

IN THE HIGH COURT OF SINDH AT KARACHI
C.P No.D-417 of 2018

Present:
Mr. Justice Aziz-ur-Rehman
Mr. Justice Adnan-ul-Karim Memon

Mujtaba Hassan & others Petitioners

Versus

Federation of Pakistan and 02 others Respondents

For hearing of CMA No.35136/2018 (Contempt Appl.)

Date of hearing: 25.03.2019

Mr. Faizan H. Memon, Advocate for the Petitioners.
Mr. M. Nishat Warsi, DAG.
Mr. Sarmad Hani, Advocate for the Respondents No.2 & 3.

ORDER

ADNAN-UL-KARIM MEMON, J:- This Petition was disposed of by consent of the parties vide order dated 18.09.2018 with the following observation(s):-

“Since in the instant matter, admittedly the respondents / OGDCL have consented that the petitioners shall be accommodated in the regularization process as and when it is initiated. It is expected that as and when the said regularization process is being made by the respondents No.2 and 3, the cases of the petitioners with regard to their regularization may also be considered in view of the judgment of the Hon’ble Supreme Court of Pakistan as discussed supra strictly in accordance with law.

With these directions, the instant petition along with the listed applications is disposed of.”

2. On 05.10.2018, Petitioner filed an application being CMA No. 31290/2018 under sections 114 read with Order XLVII Rule 1 CPC, for review of the order dated 18.09.2018. The aforesaid review application was not considered and the request of the Petitioners

was declined vide order dated 11.10.2018 with the following observations:

“2] This application has been filed on the ground that while disposing of the petition no timeframe was given in the order dated 18.09.2018 for its compliance. We are of the view that since the Hon’ble Supreme court of Pakistan has already fixed the timeframe of six (06) weeks, therefore, it was not necessary upon us to fix the timeframe in addition to the timeframe already fixed by the Hon’ble Supreme Court of Pakistan, hence, the request of the learned counsel for the petitioners is not found to have any force. Counsel further states that in the order dated 18.09.2018, while reproducing the order of the Hon’ble Supreme Court of Pakistan in the 9th line of the first paragraph of the order of the Hon’ble Apex Court dated 21.11.2017, the period of “six months” has been mentioned due to typing error, which ought to have been “six weeks”. O perusal, the contention of the learned counsel for the petitioners is found to be correct. Office is directed to make correction in the order dated 18.09.2018 by mentioning the words “six weeks” instead of “six months” with black ink.

The application stands disposed of.”

3. On 12.11.2018, the petitioners filed another Application under Section 3 & 4 of Contempt of Court Ordinance, 2003 read with Article 204 of the Constitution of Islamic Republic of Pakistan 1973, for initiating contempt proceedings against the alleged contemnor for deliberately flouting orders dated 18.09.2018 & 11.10.2018 passed by this Court.

4. We queried from the learned counsel for the Petitioners as to how the Contempt Application is maintainable against the alleged Contemnor on the premise that the Respondents have not yet initiated the regularization process as per directions issued by this Court on 18.09.2018. In reply to the query, Mr. Faizan Memon, learned counsel for the Petitioners has contended that the order dated 18.9.2018 was corrected by this Court vide order dated 11.09.2018 in terms of order dated 21.11.2017 passed by the Hon’ble Supreme court in Civil Petition No.2781 to 2783 & 2980 of 2017. He next added that the Respondents/OGDCL has to

regularize the service of the petitioners within a period of 06 weeks from the date of aforesaid order passed by the Hon'ble Supreme Court; that the alleged contemnor has not yet initiated the process of regularization as committed by him, despite the lapse of considerable time; that aforesaid act of contemnor is contemptuous in its nature as he has deliberately and intentionally failed and neglected to implement the directions passed by the Hon'ble Supreme Court and orders passed by this court as discussed supra. He lastly prayed for drastic action against the alleged contemnor.

5. Mr. Sarmad Hani, learned counsel representing the Respondent/OGDCL has contended that this Court simply directed to accommodate the Petitioners in the regularization process as and when it is initiated by the Respondents in the light of order dated 21.11.2017 passed by the Hon'ble Supreme Court. He next added that the process for regular appointment of the Petitioners is subject to availability of vacancies and through competitive process which has not yet been initiated, however he asserts that after the issuance of Public Notice, all the Petitioners will be considered for regularization of their services in accordance with law. He next argued that the Respondents have not disobeyed any order of this Court and order passed by the Hon'ble Supreme Court of Pakistan. He lastly prayed for dismissal of the listed application.

6. We have heard the learned counsel for the parties on the listed application and perused the material available on record.

7. We are cognizant of the facts that this Court disposed of the instant Petition by consent of the parties vide Order dated 18.09.2018 with simple direction to the Respondents to accommodate them in the regularization process as and when it is initiated by them in view of the order of Hon'ble Supreme Court of Pakistan as discussed supra. Record does not reflect that the Respondents have initiated the regularization process, at this juncture the question of violation of the orders passed by this Court does not arise.

8. Much emphasis has been laid on the order dated 21.11.2017 passed by the Hon'ble Supreme Court of Pakistan in Civil Petition Nos.2781 to 2783 and 2980 of 2017, whereby the Petitions were disposed of as having become infructuous. The Hon'ble Supreme Court further observed that the contempt proceedings initiated before this Court shall remain suspended in C.Ps No.D-4442/2016, D-4465/2016, D-4649/2016 & D-75/2017. We have also gone through the order dated 07.3.2018 passed by the Hon'ble Supreme Court in Cr. Org. Petition No.11-14/2018 whereby the contempt applications filed by the petitioners namely *Dr. Ehsan Ali Palari & 03 others* were dismissed.

9. It is well settled proposition of law that the Respondents are entitled to make policy with regard to regularization of service of the Petitioners and it is essentially an administrative matter falling within the exclusive domain and policy decision making of the Respondents and interference with such matters by this Court is not warranted until unless it is shown that the Respondents have violated the orders passed by this Court.

10. The commitment made before this Court by the Respondent/OGDCL that after issuance of advertisements all the petitioners will be considered for the job. They have explained in the paragraph-6 of the reply to the Contempt Application that as far as six weeks' time is concerned that is with regard to and after issuance of advertisement as they are bound to follow the direction of the Hon'ble Supreme Court's order dated 21.11.2017. However, it is made clear that the Respondents are under obligation to initiate the regularization process of the Petitioners within a reasonable time as they are working on the posts on contractual basis since long time.

11. In view of the facts and circumstances of the case and for the reasons alluded as above, we are satisfied with the explanation offered by the alleged contemnor that the case of petitioners for regularization of their services will be initiated after Public Notice which is in line with the Order dated 18.09.2018 passed by this Court, therefore, at this juncture, no stage for initiating contempt proceedings is arrived yet against the alleged contemnor. Thus, we are not inclined to take cognizance of the matter at this stage on the listed application bearing CMA No. 35136/2018, which is premature and is accordingly dismissed.

JUDGE

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