

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Aziz-ur-Rehman

Mr. Justice Adnan-ul-Karim Memon

C.P No. D- 7088 of 2017

Wazir Gul son of Godho Khan
& 2 others

.....Petitioners

Versus

Province of Sindh & others

.....Respondents

For hearing of CMA No.33731/2018 (Contempt)

Date of hearing: 02.04.2019

Date of Order: 02.04.2019

Mr. Ahmed Ali Ghumro, Advocate for Petitioners/Applicants.

Mr. Abdul Jalil Zubedi, AAG.

ORDER

ADNAN-UL-KARIM MEMON, J:- This Petition was disposed of by this Court vide order dated 31.08.2018 by directing the Chief Secretary, Sindh that when the matter of the petitioners with regard to the payment of regular salary has been resolved, the matter with regard to the arrears of their salary from 1st January, 2016 to June, 2018 may also be resolved, if the petitioners are found to be eligible for the payment of the said amounts strictly in accordance with law, rules and regulations.

2. On 03.11.2018, Petitioners filed an application being [CMA No. 33731/2018] under sections 3 and 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 order dated 31.08.2018 passed by this Court.

3. Record reflects that compliance report has been filed by the Respondents with the assertion that the intervening period of the Petitioners has been decided on merit vide order dated 14.12.2018 and conveyed the status to the Petitioners.

4. Mr. Ahmed Ali Ghumro, learned counsel for the Petitioners has refuted the claim of the Respondents and argued that the purported compliance report dated 14.12.2018 is illegal, unlawful, unconstitutional and in violation of principles of natural justice; that the impugned office order issued in sheer violation of service rights of the Petitioner as envisaged under the Service Law as such is void ab-initio. Learned counsel has further contended that the Respondents are bound to act justly, fairly, while exercising powers conferred upon them, especially in the matter pertaining to the salary and ancillary issues of the civil servants. He lastly prayed for strict action against the alleged contemnor.

5. Conversely, Mr. Abdul Jalil Zubedi, learned AAG has contended that in compliance of the Order dated 31.08.2018 passed by this Court, Respondents have finalized /resolved the matter of the Petitioners with regard to the arrears of their salary from 1st January, 2016 to June, 2018 in accordance with law; that the Committee was constituted vide letter dated 10.12.2018 for examination/verification of eligibility for the payment of the referred amount of intervening period w.e.f. 01.01.2016 to 30.06.2017 which is treated as Extra Ordinary Leave without Pay and period from 01.01.2017 to 30.06.2018 is treated as duty with full pay. He prays for dismissal of the listed application being meritless.

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

7. We have noted that the aforesaid matter was simply disposed of with direction to the Respondents to resolve the issue of arrears of the salaries of the Petitioners for the period w.e.f. 1st January, 2016 to June, 2018 strictly in accordance with law. The Respondents have submitted compliance report which, prima-facie, suggest that the compliance of the order as discussed supra has been made. For convenience sake, an excerpt of the report is reproduced as under:-

“In pursuance of order of Honourable High Court of Sindh @ Karachi passed in C.P No.7088/2017 and by taking lenient view on humanitarian grounds keeping in view the observations and recommendations of the Committee, the intervening period of Petitioners Mr. Wazir Gul, HST (BS-16), Mr. Khamiso Khan, JST (BS-14) and Mr. Ali Gul, Assistant (BS-16), SE&RC, Kashmore from 01.01.2016 to 31.12.2016 is hereby treated as Extra Ordinary Leave without Pay and period from 01.01.2017 to 30.06.2018 is hereby treated as duty with full pay.”

8. At this juncture, in our view, the case of Petitioners cannot be re-opened and discussed and at the most factum that there is any violation of the order passed by this Court can be looked into. The stance of the Petitioners is not supported / warranted by law because the Respondent-Department has taken the decision on merit as discussed supra and submitted the compliance report which is in line with the order passed by this Court. Therefore, the listed application of the Petitioners cannot be considered for initiating Contempt proceedings against the alleged contemnor / Respondents.

9. In the light of above facts and circumstances of the case, we are satisfied with the explanation offered by the alleged contemnor that substantial compliance of the Order dated 31.08.2018 passed by this Court has been made in its letter and spirit. In our view, no case for initiating contempt proceedings is made out against the alleged Contemnor. Thus, we are not inclined to proceed with any

further on the listed Application [*CMA No. 33731/2018*], having no merits, is accordingly dismissed. However, if the Petitioner is `aggrieved` by and `dis-satisfied` with the decision dated 14.12.2018 passed by the Respondent-Department, they may avail the appropriate remedy as provided under the law.

JUDGE

JUDGE

Nadir/-