

IN THE HIGH COURT OF SINDH, AT KARACHI

C.P No. D-2117 of 1995

Present: Mr. Justice Irfan Saadat Khan
Mr. Justice Adnan-ul-Karim Memon

Ansar-ul-Haq & othersPetitioners

Versus

Pakistan Broadcasting Corporation & othersRespondents

Date of hearing: 18.05.2018

Mr. Sohail Hayat Khan Rana Advocate for the Petitioners.
Mr. Shaikh Liaquat Hussain, Assistant Attorney General.

For Direction
For hearing of CMA No. 2707 of 2001 (Contempt)

ORDER

CMA No.2707 of 2001:- The instant petition along with C.P. No. D-724 of 1995 and D-1863 of 1995 were disposed of by this Court vide common Judgment dated 18.11.1998 with the following observations:-

“ Our attention has also been drawn to a judgment given by the Hon’ble Chief Justice of the Hon’ble High court of Sindh and Mr. Justice Hamid Ali Mirza in Civil petition No. D-1819/1995 wherein they have allowed the benefit of the Secretariat allowance to the staff of Official Assignee’s department after observing that if the fasacality was already granted to the staff of the Advocate General Sindh office and the solicitor’s officer, therefore, Official Assignee’s department was entitled to the same. our attention has also been drawn to the reported case of Government of Punjab Vs. Mubarak Ali Khan and 8 others , Province of Balochistan Vs. Javed Iqbal Registrar and 17 others and Government of NWFP Vs. Bashir Muhammad and 10 others which has been reported in (PLD 1993 SC at page 375) which case has also been mentioned and relied upon by the

Hon'ble Chief Justice. In the reported case it seems that the employees belonging to departments of the Federal Government or Provincial Government who were not given the benefit of such allowance, filed writ Petitions in Peshawar, Quetta and Lahore. These petitions were disposed of by the respective high Court, who allowed the benefit to the employees and the Province being aggrieved went into the Supreme Court. The Supreme court up held the judgment of the High Courts and dismissed the appeals. In another recent case the Hon'ble Chief Justice of Pakistan in Civil Petition Nos. 44/98, 45/98, 20/98 394 to 417/1998 converted the petitions into appeals and granted the 20% secretariat allowance.

The learned counsel for the Petitioners further pointed out that after 31st may, 1994 the Secretariat allowance was merged with the salary and was abolished therefore he prayed that this Hon'ble Court may allow the benefit of the allowance from 1st. July 1988 to 31st May 1994.

The learned counsel appearing on behalf of the respondent conceded that by virtue of so many judgment already existing was not in a position to show any justifiable grounds whereby the petition should not be granted the same Secretariat allowance which was virtually granted to each and every Government Department. He also conceded that in case if the benefit was not given to the Petitioners then it would be a clear cut case of discrimination. In view of the above, the petition is allowed as prayed with no order as to costs."

2. On 04.06.2001, Petitioners filed listed application being CMA No. 2707 of 2001, for initiation of contempt proceedings against the alleged contemnors on account of their willful, and deliberate act of disobeying above mentioned Judgment passed by this Court.

3. Mr. Sohail H. K. Rana, learned counsel for the Petitioners has argued that this Court has passed a very clear order after hearing the parties at length. The notice was ordered to the Secretary, information and the Secretary Finance to respond the

CMA pending for disposal; that the order of this Court is violated which shows malafide conduct on the part of alleged contemnors; that the disobedience of the order dated 18.11.1998 was deliberate and intentional; that the act and conduct of the alleged contemnors fully indicate that the alleged contemnors are not ready to comply with the common order dated 18.11.1998 passed by this Court which is a consent order; that the alleged contemnors failed to satisfy this Court that why the Court order dated 18.11.1998 was not complied so far when the employees working in the Government affiliated department, who were beneficiary of getting 20% Secretariat/Personal allowance drew the same till 30.11.2001 despite the promulgation of Ordinance 2000 (Ordinance No. XII of 2000). He has further contended that the Petitioners who were in service on 01.12.2001 are getting the benefit of 20% Secretariat/Personal Allowance while adopting the new pay scales introduced by Government of Pakistan and subsequently adopted by Pakistan Broadcasting Corporation after merging the adhoc allowances along with Secretariat Allowance w.e.f. 01.12.2001; that after promulgation of the Presidential Ordinance, the PBC Management in compliance of the Judgment of the Apex Court paid Secretariat/Personal allowance to PBC employees of the Peshawar in C.P. No. D-1581 of 1998 and C.P. No. 1582/98 in the year 2001. He has further contended that this act of the alleged contemnors for non-compliance of the order dated 18.11.1998 constitute gross contempt and they are liable to be prosecuted; that in above circumstances neglecting the order, passed by this Court is clear violation/dis-obedience to the decision passed by this Court and the Respondents deliberately disobeyed the order passed by this Court. He lastly prayed for

