

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Adnan Iqbal Chaudhary

C.P No. D-688 of 2010

Rehmatullah & othersPetitioners

Versus

Province of Sindh and othersRespondents

Direction:-

1. for order on CMA No. 19989 of 2018. (Contempt)

Date of hearing: 07.11.2018

Syed Shoa-un-Nabi Advocate for the Applicant

Mr. Abdul Jalil Zubedi Assistant Advocate General

Mr. Waqarullah Korejo, law officer of Education department

ORDER

The captioned Petition was disposed of along with the bunch of petitions vide common order dated 04.05.2011 with the following observations:-

“Pursuant to the advertisement dated 30.01.2004 published in daily Kawish Hyderabad the Petitioners had applied for the post of Junior School Teacher, Primary School Teacher and High School Teacher. After taking test, interview physical test and medical examination, the name of the successful candidates were published in daily Kawish Hyderabad dated 11.07.2006. Office letters were issued to the petitioners for the appointment as Junior School Teacher, Primary School Teacher and High School Teacher on contract basis for three years. Subsequently, through summary dated 18.10.2006 moved before the worthy Chief Minister, it was found that offer letter have been given to the eligible candidates specially JSTs, and HSTs and orders were sought to be issued to the EDOs to scrutinize educational qualifications and not to issue appointment letters unless educational qualifications are verified, it appears that without undertaking such an exercise stereotype letters dated 18.06.2007 were issued to the petitioners of cancellation of offer letters and that too

without assigning any reason. The petitioners have challenged such action of respondents and have sought implementation of the offer letter issued to them and directing their posting and payment of their salaries. After hearing the learned counsel for the parties at considerable length, parties and their counsel agree for passing of the following consent order:-

i) that the letter dated 18.06.2007 issued to the petitioners cancelling their offer letters are set aside.

ii) That in terms of summary to the Worthy Chief Minister dated 18.10.2006, the Secretary Education will issue show cause notice within one months from today to such of the petitioners who are ineligible for appointment as JST, PST and HST's for not possessing prescribed educational qualifications.

iii) The proceedings of the said show cause notice will be concluded within further one month time and appropriate order will be passed regarding eligibility on the basis of educational qualifications of the petitioners and communicate the same to the petitioners through registered post acknowledgement due record of which will be maintained.

iv) In case within two months the process of issuing of show cause notice, enquiry and passing of the order and its communication to the petitioners regarding their eligibility on educational qualifications is not completed, all the petitioners will stand entitled to be posted to their respective posts and respondent will take them on job and start paying their salaries from 5th July 2011.

v) Those petitioners in respect of whom there is no dispute regarding their eligibility of educational qualifications, they will immediately be issued posing orders and their salary will commence from the month of May, 2011.

All the petitions in the above terms with listed applications stand disposed of.

As a result of above discussion, this petition is disposed of with the directions to the respondent NO.2 to forward the names of petitioners to the Chief Secretary, Government of Sindh, so that their cases may be sent for consideration to the Scrutiny Committee constituted to deal with the cases of regularization under the Act, 2013. This exercise shall be completed within sixty days. At this juncture the learned AAG argued that sixty days' time will be reckoned from the date of sending names by the Respondent NO.2, which argument seems to be logical and approved. The Chief Secretary, Government of Sindh shall ensure that as soon as the names are received from Respondent NO.2, he will pass on the same to the Scrutiny Committee constituted to deal with the cases of regularization for their consideration and the petitioners be intimated accordingly.

2. The aforesaid order was assailed before the Hon'ble Supreme Court of Pakistan in Civil Petition No. 594-K to 611-K of 2011 and the same was disposed of vide order dated 11.08.2011 with the following observations:-

“Mr. Abdul Fateh Malik, learned Advocate General Sindh, submits that though the terms of impugned judgment are in direct conflict with the earlier judgment of the High Court of Sindh dated 24.11.2008 in C.P.s No. D-670/2008 and D-1090/2008, still the...

Looking to the peculiar facts and circumstances of the case, request made by the learned Advocate General Sindh being reasonable, is acceded to.

We accordingly dismiss all these petitions and refuse leave to appeal however with the observation that time from given in the impugned order of the High Court dated 04.05.2011 is extended for a period of two months from today, which shall be treated as final. “

3. On 05.06.2018 Petitioner No.15 filed an application under Section 3 & 4 of the Contempt of Court Ordinance 2003 (CMA No. 19989/2018) for initiation of contempt proceedings against the alleged contemnor on account of his willful, intentional and deliberate act of disobeying the above mentioned order passed by this Court.

