

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No.D-527 of 2010

Present:

Mr. Justice Syed Hassan Azhar Rizvi

Mr. Justice Adnan-ul-Karim Memon

Syed Muhammad Ali Gohar Zaidi.....Petitioner

Versus

House Building Finance Corporation & others.....Respondents

Date of hearing: 21.12.2017

Petitioner present in person

Ms. Rukhsana Ahmed advocate for Respondents No.1 to 3

Mr. Shaikh Liaquat Hussain, Assistant Attorney General.

ORDER

ADNAN-UL-KARIM MEMON, J:- This Petition was disposed of by this Court vide order dated 26.8.2015 with the following observation(s):-

“The Petitioner was dismissed from service in 1989. While pursuing his case, the petitioner attained the age of superannuation and the only relief that was granted to the petitioner was back benefits from 1989 to 2003. The petitioner has discharged his burden by filing affidavit-in-evidence before the Federal Service Tribunal on which he was duly cross examined. In the affidavit-in-evidence filed by HBFC’s witness nowhere it is stated that the petitioner was employed with any entity or person. In the circumstances, no useful purpose would be served by sending this petition to the Federal Service Tribunal for recording further evidence when this case has taken several rounds of litigation since 1989. This Court is exercising powers, not under Article 199 but under Article 187 (2) of the Constitution for executing the decision of the Supreme Court. In the circumstances, the respondents are directed to pay all back benefits to the petitioner from date when the petitioner was dismissed from service till his attaining the age of superannuation within a period of 15 days, failing which the Managing Director, House Building Finance Corporation shall be present in Court to explain non-compliance. This petition is disposed of in the above terms.”

2. On 12.9.2015, Petitioner filed an application being CMA No. 23082/2015 under Section 151, CPC for taking cognizance of the matter on the ground that no payment has been made to the Petitioner within 15 days period as directed by this Court vide order dated 26.8.2015.

3. On 19.9.2015, Petitioner filed another application for contempt of Court (CMA No.30184/2015) against the Respondents for initiating contempt proceedings against them. Petitioner also sought directions to the alleged contemnors to issue pay order in the name of the Petitioner, in compliance with the order passed by this court.

4. On 16.4.2016, Petitioner filed another application for contempt of Court and due payment (CMA No.6740/2016) and demanded total amount of Rs.10 crore approximately as per judgment rendered by the Honourable Supreme Court.

5. On 23.4.2016, Petitioner filed another application for contempt of Court and due payments addendum to the statement dated 15.4.2016 (CMA No.10227/2016) on the ground that Petitioner has incurred amount of expenditure in 27 years in litigation valuing millions of rupees yet to be paid including all TA/Das, fees of Lawyers, pocket payment to Lawyers, stationary charges, paper books and other ancillary payments from the date of termination period.

6. M/s House Building Finance Corporation/Respondents impugned the judgment dated 26.8.2015 passed by this Court

before the Honourable Supreme Court in Civil Petition No.462-K of 2015 and by order dated 09.10.2015, the following observation was given by the Honorable Supreme Court: -

“5. In our opinion once the matter has been remanded back to the Learned High Court vide Order of this Court passed in Civil Appeal No.26 of 2012 then the issue of jurisdiction can hardly be raised by the Petitioner as admittedly no review was filed against the said Order. Similarly we are quite clear that once the Respondent No.1 had stated on oath that he was not gainfully employed during the relevant period, the onus to establish to the contrary fell on the Petitioners which they failed to discharge. In these circumstances we do not find any defect or material irregularity in the impugned Order of the Learned High Court so as to warrant interference. Hence this petition is dismissed and leave declined.

6. Before parting with the Order we see that the Learned High Court had on 26.08.2015 directed that arrears of the Respondent No.1 be paid to him within a period of fifteen days thereof but admittedly till to date same has not been done. So also it is an admitted position that after termination of the Respondent No.1 on 24.01.1989 he was reinstated on 27.03.2003 and was retired after attaining the age of superannuation on 01.02.2006. In these circumstances we are of the opinion that the Petitioner Corporation has unnecessarily delayed the payment of back benefits as directed by the Learned High Court to the Respondent. Consequently we adjourn this case for this purpose to 12.10.2015 when a cheque in the amount of back benefits shall be given to the Respondent No.1 by the Petitioner. The travelling and hotel expenses of the Respondent No.1 shall be borne by the Petitioner Corporation. If a cheque in the amount of arrears of the Respondent No.1 is not available on 12.10.2015 with this Court, the M.D. HBFC shall be present in person. We would also consider the question whether the Petitioner is entitled to pension and gratuity etc.”

7. On 12.10.2015, the Honourable Supreme Court took up the matter and observed as follows: -

“Today learned ASC for the petitioners has brought a cheque amounting to Rs.37, 32,651/- which has been given to respondent No.1 who has accepted the same under protest. According to the latter, the dues are much more than this amount and he accordingly handed over his calculations of the dues which are in the sum of Rs.10,03,15,550/-.

2. Learned ASC for the petitioners shall file a reply/objection, if necessary, by the next date of hearing.

So also learned counsel has handed over the pension papers to respondent No.1 which shall accordingly be filled and returned to the House Building Finance Corporation for further process.

