

## IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

C.P No. D-308 of 2012

**Rizwan Akbar Arain versus The Chairman National Highways Authority  
& others.**

For Direction:-

1. for order on CMA No. 16590 of 2019. (Contempt)

Date of hearing: 17.09.2019

Date of order: 17.09.2019

Mr. Ali Asadullah Bullo, Advocate for the Applicant

Mr. Zubair Ahmed Rajput, advocate respondents.

Mr. Muhammad Nishat Warsi, Deputy Attorney General.

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**ORDER**

The captioned Petition was disposed of vide order dated 28.11.2012 with the following observations:-

*“3. In the parawise comments it is stated that working paper of 69 contract and 18 daily wages employees fulfilling the criteria of regularization has already been sent to Cabinet Sub Committee but the name of petitioner was inadvertently missed out from the list of eligible employees. Learned Standing Counsel submits that the name of the petitioner has now been included in the list for regularization of service and his case shall be processed in the same manner as was done for the other eligible daily wages employees under the policy.*

*3. In the circumstances, we direct the respondents to process the case of petitioner within a period of 30 days, if his case falls within the ambit of the above mentioned policy. With these directions the petition is disposed off.”*

2. On 28.05.2019 Petitioner filed an application under Section 3 & 4 of the Contempt of Court Ordinance 2003 (CMA No.16590/2019) for initiation of contempt proceedings against the alleged contemnors on account of their willful, intentional and deliberate act of disobeying the above mentioned order passed by this Court.

3. Mr. Ali Asadullah Bullo, learned counsel for the Applicant has argued that despite clear directions in the above said order and subsequent orders dated 2.9.2013 and 25.8.2013, the contemnors have not complied with the

same. He next contended that more than 05 years have been elapsed but the contemnors are not following the dicta laid down by this Court, no development has occurred yet. He lastly prayed for direction to the alleged contemnors to regularize the Applicant if his case falls within the ambit of policy. However, he conceded that service of the petitioner/ applicant has been regularized with effect from 2013, which is not the spirit of the main order dated 28.11.2012.

4. Conversely, Mr. Zubair Ahmed Rajput, learned Counsel for the alleged Contemnors has submitted a statement dated 17<sup>th</sup> September, 2019 alongwith annexures i.e. Order in Civil Appeal No.1119 of 2015 dated 02.06.2016 passed by the Hon'ble Supreme Court of Pakistan, copy of Judgment dated 09.04.2015 passed in the Case of (Major (Rtd) Waqar Ali Shah and 4 others v. Nawab Ali and 5 Others) and Office Order dated 26<sup>th</sup> September 2018 and argued that the service of the petitioner was regularized with effect from 8.3.2013 but the Petitioner is insisting for regularization of his service with effect from his initial appointment on contract and when the decision of Cabinet Sub-Committee for regularization was approved. Learned Counsel emphasized that the Hon'ble Supreme Court in the aforesaid order on the issue of regularization disposed of the matter with the following observations:-

“3. In the above backdrop, all the learned counsels/parties present in Court seek disposal of these cases in the following terms:-

- a) That the process of regularization in terms of the Judgments dated 09.4.2015 of the learned Division Bench of Islamabad High Court may be conducted by the Competent Authority in accordance with the law without being influenced by any extraneous considerations or directions.
- b) After the process is completed, if any, individual has any grievance either for not being regularized or, if any, other person is regularized illegally or with illegal consequences, such individuals may seek the remedies available to them in accordance with law.

4. We expect that this process shall be completed, if possible, within a period of six months.

5. Accordingly, these cases are disposed of in the above terms.”

Per learned Counsel, the order dated 2.9.2013 has also been complied with which also reflects compliance report; that the issue of determination of seniority is to be reckoned from the date of regular appointment and not from the date of initial appointment, thus all orders passed by this Court have been complied with in its letter and spirit. He lastly prayed for dismissal of the listed contempt application.

5. Mr. Muhammad Nishat Warsi, learned Deputy Attorney General has adopted the argument of the learned Counsel for the alleged Contemnors.

6. 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 Counsel for the alleged Contemnors.

7. This is a simple case of enforcement of the order dated 28.11.2012 passed by this Court as discussed supra.

8. Record reflects that this Court vide order dated 28.11.2012 disposed of the instant petition, in which direction was issued to the respondents to process the case of Petitioner for regularization of his service under the policy. As per record, the service of the petitioner was regularized vide Notification dated 8.3.2013 issued by National Highways Authority. Now the Petitioner has changed the stance and raised the grievance that his inter- se- seniority has not been determined

9. We are of the considered view that no appointment made on contract basis shall be regularized retrospectively and the contract/ad-hoc period of service cannot be counted in seniority of a Civil Servant as seniority can be reckoned from the date of regular appointment. Thus, the question of regularization from the date of contract employment is misconceived.

10. We have also scrutinized the compliance report submitted on behalf of the alleged contemnors, which explicitly shows that substantial compliance of the order dated 28.11.2012 has been made by issuance of notification of regularization of his service.

11. In view of the above averments, the question before us is as to whether we can enlarge the scope of the main order dated 28.11.2012 and allow the parties to argue the matter on merits of the case in Contempt Proceedings? The answer is not in affirmative.

12. We are cognizant of the fact that this Court while disposing of the matter directed the Respondents that the case of Petitioner for regularization be processed as per policy and the Department has regularized the services of the Petitioner vide Notification dated 8.3.2013.

13. Prime facie the explanation offered by the Respondents through statement dated 17<sup>th</sup> September, 2019 by placing reliance upon the order of Hon'ble Supreme Court passed in Civil Appeal No.1119/2015 dated 2.6.2016 is

tenable under the law. We do not see any malice on the part of alleged contemnors warranting interference of this Court to take action against the alleged contemnors under Article 204 of the Constitution.

14. In view of the facts and circumstances of the case and for the reasons alluded above, we are satisfied with the explanation offered by the alleged contemnors that substantial compliance of the order dated 28.11.2012 passed by this Court has been made in its letter and spirit. Therefore, at this juncture, no case for initiating contempt proceedings against the alleged contemnors is made out. Resultantly, CMA No.16590/2019 is dismissed.

**JUDGE**

**JUDGE**

Nadir/-