4. Syed Shoa-un-Nabi, learned counsel for the Applicant has argued that despite clear directions in the above said Order, the contemnor has not complied with the same. He next contended that this petition was disposed of by consent vide order dated 04.05.2011, which was challenged by the Respondent No.1 before the Hon’ble Supreme Court of Pakistan by filing Civil Petitions No. 594-K to 611-K of 2011 and the Hon’ble Supreme Court maintained the order of this Court, however, time frame was given in the order of this Court, was extended for further two months’ time. Subsequently thereof by a letter dated 30.04.2013 issued by Section Officer (Judicial) to the District Education Officer, Naushero Feroz, copy of which enclosed with the earlier contempt application being CMA No. 2893 of 2016, directed for issuance of posting orders as per aforesaid order passed by this Court and the

name of the Petitioner namely Dildar Hussain was mentioned at Serial No.37 of the letter. Learned counsel for the Petitioner has further contended that till date no posting order has been given by the alleged contemnor to the Petitioner No.15, though concise statement has been filed by the Additional Secretary law Education & Literacy department on 06.04.2016, but nothing has been mentioned with regard to the compliance of the order as referred above. Learned counsel next contended that this Court vide order dated 12.09.2017 directed the learned AAG to seek instruction from the Education department and several other chances were given to the Respondent-education department to do the needful and till date, compliance has not been made for one or the other reason. Learned counsel added that this Court vide order dated 31.10.2017 disposed of earlier contempt application filed by the Petitioner, with direction to the Respondents to comply with the final disposal order dated 04.05.2011 within a period of 30 days and submit compliance report to this Court through MIT-II. Learned counsel states that all the Petitioners, except Petitioner No.15 have been accommodated, whereas the Applicant, who qualified and recommended by the department for the aforesaid post, the Respondents have adopted discriminatory attitude by single out the Applicant without any rhyme any reason. He lastly prays for direction to the alleged contemnor to issue posting order to the Applicant, in compliance of the orders passed by this Court in the present matter.

5. Mr. Abdul Jalil Zubedi, learned Assistant Advocate General has refuted the claim of the Applicant/ Petitioner No.15 and referred to the concise statement dated 06.04.2016 filed by the

alleged contemnor and argued that on 30.01.2004 Education & Literacy Department invited applications for the appointment to the post of PST, JST, HST. OT, DT etc. through daily newspaper. The offer letters for these appointments were issued on 10.07.2006; that the offer letters were cancelled later on. The reasons for cancellation of the offer of appointments were that the Education & Literacy Department was in contact with the World Bank for financial assistance for the betterment of education in Sindh. The World Bank agreed to provide assistance for the appointment of teachers under Sindh Education Reform Program as per the guidelines, provided by the World Bank. It was decided to formulate Teachers Recruitment Policy for recruitment of teachers purely on merit, assessed/evaluated by the third party. Accordingly Teacher's Recruitment Policy under World Bank policy, under World Bank's guidelines was issued on 10.07.2008 and it was decided to cancel all the offer letters and recruit the teachers on the new policy, purely on merit basis; that in consequence of the cancellation of such offer of appointment letters, many candidates filed petitions before this Court, in C.P. No. D-850 of 2010 along with 272 other CPs this court decided the matter on 08.07.2011, in which recruitment policy of 2008 was appreciated and it was declared that any selection or appointment made in violation of criteria laid down in the said policy to be unlawful and or no legal effect. He further contended that in C.P. No.D-670 and C.P. No. D-1090/2007, this Court supported the stance of Education & Literacy Department, who issued offer letters but cancelled afterwards in view of the recruitment policy 2008; that this Court declared that since their offer letters have not been

acted upon therefore the Petitioners cannot seek direction for issuance of posting orders. Learned AAG in support of his contention relied upon the decision dated 15.2.2012 rendered by this Court in C.P. No.D-749 of 2009, which reads as under:-

“Case of the petitioner is that the offer letter for appointment as School Teachers were issued to them in 2006 but they were not allowed to join the service and for three years they kept on approaching authorities and finally filed this petition. The matter with regard to the recruitment procedure for appointment of teachers has already been discussed by the Hon’ble High Court of Sindh in the case of Shabbir Vs. EDO (Education) Larkana & 5 others reported in 2012 CLC 16, in which education policy was devised and criterion for the appointment has been laid down. Admittedly, the petitioners were only issued offer letters on contract basis. In view of the above decision reported in 2012 CLC 16, this petition is dismissed.”

