

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-7368 of 2015

M/s Sind Club Petitioner
Versus
Asif Ali and others Respondents

Disposed of matter:

1. For hearing on Misc. No. 3639/2018.

Date of hearing: 29.05.2018

Mr. Muhammad Ali, Advocate for the Petitioner.

Mr. Muhammad Rafiullah, Advocate for the respondent No.1.

ORDER

The instant petition was disposed of vide order dated 26.1.2018 with the following observations:-

“We have heard both the learned counsel at considerable length and are of the view that core controversy in the instant petition is whether the respondent No.1 is entitled for back benefits during the period he remained out of the job. From the pleadings of the petitioner, it is evident that the issue of back benefits was very much agitated before the Sindh Labour Appellate Tribunal however somehow or the other the said issue skipped the attention of the learned Labour Tribunal and admittedly no order in respect of that issue whether the respondent is entitled for back benefits or not in respect of the period he has not served the petitioner club finds mention in the impugned order of 22.10.2015. We, therefore without indulging in other aspects of the matter remand this case to the learned Sindh Labour Tribunal for deciding the matter afresh so far as the issue of back benefits is concerned. It is expected that the Tribunal would decide the said issue preferably within a period of one month from the date of receipt of this order. So far as other aspects of the petition, i.e. conversion of dismissal from service to withholding of one year increment, is concerned we find no illegality in the order passed by the said Tribunal and uphold the same.

With these observations the instant petition is disposed of along with all the listed applications.”

On 31.1.2018 respondent No.1 has filed an application bearing CMA No.3639/2018 under section 151 CPC for release of his salaries deposited with the Nazir of this Court by the petitioner-club .

Counter affidavit on the aforesaid application has been filed by the petitioner with the assertion that this Court vide order dated 26.1.2018 without indulging in other aspects of the matter remanded the case to the learned Sindh Labour Appellate Tribunal (SLAT) for deciding the matter afresh so far as the issue of back benefits is concerned; that the salaries deposited by the petitioner's club with the Nazir of this Court, during pendency of this petition is part and parcel of back benefits, which matter has not been decided yet by the learned SLAT to whom directions were issued; that the respondent No.1 at this stage cannot claim release of salary without adjudication by the learned SLAT on the issue of back benefits; that the petitioner's club after disposing of the instant petition, respondent No.1 was reinstated in service and is already getting his monthly salary from the club on a regular basis, whereas the claim of back benefits is a separate issue, which has to be decided by the learned SLAT after examining the matter in detail.

Mr. Rafiullah, learned counsel for the respondent No.1 has argued that this Court vide order dated 26.1.2018 maintained the findings of learned SLAT i.e. conversion of dismissal from service to withholding of one year increment; that only the issue of back benefits has been remanded to the learned SLAT for decision; that since Sindh Labour Court has already reinstated the service of the respondent No.1 from the date of its order and the issue of back benefits can be considered w.e.f. the date when the petitioner filed the instant petition as such respondent No.1 is entitled for the salary from the date when the learned Labour

Court ordered for his reinstatement in service. Learned counsel further submitted that the Nazir of this Court may be directed to release the salaries of the respondent No.1 which has been deposited w.e.f. October, 2015.

Mr. Muhammad Ali Khan, learned counsel for the petitioner has argued that the respondent No.1 is not entitled for release of the salary deposited with the Nazir of this Court, which is in compliance of the order dated 30.11.2015 passed by this Court; that the matter has been remanded by this Court to the learned SLAT and the respondent No.1 has to wait for the decision of the matter on the issue of back benefits. Per learned counsel the salary is part and parcel of the back benefits. He lastly prayed for dismissal of the instant application.

We have considered the arguments of the learned counsel for the parties at length on the listed application.

Perusal of the order dated 26.1.2018 passed by this Court which is clear in its terms that without indulging in other aspects of the matter, the issue of back benefits was remanded to the learned SLAT for deciding the matter afresh within a period of one month. During the course of arguments, we have been informed that the learned SLAT has not yet taken the matter and decided on the premise that the record and proceedings of the case are still lying with the office of this Court as such the matter is still pending adjudication.

In view of the foregoing position of the case, we are of the considered view that let the matter be decided finally by the learned SLAT on the issue of back benefits preferably within a period of 15 days from the date of receipt of this order.

In the meanwhile, the listed application is deferred till the decision of the learned SLAT on the aforesaid issue. Office is directed to immediately return the R&Ps if not return so far. Let copy of this order be sent to the Chairman SLAT for information.

JUDGE

JUDGE

Nadir