

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D – 139 of 2017

Date	Order with signature of Judge
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Before :

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

For hearing of CMA No.15621/2020 (U/S 151 CPC) :

14.10.2020 : Mr. Muhammad Ali Lakhani, advocate for the petitioner.
Mr. Khalid Mahmood Siddiqui, advocate for the respondent.

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NADEEM AKHTAR, J. – Through this application, the petitioner has prayed for setting aside / recalling the order passed on 10.04.2019 whereby his application seeking unconditional withdrawal of the present petition was allowed. It is the case of the petitioner that it was specifically stated by him in his above application for withdrawal of the petition that the same was being filed by him as the respondent had assured him that his post-retirement benefits will be disbursed in his favour immediately upon withdrawal of the petition. According to him as the respondent had failed to fulfill its promise, he was constrained to file the listed application under Section 12(2) CPC. Vide order dated 20.08.2020, while observing that the application does not fall within the limited scope of Section 12(2) CPC, notice was ordered to be issued to the respondents by treating the application as an application under Section 151 CPC for recalling the order passed on 10.04.2019.

2. Counter affidavit has been filed on behalf of the respondent wherein the settlement alleged by the petitioner has been denied. Other objections have also been raised in the counter affidavit which, in our opinion, are not relevant for deciding the instant application.

3. Learned counsel for the respondent submits that the petitioner had submitted fake and forged documents at the time of his appointment, and due to this reason disciplinary proceedings were initiated against him by the respondent. He concedes that the said proceedings could not be concluded in view of the litigation initiated by the petitioner against the respondent, and in the meantime the petitioner retired from service upon superannuation. In view of the above admitted position, we are of the view that the disciplinary proceedings initiated against the petitioner stood abated, and resultantly his status, for the time being, is that of a retired employee of the respondent for all legal intent and purposes.

4. Perusal of the petition shows that in addition to other prayers, the petitioner had also prayed that the respondent be directed to calculate his retirement benefits and disburse the same to him. In his application (CMA No.10620/2019) for withdrawal of the petition, the petitioner had categorically stated that “*The prayer is premised on the fact that the respondent has assured that all retirement benefits presently outstanding in his favour shall be disbursed immediately upon withdrawal of the present proceedings*”. His said application was supported by his personal affidavit duly sworn on oath. It is important to note that the respondent did not file any counter affidavit or objections to the said application. On the contrary, when the said application was taken up for orders on 10.04.2019, a statement was made on behalf of the respondent that the respondent had no objection to the grant of the said application. Thus, the reason stated by the petitioner in his said application for withdrawing the petition remained un-rebutted. Even otherwise, the stance taken by the petitioner in his said application appears to be correct as no prudent person, at the end of his professional career, would think of withdrawing a case or abandoning the claim vigorously pursued by him for his post-retirement benefits.

5. Learned counsel for the respondent has opposed the instant application. However, we are of the view that if the petition is not restored, the petitioner will not be able to initiate fresh proceedings for recovery of his pension, and thus he will be left without any remedy in spite of the admitted position that the disciplinary proceedings initiated against him stood abated and now his status is that of a retired employee of the respondent. Such an absurd situation cannot be allowed to happen as ; firstly, it is a well-settled and consistent view of the Superior Courts that matters should be decided on merits rather than depriving a party on technical grounds ; secondly, it is the duty of the Court to ensure dispensation of justice by setting the controversy before it at rest ; and lastly, this Court, under its inherent powers, can allow restoration of the petition so that the petitioner may get a fair opportunity of decision of his case on merits. It may be observed that the question of restoration of a case or application, as the case may be, would depend upon the facts and circumstances of each case.

6. Our above view is fortified by the following cases. In *H. M. Saya & Co. Karachi V/S Wazir Ali Industries Ltd., Karachi and another, PLD 1969 SC 65*, it was held, *inter alia*, by the Hon’ble Supreme Court that the Court ought not to act on the principle that every procedure is to be taken as prohibited unless it is expressly provided for ; to give such a meaning to the omission would result in grave injustice ; and, the Court should proceed on the principle that every procedure which furthers administration of justice is permissible even if there is

no express provision permitting the same. In *Imtiaz Ahmed V/S Ghulam Ali & others*, **PLD 1963 SC 382**, the Hon'ble Supreme Court was pleased to hold, *inter alia*, that the proper place of procedure in any system of administration of justice is to help and not to thwart the grant to the people of their rights ; all technicalities have to be avoided unless it be essential to comply with them on grounds of public policy ; any system which by giving effect to the form and not to the substance defeats substantive rights and is thus defective to that extent ; and, the ideal must always be a system that gives to every person what is theirs. In *Cotton Export Corporation of Pakistan (Pvt.) Ltd., Karachi V/S Messrs Awami Cotton Ginners and 7 others*, **PLD 1995 Karachi 282**, it was held by Kamal Mansur Alam, J., as his lordship then was, that the inherent powers of the Courts as affirmed by Section 151 CPC are undoubtedly wide and varied and are meant to advance the cause of justice and to redress a wrong ; to secure the ends of justice and to prevent abuse of the process of the Court these ought to be exercised unhesitatingly so long as this does not conflict with or is contrary to any provision of law ; and, the circumstances of the case were fit for invoking inherent powers of the Court to recall its order for dismissal of the Suit.

7. In view of the above discussion, the listed application is allowed with no order as to costs, and resultantly the petition is restored to its original position. Needless to say the observations made herein shall not affect the merits or demerits of the case of either of the parties to the petition, which shall be decided on merits in accordance with law.

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