

**HIGH COURT OF SINDH, CIRCUIT COURT AT
HYDERABAD**

C.P No.D-1491 of 2020

[Akhlaque Hussain Memon & ors v. Federation of Pakistan & Others]

DATE	ORDER WITH SIGNATURE OF JUDGE
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Before:

Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Adnan Iqbal Chaudhry

Petitioners : Through Mr. Taha Soomro advocate
Respondents 2to6 : Through Mr. M. Arshad S. Pathan advocate
Mr. Ashfaque Nabi Qazi, Asstt: A.G
Date of hearing : 09.11.2021
Date of Decision : 07.12.2021

J U D G M E N T

ADNAN-UL-KARIM MEMON, J.- This petition has impugned the Office Order dated 11.12.2020, whereby, earlier Office Order dated 03.03.2015 regarding recalling of promotions of petitioners stood withdrawn by the respondents; however, subject to the outcome of inquiry proceedings. Petitioners are only aggrieved by this conditional order.

2. Brief history of the case is that petitioners were serving as Upper Technical Subordinate Engineer (B.E) with the respondents and subsequently, vide office Order dated 11.12.2013 they were promoted to the post of Junior Engineers (BPS-17), but later on the above said promotion order was recalled by the respondents through Office Order dated 27.05.2014. The petitioners being aggrieved by and dissatisfied with the Office Order dated 27.05.2014, preferred Constitutional Petitions bearing No. D-1045 & 1139 of 2014 before this Court, which were disposed of vide common judgment dated 09.09.2014, whereby, Office Order 27.05.2014 was set aside. Accordingly, in compliance with the aforesaid judgment followed by order dated 29.10.2014 passed on the application for contempt proceedings, the respondents had withdrawn the Office Order dated 27.05.2014; and, in result whereof restored the promotions of petitioners, vide Office Order dated 29.10.2014; however, in the intervening period, respondents/ HESCO

also impugned the aforesaid judgment of this Court before the Hon'ble Supreme Court of Pakistan in Civil Petitions No.2122 & 2123 of 2014. The Hon'ble Supreme Court of Pakistan vide interim order dated 19.02.2015 granted leave to appeal to respondents and suspended the operation of impugned judgment. In consequence of the said interim relief, the respondents again recalled the promotions of petitioners, vide Office Order dated 03.03.2015. Finally, vide order dated 16.10.2020 the Hon'ble Supreme Court of Pakistan dismissed the appeals of respondents and resultantly upheld the judgment of this Court dated 09.09.2014. Accordingly, vide Office Order dated 11.12.2020 respondents / HESCO withdrew their Office Order dated 03.03.2015 and restored the promotions of petitioners in compliance with the judgment of Honorable Supreme Court; however, the said exercise was subject to outcome of inquiry proceedings initiated against them as provided in para-23 of the aforesaid judgment of this Court.

3. Mr. Taha Soomro learned counsel for the petitioners has contended that the petitioners are only aggrieved of the conditional order. His main contention is that though in para-23 of the aforesaid judgment of this Court respondents were set at liberty to take action strictly in accordance with law, yet since the said judgment has been merged into the order of Hon'ble Supreme Court, therefore, now the order of Hon'ble Supreme Court is fully applicable in their case and not the judgment passed by this court, wherein no such directions were given. He, while adopting rest of the grounds taken by him in the memo of petition, prayed that the impugned order may be set aside to the extent of the condition imposed therein and respondents may be directed to issue fresh order without any condition.

4. Mr. M. Arshad S. Pathan learned counsel for HESCO vehemently opposed the petition and submits that in para-23 of the aforesaid judgment of this Court it is provided that the respondents can take action and initiate inquiry proceedings strictly under law. He further submits that since the Hon'ble Supreme Court has upheld the said judgment in whole, therefore, petitioners cannot step back from para-23 of it. He also submits that the petitioners are seeking implementation of the judgment of this Court in piecemeal, which is not permissible under the law. He prayed for dismissal of this petition.

5. Mr. Ashfaque Nabi Qazi, learned Assistant Attorney General has adopted the arguments advanced by learned counsel for HESCO.

6. We have heard learned counsel for the parties and have minutely scanned the material available on record.

7. The only question involved in this petition whether the respondents can initiate inquiry proceedings against the petitioners given in para-23 of the aforesaid judgment of this Court or otherwise?

8. To appreciate this question, para-23 of the judgment dated 09.09.2014 is reproduced below:

“23. Since we have heard the learned counsel for the parties at great length, therefore, we convert the aforesaid petitions into regular hearing and allow the same as prayed with this common judgment as a result of which the petitioners shall be restored back to their positions to which they were posted prior to issuing of the impugned office orders. However, if the respondents want to take any action against the present petitions, they can do so strictly according to law and after giving due opportunity to the petitioners of being heard. In this regard respondents No.1 and 2 can employ WAPDA Rules as a mechanism to initiate enquiry and to issue show-cause notice, inasmuch as, the said Rules provide comprehensive procedure for both sides. Parties to bear their own costs.”

[Underlined by us]

9. During arguments, learned counsel for the petitioners took the stance that aforesaid judgment of this Court has been merged into the order of Hon'ble Supreme Court, whereby the said judgment was upheld and the Hon'ble Supreme Court has not given any such directions, therefore, respondents cannot initiate inquiry proceeding as provided in para-23 *ibid*.

10. To appreciate this ground, concluding paragraphs of the order dated 16.10.2020 passed by the Hon'ble Supreme Court are reproduced below:

“4. In view of the law cited in the impugned judgment, we note that the universal principles of audi alteram partem and locus poenitentiae have been violated by the appellant without any lawful reason or justification. Thus, the exercise of jurisdiction by the High Court appears to be justified. In this regard the judgment relied upon by the learned counsel for the appellant is distinguishable from the case in hand.

5. We, on consideration of the matter, find that the impugned judgment does not suffer from any illegality nor any has been shown to us. The appeals are, therefore, dismissed. All pending CMAs are also disposed of.”

11. From careful perusal of the judgment of this Court, referred to above, it appears that though the impugned order recalling promotions of the petitioners was set aside by this Court, yet the respondents were set at liberty to initiate inquiry proceedings in the matter and take action strictly under law. The said judgment was upheld by the Hon'ble Supreme Court of Pakistan in its entirety without modifying or making an alternation therein. As such, in our view, the right of inquiry and action under the law, as provided to the respondents in para-23 of the judgment of this Court reproduced above, is still available to them. However, prima facie, the petitioners are seeking implementation of above-referred judgment of this Court in piecemeal though the same has been upheld by the Hon'ble Supreme Court in its entirety.

12. The offshoot of the above discussion is that respondents cannot be restrained from exercising the right of disciplinary proceedings and taking action in consequence thereof strictly under law, provided to them by the law. Accordingly, this petition being not maintainable is liable to be dismissed.

13. However, since nothing is available on record as to whether inquiry proceedings, as provided in para-23 of the judgment *ibid* have been initiated and/or concluded, therefore, we cannot comment on it at this stage and on the conclusion of the same the petitioners would be at liberty to seek their remedy against the outcome of disciplinary proceedings and action in consequence thereof if any.

14. In view of the above, this petition being not maintainable stands dismissed accordingly.

JUDGE

JUDGE