3. To come up on 02.11.2015. The petitioners shall pay TA/DA to respondent No.1 before the next date of hearing.”

8. On 02.11.2015, the Honourable Supreme Court again started hearing the matter and observed as follows: -

“The petition in this case has been dismissed. If the judgment of the learned High Court, which has been upheld by this Court, is not complied with, the High Court can ensure its compliance in letter and spirit. No case for implementation of the judgment before this Court is made out. Disposed of accordingly.”

9. Petitioner present in person has referred to his synopsis as well as statement filed by him on 19.8.2015 and submitted that the Respondent-company owe an amount of Rs.10,021,5502/00 on account of following charges: -

Updated summary of account		
1	Salaries upto 2014	Rs.67114032/00
2	Pension commutation	Rs.3083267/00
3	Actual pension amount upto 2013	
Total amount		Rs.72808716/00
Amount paid by HBCS on Reinstatement		Rs.1672650/00
Net payable in 2014		Rs.71136066/00
For Due Promotions Civil Servant Rules CL=04HBFC rules		Rs.15618608/00
		Total Rs.86754674/00
Add for one more year delay		Rs.12145654/00
Add for due Pensions 2014 & 2015		994306/00
Add for Medical from 2010 to 2014		Rs.320868/00
Total		Rs.100215502/00

Suffering from myself and all family members are yet to be worked out.

NOTE: According to clause 4 of HBFC rules and regulations the restoration of seniority will be based on the Rules Applicable to CIVIL SERVANTS.”

10. Petitioner states that Respondent-company has given lame excuses after the delay of 28 years in releasing the dues of the Petitioner; however, he denied the contents of letter dated 30.10.2017 of the Respondents and stated that the same is based on false assertions. He further stated that the Inquiry Committee formed by the Respondent-Company is against the orders passed by the Honourable Supreme Court as referred hereinabove. He next added that the main grievance of the Petitioner is delay of pensionary benefits due to lethargic attitude of the Respondent company for that he has suffered more than 30 years in litigation, therefore, he is entitled for the increases on the payment as mentioned in the schedule of payment discussed supra. Petitioner gave various reasons to claim the interest on the delayed payments at paragraph 9 his statement dated 08.12.2017; however, he denied the contents of letter of Respondent Company dated 06.11.2017 and 15.11.2017. He lastly prayed for directions to the Respondent Company to clear the pensionary benefits of the Petitioner in accordance with the judgment passed by this court.

11. Ms. Rukhsana Ahmed, learned counsel for the Respondent company has submitted that the Petitioner had initially claimed Rs.7113,606.00 from the Respondent company and he has been paid to date Rs.90,46,796.00 by the Respondent company in excess of Rs.19,33,190/-, as such there is no present outstanding amount to be paid to the petitioner as claimed by him;

that the Respondent company vide Office Order No.532 dated 29.10.2015 had constituted an Inquiry Committee for determining quantum of back benefits to be calculated of the ex-employee, but despite notices to attend inquiry committee, the Petitioner did not appear before them but was given the back benefits by the committee as per rules; that the Petitioner has been withdrawing pension regularly since his retirement and the latest pensioners bank statement for the month of October 2017 is enclosed, wherein at Serial No.81 on typed page No.4 the name is showing against pension number 0168P4 held in HBFCL Account No.12160006579001. Lastly she prayed for disposal of the listed applications in view of the above submissions.

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

13. We are cognizant of the fact that this Court disposed of the instant Petition vide order dated 26.8.2015 by directing the Respondents to pay all back benefits to the Petitioner from the date when the petitioner was dismissed from service till his attaining the age of superannuation within a period of 15 days. The Honorable Supreme Court has maintained the order of this Court while disposing of the matter directed that if the order of this Court is not complied with the same shall be ensured to be complied with in letter and spirit by the Respondents.

14. Upon perusal of the pleadings of the parties and arguments extended by them on the listed Applications, we are not satisfied with the calculation made by the respective parties, even we do not

agree with the contentions of the learned counsel for the Respondent company that an Inquiry Committee was constituted to determine the quantum of back benefits of the Petitioner, for the simple reason that the Honourable Supreme Court vide order dated 09.10.2015 maintained the order of this Court, therefore, the Respondents cannot be allowed to sit in appeal against the judgment passed by this Court to order for holding an inquiry to determine the quantum of back benefits. Apparently the payment of the pensionary benefits to the Petitioner has been delayed for which the Petitioner cannot be held responsible.

15. In view of the facts and circumstances of the case and for the reasons alluded as above, we are not satisfied with the explanation offered by the alleged contemnors that compliance of the Order dated 26.8.2015 passed by this Court has been made in its letter and spirit, therefore, at this juncture, before taking cognizance of the matter for initiating contempt proceedings against the alleged contemnors, we in the above circumstances, at the first instance direct the Nazir of this Court to consult with the Accountant General Sindh, who is directed to depute an Official to assist the Official of this court to undertake the exercise of recalculation of the pensionary benefits of the Petitioner including Back-Benefits as directed by this Court vide judgment dated 26.8.2015 and delay in payment to the Petitioner if any accrued, in accordance with rules and regulations. The comprehensive report has to be submitted by the Nazir within a period of one month from the receipt of order of this Court. The parties to file their claim before the Nazir of this Court within one week, who thereafter will transmit the same to

the Accountant General Sindh for re-calculation of the same. Such report shall be submitted within the stipulated period after receipt of this order.

The matter is adjourned to be taken up after one month.

JUDGE

JUDGE

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