

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Aziz-ur-Rehman

Mr. Justice Adnan-ul-Karim Memon

C.P No. D- 4000 of 2014

Professor Dr. Parveen MunshiPetitioner

Versus

Chancellor, Governor
University of Sindh & othersRespondents

For hearing of CMA No.13006/2018 (Contempt)

Date of hearing: 03.04.2019

Date of Order: 03.04.2019

Mr. Zahoor Ahmed Baloch, Advocate for Petitioner/Applicant.

Mr. Kamaluddin, Advocate for Respondents No.1 to 3.

Mr. Abdul Jalil Zubedi, AAG.

ORDER

ADNAN-UL-KARIM MEMON, J:- This Petition was disposed of by this Court vide order dated 14.11.2017, with consent of the parties with direction to the Special Selection Board of the Respondent-University to decide the case of the Petitioner and then to submit report to the Syndicate Members of Respondent-University, strictly in the light of order dated 05.10.2017 passed by this Court in C.P. No.D-2320 of 2013, within a period of four months.

2. On 11.04.2018, Petitioner filed an application being [CMA No. 13006/2018] 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 contemnors for deliberately flouting order dated 14.11.2017 passed by this Court on the premise that in

compliance of the order dated 14.11.2017, the meeting of the Special Selection Board was convened on 26.02.2018, whereby in paragraph No.3 of the minutes, Selection Board of Respondent-University opined that under the Head of ACRs Petitioner was awarded only two marks out of maximum 10 marks against her meritorious services as Professor since 01.12.2007. The aforesaid opinion, prima-facie, suggest that the Petitioner was not dealt with in accordance with law, though there was no adverse remarks against her during tenure of her service; that this Court vide order dated 05.10.2017 in C.P No.D-2320/2013 observed that “no doubt, the Scrutiny Committee consisting of three (3) members having Secretary have awarded and assigned the numbers on the basis of their performance this Bench cannot further scrutinize the mode and conduct of assigning the marks to these individuals. “However without disturbing award of marks we deem it appropriate to refer the case of Dr. Imdad Ali Ismaili and the case of two candidates standing at S.No:9 & 10 of the merit list to the Special Selection Board, Syndicate Members/Chancellor to re-apply their mind to the case of Dr. Imdad Ali Ismaili, as to whether he being a black listed Faculty Member could have been entitled for award of Meritorious Professor”.

3. Mr. Zahoor Ahmed Baloch, learned counsel for the Petitioner argued that the order dated 14.11.2017 passed by this Court has not been complied with in its letter and spirit within stipulated time and in the meanwhile Petitioner stood retired from service of Respondent-University on 06.05.2018; that there is conflicting decision as such the Respondent-University ought to have referred the matter to the Chancellor for his final decision which has not been done as provided under Section 7 of the Sindh University Code. He lastly prayed for drastic action the alleged Contemnors.

4. Conversely, Mr. Kamaluddin, learned counsel for Respondents No.2&3 has refuted the claim of the Petitioner and argued that the requisite procedure was completed much before the date of retirement of the Petitioner and it resolved as per Minutes of the Meeting and the recommendations of the Special Selection Board were placed before the Syndicate in its meeting held on 26.03.2018 and it was unanimously resolved vide its Resolution No.2.3 that since marks awarded to the Petitioner on ACRs cannot be altered/ changed and expunged at the belated stage; that the Alleged Contemnor No.2 has no role/voice in the decision taken by the Special Selection Board and/or the Syndicate, except he was acting as Secretary in the meeting; that the decisions in question of the Selection Board and Syndicate are not the individual acts of the alleged Contemnor No.1 but the same are unanimous decisions of the Statutory Bodies consisting of its members. He lastly prays for dismissal of the listed application being meritless.

5. Mr. Abdul Jalil Zubedi, learned AAG has supported the stance taken by Mr. Kamaluddin, learned counsel representing the Respondent-University.

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 disposed of by consent on the terms that the case of the present Petitioner should be decided by the Special Selection Board and to submit report to the Syndicate Members, in the light of the order dated 05.10.2017 passed by this Court in C.P. No.D-2320 of 2013. It appears that the Selection Board of Respondent-University finally concluded the matter with the following findings:-

“In above circumstances the marks awarding cannot be altered by the Selection Board, but since the Selection Board is of the opinion that since she was denied to her entitlements to the ACR marks for her services as Professor which the Vice-Chancellor is authorized to consider this situations and award the missing marks and to place it such action before the Syndicate alongwith recommendations and decision of this Selection Board for its approval and considering her for grant of promotion to Meritorious professor.

In order to avoid any future litigation, the Selection Board having learnt that 2 (two) seats occupied by late Prof. Dr. Abida Tahirani and late Prof. Dr. Pervaiz Ahmed Pathan have fallen vacant on their demises it is recommended that the Syndicate considering decisions of the Vice -Chancellor on the missing marks of her ACR may award one vacant seat out of two to Prof. Dr. Parveen Munshi, to redress her genuine grievance.”

8. The aforesaid Minutes of the Special Meeting were forwarded to the Syndicate who considered the recommendations of 168th meeting of the Selection Board and decided the issue of the Petitioner. 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 Minutes of Selection Board held on 15.03.2018 is reproduced as under:-

“Item No.2.3. To consider and approve the minutes of (168th) Special meeting of the Selection Board held on 26.02.2018.

Resolution No.2.3 After detailed discussions and deliberations, it was resolved that as per recommendations of (168th) Special Selection Board meeting held on 26.02.2018 (Page No.42-44) since as per orders of Honorable court the marks awarded cannot be altered, therefore her marks awarded on ACRs cannot be changed/expunged at this stage. Prof. Dr. Parveen Munshi may be advised to re-apply a fresh for the post of Meritorious Professor BPS-22 whenever University announces the post of Meritorious Professor BPS-22 and she may be considered according to her merit for the appointment of Meritorious Professor BPS-22 as per rules.”

9. 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 Petitioner is not supported / warranted by law because the Respondent-University has taken the decision on merit as discussed supra and submitted the compliance report which is in line with the orders dated 15.10.2017 in C.P No.D-2320 of 2013 & order dated 14.11.2017 passed by this Court in the aforesaid Petition. Therefore, the listed application of the Petitioner cannot be considered for initiating Contempt proceedings against the alleged contemnors / Respondents for the simple reason that substantial compliance of the orders passed by this Court has been made in its letter and spirit

10. In the light of above facts and circumstances of the case, we are satisfied with the explanation offered by the alleged contemnors, which is justified. In our view, no case for initiating contempt proceedings is made out against the alleged Contemnors. Thus, we are not inclined to proceed with any further on the listed Application [CMA No. 13006/2018], having no merits, is accordingly dismissed. However, if the Petitioner is aggrieved by and dis-satisfied with the decision dated 15.03.2018 passed by the Respondent-Department, she may avail the appropriate remedy as provided under the law.

JUDGE

JUDGE

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