directing the Respondents/alleged condemners to comply with the Judgment dated 18.11.1998 passed by this Court and strict action be taken against them in accordance with law.

4. This Court vide order dated 07.06.2001 issued notice to the Respondents as well as DAG.

5. Upon notice Respondent No.3 filed written statement on behalf of Finance Division with the assertion that the President of Pakistan promulgated the Ordinance in pursuance of proclamation of Emergency of the fourteenth day of October, 1999 and provisional Constitution order No.1 as amended as well as Order No. 9 of 1999. This ordinance states that the Federal Government's (orders, office Memorandums, instructions and other instruments, hereinafter referred to as the orders, converting the Secretariat Allowance into Personal Allowance are hereby rescinded and shall be deemed always to have been so rescinded on the 1st July, 1988, and no financial benefit whatsoever, save and except as provided in sub-section (2) shall accrue or deemed to have accrued to become payable thereunder, to the persons employed in the aforesaid Secretariat and other Organizations of the Federal Government notwithstanding any decision of any Court including a High Court and the Supreme Court; that the Honourable Supreme Court of Pakistan passed Judgment dated 23.01.2001 in Civil appeal No. 1575/98 to 1582/98, 1584, 1585, 1587, 1589/98 to 1595/98, 1598/98 and 1601/98 states as under:-

“After considering the facts and circumstances and the provisions of Secretariat Allowance (Rescission of orders, etc) Ordinance, 2000 (Ordinance XII of 2000) issued by the Federal Government and North West

Frontier Province Secretariat Allowance (Rescission of orders etc.) Ordinance, 2000 (Ordinance I of 2000), we are of the view that the ends of justice would be adequately met if the Secretariat Allowance paid to the private respondents under the impugned judgments is not recovered from the recipients thereof up to the period on expiring on 31.05.1994. In case the Secretariat Allowance payable under the impugned judgments has not been paid, the private respondents will not be entitled to receive the same in view of above Ordinance.”

It is further asserted in the written statement that the Law & Justice Division have offered their views/ advice after issuance of President’s Ordinance in case of 208 Secretariat/ Personal Allowance, which are reproduced below:-

“It is clear from the above provisions of Ordinance XII of 2000 that the order of the Supreme Court dated 27.07.1999 is also hit by the said provisions because payment of Secretariat Allowance was not made still promulgation of the said Ordinance. So it would not be possible for the referring Division to implement the order of the Supreme Court of Pakistan in the light of Section 2 of Ordinance XII of 2000. Only the orders already implemented before the commencement of the ordinance have been saved. ”

Respondent No.3 has further stated that in view of the above, if the President’s Ordinance takes away the right in relation to the Secretariat/Personal Allowance w.e.f. 1.7.1988, then it should not be counted for any purpose and no one is eligible for allowing 20% Secretariat Allowance after issuance of President’s Ordinance No. XII of 2000.

