted in view of Para 9 of order passed by a Division Bench at Circuit Court Larkana in C.P. No.D-2781 & 2782 of 2024, which reads as follows: -

“9. In view hereof and as reiterated by the recent order of a five member bench of the Supreme Court in SSGC case, the office is instructed to place these petitions before the honorable Chief Justice for formation of a larger bench to consider the matter and adjudicate issues including the those identified per paragraphs 2 and 5 supra.”

Mr. Suhail Muhammad Laghari, learned Registrar of this Court has shown appearance and submits that pursuant to the Court’s order passed by a Divisional Bench of this Court at Circuit Court Larkana on 21.05.2024, he has furnished his explanation/reply, whereas, while

accepting the explanation, the Hon'ble Bench has been pleased to pass an order on 29.05.2024, whereby, explanation/reply duly furnished has been accepted and the show-cause notice has been discharged in the following terms, (copy of the order has been placed on record).

"Mr. Laghari submits that no non-compliance was ever intended and none can even be contemplated. It is further submitted that the replies, as sought vide order dated 07.5.2024 in Constt. Petition No.D- 217 and 218 of 2024 are being filed at the Principal seat since, per orders of this bench, the cases have already been referred to the Hon'ble Chief Justice at Karachi to be heard by a larger bench.

It is the considered view of this Court that the reason for non-compliance has been adequately explained and the same is hereby accepted. The show cause notice stands discharged. A copy of this order may be kept on file, however, the show cause notice, its reply and/ or this order need no longer be placed in the service file of Mr. Suhail Muhammad Laghari."

It has been prayed that in view of above factual and legal position, the adverse remarks as contained in Para 11 of the order dated 21.05.2024 may be expunged or the same may not be treated as part of the proceedings before this larger bench.

This Bench is of the tentative view that while hearing the matter on judicial side, the Courts are required to adjudicate upon the legal issues and the points for consideration, as agitated before it, after hearing the relevant parties in accordance with law. However, in exceptional cases, during course of hearing the matter, in case of any disruption of Court proceedings, or non-compliance of the Courts' orders by any of the party to the proceedings, contempt of Court proceedings can be initiated after notice or show cause notice, against the delinquent officials or the party in accordance with law, besides deciding the lis before the Court on merits. In the instant case, prima

facie, it appears that while disagreeing with the previous decision(s) of the Hon'ble Division Benches of this Court, while placing reliance in the case of **MULTILINE ASSOCIATES v. ARDESHIR COWASJEE [1995 SCMR 362 / PLD 1995 SC 423]** matter has been referred to the Chief Justice for constitution of a larger bench, however, while doing so, directions have been issued for issuance of show-cause notice of contempt to the Registrar of this Court on the pretext that the order passed by the Hon'ble Division Bench in the above petitions requiring the Registrar of this Court to submit policy relating to the appointment of deceased / son-quota, if any, in the District and Sub-ordinate Courts, Sindh was flouted, therefore, show cause notice was directed to be issued to the Registrar, whereas, in addition to issuance of show-cause notice, further directions have been issued in the following manner: -

“A copy of this order and the consequent show cause notice shall be placed in the service file of Mr. Suhail Muhammad Leghari (Registrar) forthwith.”

Without dilating upon the proprietary of the aforesaid directions, prima facie it appears to be beyond the scope of lis pending before the Hon'ble Division Bench in the above petitions, which otherwise are premature, as no explanation/reply to this effect was sought or considered while issuing the aforesaid directions. Moreover, without ascertaining the factual position regarding service of Court's orders upon the Registrar, or making out a prima facie case of deliberate or willful non-compliance or defiance of Court's order, which may otherwise constitute contempt of Court, such extreme action for issuance of contempt notice should have been avoided while exercising due caution and showing judicial restraint. Therefore, in order to keep the record straight we are inclined to expunge the aforesaid directions as contained in Para 11 of Order dated

21.05.2024. We need not dilate upon the propriety of the contents of Para 11 of the order regarding issuance of show cause notice to the Registrar of this Court, in view of the fact that explanation/reply furnished by the Registrar has been duly accepted and the show cause notice has been discharged and further directions have been issued to the effect that the aforesaid order may not be placed in the service file of Mr. Suhail Muhammad Laghari (Registrar). However, it is observed that while hearing instant matters, Para 11 of the decision dated 21.05.2024 passed by the Division Bench at Circuit Court Larkana shall be treated as of no consequence or effect. We are also concerned with regard to the observations made in Para 10 of the aforesaid decision to the following effect: -

“This practice would defeat the administration of justice and upset the integrity and sanctity of the Court. Therefore, this matter may be placed before the competent authority / honorable Senior Puisne Judge to consider the likelihood and severity of disciplinary proceedings against officers concerned.”

We are of the tentative view that Additional / Deputy Registrar(s) while entertaining any matter to be placed before the Court exercises the administrative authority, whereas, in case of allegation regarding non-compliance of Rule 6 of the Roster set by the Chief Justice of this Court the matter should have been referred to the Chief Justice through Registrar to be taken up on Administrative Side, instead of referring the matter to the Hon'ble Senior Puisne Judge, who is authorized to deal with the complaints regarding misconduct of the judicial officers, while performing judicial functions. Whereas, it has been intimated by the Registrar that office objections were raised by the Additional Registrar in the above petitions in the following terms:

“Advocate to satisfy the Court as to how he has made Learned Registrar High Court of Sindh, Karachi as a respondent/Party.”

It appears that the onus of Additional Registrar appears to have been discharged once objection as to maintainability of the petition at Circuit Court Larkana was raised. It has been further observed that similar objections were also raised in C.P. No.D-570/2023. Learned Registrar submits that he has already filed reply/statement on behalf of Registrar, High Court of Sindh, wherein, policy relating to the appointment of sons of deceased, retired and serving employees of District and Sub-Ordinate Courts in Sindh has also been annexed alongwith decision of the Administration Committee of the High Court of Sindh to this effect, whereas, comments on behalf of the District and Sessions Judge, Larkana have also been filed, which are available on record.

In view of hereinabove facts and circumstances of the case, we are constrained to suspend the operation of the aforesaid observations made in Para 10 of the order passed by the Divisional Bench of this Court at Circuit Court Larkana in the above petitions. Since the learned AAG is already on Notice, whereas, representative of Judicial District Larkana present in Court have also filed their reply, therefore, by consent, these matters be fixed on **10.06.2024**, to be taken up **at 11:30 A.M.** In the meanwhile, intimation notice be issued to the petitioner and his counsel in C.P. No.D-2781/2024 for the next date of hearing, whereas, the attendance of the representative of District & Sessions Court, Larkana is dispensed with till further orders.

CHIEF JUSTICE

JUDGE

JUDGE