It is further submitted that the Petitioners in the above referred matter were issued only offer letters on contract basis. This Court dismissed C.P. No. D-749/2009 on the ground that the Petitioners were only issued offer letters on contract basis, which were cancelled later on and they were not appointed. All appointments for the posts of PST, JST and HST advertised in 2007 onwards are made in accordance with the Recruitment Policy of 2008 and 2012 and with the assistance of the World Bank i.e. IBA and Sindh University in 2008. All remaining candidates, who could not be appointed in 2007-08 thorough selection by the NTS i.e. third party but the Petitioner No. 15 did not avail the same. He lastly prays for dismissal of the listed contempt application.

6. Mr. Waqarullah Korejo, Law officer of the Education department has adopted the argument of the learned AAG and submitted that the listed application is not maintainable under the law and is liable to be dismissed. He relied upon the Teachers Recruitment Policy-2012 and argued that the Petitioner No. 15 is not entitled to be accommodated under the aforesaid policy.

7. We have heard the learned counsel for the parties on the listed application and perused the material available on the record and the decision relied upon by the learned AAG.

8. This is a simple case of enforcement of the order dated 11.08.2011 passed by the Hon'ble Supreme Court of Pakistan in Civil Petition No. 594-K to 611-K of 2011 as discussed supra.

9. Record reflects that this Court vide order dated 04.05.2011 disposed of the C.P. No.D-688 of 2010, in which Petitioner had been shown at serial No.15 and the same was maintained by the Hon'ble Supreme Court. Record further reflects that Respondent recommended the case of all the Petitioners including Petitioner No.15 for appointment vide letter dated 30.04.2013 in compliance of the order dated 03.05.2012 passed by the Hon'ble Supreme Court in Cr. Original Petition No. 10-K to 16-K of 2011 and 6, 7-K of 2012.

10. We have noticed that the Respondents impugned the order dated 04.05.2011 passed in all connected petitions including C.P. No. D-6988 of 2010 before the Hon'ble Supreme Court and the Hon'ble Supreme Court vide order dated 05.06.2012 passed in Cr. Org. Petition No. 14-K of 2011 in Cr. Petition No. 611-K of 2011 and held as under:-

“As per compliance report submitted in Court by the Acting Secretary Education, Government of Sindh, all the six applicants in this Criminal Original Petition have been issued appointment and posting orders. Disposed of accordingly.”

11. Record does not reflect that Petitioner was declared ineligible for the post applied for, therefore, we have no hesitation to hold that the Petitioner was/is entitled to the benefit of the

aforesaid orders passed by this Court and the Hon'ble Supreme Court of Pakistan, therefore, prima-facie the Respondents are under obligation to issue appointment order to the Petitioner No.15 against the post he applied for.

12. We have also scrutinized the compliance report submitted on behalf of the alleged contemnor; prima-facie the explanation offered by the Respondents vide concise statement dated 06.04.2016 is not tenable under the law. The Petitioner has pointed out malice on the part of alleged contemnor warranting interference of this Court to take action against the alleged contemnor under Article 204 of the Constitution, who failed and neglected to issue appointment order to the Petitioner.

13. In view of the facts and circumstances of the case and for the reasons alluded above, we are not satisfied with the explanation offered by the alleged contemnor that substantial compliance of the order dated 04.05.2011 passed by this Court in all connected petitions including C.P. No. D-6988 of 2010 and order dated 11.08.2011 passed by the Hon'ble Supreme Court of Pakistan in Civil Petition No. 594-K to 611-K of 2011 has been made in its letter and spirit. Therefore, at this juncture, prima facie, Petitioner No.15 has made out a case for initiating contempt proceedings against the alleged contemnor. Therefore, the office is directed to issue show cause notice under section 17 (1) of the Contempt of Court Ordinance 2003 read with Article 204 of the Constitution, as to why contempt proceedings should not be initiated against him for willful defiance of the order dated order dated 04.05.2011 passed by this Court and order dated

11.08.2011 passed by the Hon'ble Supreme Court of Pakistan. Office shall make a separate file of the proposed contempt proceedings by assigning it a separate number. The listed application bearing (CMA No. 19989 of 2018), is adjourned to be taken up after two weeks.

JUDGE

Karachi
Dated:-07.11.2018.

JUDGE

Shafi Muhammad P.A