6. Mr. Shaikh Liaquat Hussain, learned Assistant Attorney General of Pakistan has invited our attention to the statement dated 22.04.2016 filed on behalf of Respondent No.1 and argued that the Finance Division fully complied with the orders of the Hon’ble High Court of Sindh, Karachi and sanctioned Rs. 2,476,000/- vide sanction letter 2(3)/1999 E.II-DFA (P) dated

06.01.2000 of Ministry of information and media Development, which was endorsed by Deputy Financial Advisor (DFA) (I&MD) vide endorsement No. 1060-DFA (I&MD)/99-2000 dated 06.01.2000 and Rs. 2,553,000/- vide sanction letter NO. 2(3)/1999 E-II DFA (P) dated 27.03.2000 of Ministry of information of Media Development, endorsed by DFA (I&MD) vide its endorsement No. 335-DFA (I&MD)/2000 dated 27.03.2000 for payment of Secretariat Allowance/Personal Allowance to the Petitioners in C.P. Nos. 1863 & 724/1995. Pakistan Broadcasting Corporation filed appeal against the judgment in C.P. No. 2117/1995 before the Supreme Court of Pakistan (SCP) which was dismissed on 31.01.2000. Thereafter CMA No. 302/2000 was filed in Supreme Court of Pakistan (SCP) which not allowed vide order dated 19.05.2000.

7. The employees of Pakistan Broadcasting Corporation of Baluchistan filed C.P. No. 359 & 360 of 1997 before the High Court Baluchistan, Quetta for grant of 20% Secretariat Allowance which was decided on 11.01.1997. Meanwhile, Pakistan Broadcasting Corporation preferred Civil appeals No. 1508 and 1509 of 1997 against the judgment dated 11.01.1997 passed by the High Court of Baluchistan, Quetta which was decided by the Hon'ble Supreme Court vide judgment dated 10.01.2005. The operative part of the judgment is as under:-

“Thus it is held that after promulgation of above O.M dated 15.06.1994 and Ordinance 2000, the respondents are not entitled to 20% Secretariat Allowance”

8. Owing to the aforementioned reasons, the judgment of this Court dated 18.11.1998 could not be implemented to the

extent of Petitioners in C.P. No. 2117/1995 being similarly and equally placed employees of PBC, whose matter was subjudice before the Hon'ble Supreme Court of Pakistan against the judgment dated 11.01.1997 of High Court of Baluchistan, Quetta.

9. The President of Pakistan promulgated the Ordinance called the Secretariat Allowance (Rescission of orders, Etc.) Ordinance No. XII of 2000 on 30.03.2000. This Ordinance states that:-

“The orders, office memorandums, instructions and other instruments amending the aforesaid orders, office memorandums, instructions and other instruments, hereinafter referred to as the orders, converting the Secretariat Allowance into Personal Allowance are hereby rescinded and shall be deemed always to have been so rescinded on the 1st July, 1988 and no financial benefit whatsoever, save and except as provided in sub-section (2) shall accrue or deemed to have accrued to become payable thereunder, to the persons employed in the aforesaid Secretariats and other Organizations of the Federal Government notwithstanding any decision of any court including a High Court and the Supreme Court.”

10. The President Islamic Republic of Pakistan's Ordinance is applicable to all the Petitioners and other employees as observed by the Honourable Supreme Court of Pakistan vide judgment dated 23.01.2001 in Civil Appeals Nos. 1575/1998 to 1582/1998, 1584/1998, 1585/1998, 1587/1998, 1589/1988 to 1595/1998 and 1601/1998, inter alia, it has been stated as under:-

In case the Secretariat Allowance payable under the impugned judgments has not been paid, the private respondents will not be entitled to receive the same in view of above ordinance”

He lastly prayed for passing appropriate orders keeping in the judgments of Hon'ble Supreme Court of Pakistan dated

23.01.2001, 10.01.2005 and Ordinance No. XII of 2000 promulgated by the Government of Pakistan.

11. We have heard the learned counsel for the respective parties and perused the material available on record.

12. A perusal of common Judgment dated 18.11.1998 reveals that the petitions No. D724/95, 1863/1995 and 277/1995 were allowed as prayed. The Petitioners prayed in the memo of petition that the impugned office order dated 12.09.1988 whereby Secretariat Allowance/Personal allowance @ 20% which was being given to the employees of Pakistan Broadcasting Corporation at its Headquarters office, Islamabad Centre while denying the same to the Petitioners is discriminatory with a further prayer for direction to the Respondents to pay 20% Secretariat Allowance to the Petitioners from the same rate and from the same date as is being paid to the their counter parts employed at its headquarters office Islamabad and National Broadcasting House at Islamabad.

13. The aforesaid judgment dated 18.11.1998 was impugned before the Hon'ble Supreme Court of Pakistan by the Respondents in Civil Petition No. 173 of 1999 which was dismissed for non-prosecution vide order dated 31.01.2000 and Misc. Application No. 302 of 2000 was dismissed vide order dated 19.05.2000 as under:-

“Heard.

No valid ground exists for restoration.

Dismissed”.

14. Perusal of record shows that the judgment dated 18.11.1998 passed by this Court has attained finality. However,

upon perusal of the judgment dated 10.01.2005 passed by the Hon'ble Supreme Court of Pakistan in Appeals No. 1508 and 1509 of 1997 which makes it clear that after promulgation of office memorandum dated 15.06.1994 and Ordinance XII of 2000, the Respondents in the aforesaid Appeals are not entitled to 20% of Secretariat Allowance.

15. The plea taken by the Respondents that in view of the Ordinance No. XII of 2000 the right of the Petitioners in relation to the Secretariat / Personal Allowance w.e.f. 01.07.1988 has been taken away as such no benefit could be given to the Petitioners. We confronted the learned DAG with the judgment dated 18.11.1998 passed by this Court which was allowed and attained finality; he reiterated his argument as discussed in the preceding paragraph. The important question of law is involved in the present proceeding is whether the Ordinance No. XII of 2000 has nullified the effect of the judgment of this Court?

16. We are of the view that in order to nullify the judgment of the Court, unless basis for judgment in favor of a party is not removed, it could not affect the rights of a party in whose favor the same was passed. The issue of effect of nullification of judgment has already been discussed in the case of Mobashir Hassan reported in (PLD 2010 SC 265), Para-76 discusses the effect of nullification of a judgment by means of a legislation. In the said case, the view formed is identical to the one in the case of *Indira Nehru Gandhi v. Raj Narain* (AIR 1975 Sc 2299) and *Fecto Belarus Tractor Ltd. v. Government of Pakistan through Finance Economic Affairs and others* (PLD 2005 SC 605) and it was observed that

legislature cannot nullify the effect of the judgment and there are certain limitations placed on its powers including the one i.e. by amending the law with retrospective effect on the basis of which the order or judgment has been passed hereby removing basis of the decision. In other words, the arguments of the learned DAG that the legislature has the power to nullify the effect of the judgment on the facts in the present case are without force. We are fortified by the judgment rendered by the Hon'ble Supreme court of Pakistan in the case of contempt proceeding against Chief Secretary Sindh & others (2013 SCMR 1752).

17. The Hon'ble Supreme court of Pakistan vide judgment dated 23.01.2001 in Civil Appeals No. 1575 of 1988, 1532 of 1998, 1584/1998, 1585 of 1998, 1587 of 1998, 1589 of 1998 to 1595/1998, 1598 of 1998 and 1601 of 1998 has held at paragraph No. 5 of the judgment as under:-

“ Be that as it may, by virtue of Secretariat Allowance (Rescission of Orders, etc) Ordinance, 2000 and North-West Frontiers Province Secretariat Allowance Rescission of Orders, etc) Ordinance, 2000 the Secretariat Allowance granted to certain Federal Government employees and employees of other organizations of the Federal Government through various orders, office memorandums, instructions and other instruments etc. have been rescinded with effect from 01.07.1988 and no financial benefits save those obtained pursuant to any order made, instruments issued, decision of any Court including a High Court or the Supreme Court implemented immediately before the commencement of the said ordinance are deemed to have been validly made but the Secretariat Allowance including Personal Allowance already paid Is not recoverable from the recipients of such allowances. It is not the case of the Government that they intend to recover any of the allowances paid to the private respondents. Needless to say that some of the learned counsel for the private respondents frankly and some hesitantly conceded that the private respondents were not entitled to the Secretariat Allowance beyond the

target date fixed in the case of Muhammad Shabbir Ahmed Nasir (supra) ie. 31.05.1994.

6. Before parting with the judgment, it may be observed that except Civil Appeal No. 1576 of 1998 the other appeals are barred by time. Ordinarily we would not have condoned the delay in that the Government is not entitled to any preferential treatment qua the ordinary citizens in the application of law of limitation. In the instant case, however we find that after the promulgation of Ordinance XII of 2000 by the Federal Government and Ordinance 1 of 2000 by the Government of NWFP, the validity whereof has not been challenged by the private respondents, the relief granted by the High Courts would not be operative if the appeals are dismissed on ground of limitation. In this backdrop it has become imperative to resolve the question of limitation I favour of the appellants.

7. After considering the facts and circumstances and the provisions of Secretariat Allowance (Rescission of Orders, etc.) Ordinance, 2000 (Ordinance XII of 2000) issued by the Federal Government and North-West Frontier Province Secretariat Allowance (Rescission of Orders etc.) Ordinance 2000 (Ordinance I of 2000), we are of the view that the ends of justice would be adequately met if the Secretariat Allowance paid to the private respondents under the impugned judgments is not recovered from the recipients thereof up to the period expiring on 31.05.1994. In case the Secretariat Allowance payable under the impugned judgments has not been paid, the private respondents will not be entitled to receive the same in view of above Ordinances. The above appeals, except Civil Appeals No. 1581 & 1582 of 1998, are disposed of accordingly in the above terms. No costs.

8. It appears that due to inadvertence Civil Appeals No. 1581 & 1582 have been filed and listed for hearing notwithstanding the fact that the writ petitions impugned in these appeals were earlier assailed and decided in Civil Appeals No. 205 and 206 of 1998, vide order dated 19.02.1999 as the following terms:

ORDER

“Though in some cases 20% Secretariat allowance has been granted for a period of several years but in view of economic situation the question has arisen as to whether the respondents who approached the Peshawar High Court first time in 1994 should be allowed Secretariat Allowance with effect from 1988.

We enquired form Mr. Kundi, the learned counsel for the respondents, as to whether his clients would be agree to receive the allowance for a period of three years prior to the date of institution of Writ Petition till 31.05.1994 to which he agreed.

The appeals are disposed of accordingly in the above terms.”

No further order is, therefore necessary in respect of the above appeals.”

18. We are of the view that the Hon’ble Supreme Court of Pakistan in the aforesaid judgments dated 23.01.2001 & 10.01.2005 has interpreted the Ordinance XII of 2000 and its applicability, which has essentially and materially modified the judgment dated 28.11.1998 passed by this Court.

19. We are of the view that the matter pertains to 20% Secretariat Allowance / Personal Allowance to the Petitioners, through judgment passed by this Court. As per averments of the parties the same has been disallowed in view of the Ordinance XII of 2000 and the judgment of this Court dated 28.11.1998 has been modified through the pronouncement of the judgment dated 23.01.2001 passed by the Hon’ble Supreme Court of Pakistan in the aforesaid appeals on the same issue involved in the present proceeding. Therefore, it cannot be said that any right of the Petitioners is infringed, which could be enforced through contempt proceedings. It is a well settled law that the Government is empowered to change the policy regarding award of 20% Secretariat Allowance/ Personal Allowance through promulgation of Ordinance and amendment in the relevant Rules. Secondly, the responsibility for deciding suitability of certain allowances fell

primarily on the Executive branch of the State which is a policy matter and no employee including the Petitioners can be prejudiced.

20. In view of the above facts and circumstances of the case, the explanation offered by the respondents vide statement dated 22.04.2016, prima facie, appears to be tenable under the law. At this juncture, we are satisfied with the explanation offered by the alleged contemnors that substantial compliance of the order dated 28.11.1998 passed by this Court has been made in its letter and spirit, therefore, no case for initiating contempt proceedings is made out against the alleged contemnors as it is a well settled principle of law that Contempt Proceedings is always between the Court and the alleged contemnor. Thus, we are not inclined to proceed with any further on the listed application bearing CMA No.2707/2001, having no merit, which is accordingly dismissed.

JUDGE

JUDGE

Karachi
Dated 18.05.2018

Shafi Muhammad/PA