

# IN THE HIGH COURT OF SINDH, KARACHI

CP. No. D- 3590 of 2020

Date Order with Signature(s) of Judge(s)

Direction

For hearing of Misc. No.11134 of 2021 (Contempt)

**19.01.2022**

Syed Ali Ahmed Zaidi, advocate for the petitioner  
Dr. Rana Khan, advocate for the respondent  
Mr. Muhammad Nishat Warsi, DAG  
Mr. Ali Safdar Depar, AAG

The instant petition was disposed of vide common judgment passed by this Court on 04.3.2021 with the following direction:

*“23. The Petitions C.P. No. D-1662 of 2019 and C.P. No. D-3590 of 2020 are disposed of in the terms of paragraph 35(iii) of the judgment dated 18.03.2016 passed by learned Sindh Service Tribunal maintained by the Honorable Supreme Court vide order dated 26.03.2018 passed in Civil Petition No.266-K and 1074 of 2016, resultantly the competent authority of respondent-WAPDA is directed to comply with the ratio of the aforesaid judgments in its letter and spirit and allow them joining from the date of their repatriation by the Sindh Government vide notification dated 5.7.2018 and the issue of their salary, for the intervening period, shall be decided by the competent authority of respondent-WAPDA accordingly within one month. In the meanwhile, the respondent Sindh Government is directed to return all pensionary benefits of the petitioners to WAPDA forthwith so that in case of their retirement in the future, the same be disbursed to them under the law.*

We have noticed that the above common judgment dated 04.3.2021 was assailed before the Hon'ble Supreme Court of Pakistan in CPLA Nos.542-K, 558-K, 559-K, and 656-K of 2021; and, the Hon'ble Supreme Court of Pakistan vide order dated 29.10.2021 dismissed the petitions with the following observation:

*“2. The learned counsel for the petitioners in the first place have contended that there is an agreement between WAPDA and the Province of Sindh for transfer of the employees of WAPDA to the Government of Sindh as civil servants. We have asked them to show us such agreement, but no such agreement was shown rather a notification dated 25.9.1980 (available at pages 46 & 47 of the paper book of C.P.No.542-K of 2021) was referred to contend that the WAPDA officers and officials employed in a project including those on deputation from Government of Sindh but excluding such persons whom WAPDA wants to retain shall be transferred to the Government of Sindh from 01.07.1980 and be treated as civil servants of the Sindh Government and governed by the provisions of Civil Servants Act, 1973 and the rules in force. We note that in the first place, the WAPDA officers were project employees and secondly the Government of Sindh has no authority in law to convert the officers of WAPDA who are project employees into civil servants as the civil servants can only be appointed under the Civil Servants Act, 1973 and the rules framed thereunder and in terms of Article 240 of the Constitution, the civil servants are employed through Public Service Commission. The manner in which the WAPDA officers employed in the project were transferred and purported to be given the status of civil servants by the above notification apparently has no legal backing behind it and thus in our view the High Court in the impugned judgment has rightly come to the conclusion that the petitioners never became the employees of Government of Sindh nor were they civil servants. No illegality in the impugned judgment has been shown to persuade us to interfere in the same. These petitions are therefore dismissed. Leave to appeal is refused.”*

Syed Ali Ahmed Zaidi Learned counsel for the petitioner has argued that the petitioner was a permanent employee of the WAPDA as he joined the service in the year 1987, thus his transfer to the Government of Sindh has already been declared a nullity by the Honorable Supreme Court, and therefore he is entitled to be treated at par with his colleagues with seniority, promotion and other pensionary benefits in line with the decision of the Honourable Supreme Court rendered in the case of *Ali Azhar Khan Baluch Vs. Province of Sindh* 2015 SCMR 456.

Dr. Rana Khan learned counsel representing the alleged contemnor has refuted the stance of the petitioner and submitted that in compliance with the judgment dated 04.3.2021 passed by this Court as well as the order dated 29.10.2021 passed by the Hon'ble Supreme Court of Pakistan, the competent authority has approved joining of the petitioner in the capacity of Junior Engineer (Civil) BPS-17 with effect from 10.07.2018 against the post in the office of G.M/PD (DASU) HPP, WAPDA, Kohistan by changing his pay and allowances to the same post with effect from 10.07.2018 till the date of retirement of the petitioner i.e. 22.05.2021. Learned counsel for WAPDA further submitted that cheque amounting to Rs.1,770,110/- regarding pension contribution of the services of the petitioner rendered in the Irrigation Department Government of Sindh has been credited in his account, however, she further added that any other service matter will be decided later on as per WAPDA rules/policy. In support of his contentions, she relied upon the statement dated 30.11.2021 along with notification dated 22.11.2021 and letters dated 22.11.2021 & 25.11.2021. She lastly prayed that nothing is left on the part of respondent-WAPDA to be paid to the petitioner, however, any other service-related issue shall be taken into consideration by the competent authority subject to all just exceptions as provided under the law.

To this proposition, learned counsel for the petitioner has raised the hue and cry that initially, the petitioner joined in WAPDA in August 1987 as Junior Engineer and in the decision of the learned Federal Service Tribunal which explicitly shows that seniority of the petitioner ought to have been with his colleagues who have retired as Chief Engineer (BPS-20). He prayed for a direction to the respondents to comply with the judgments passed by the learned Federal Service Tribunal, the Hon'ble Supreme Court of Pakistan, and this Court in its letter and spirit, more particularly ratio of the judgment of the Hon'ble Supreme Court of Pakistan rendered in the case of *Ali Azhar Khan Baloch v. Province of Sindh*, **2015 SCMR 456** and allow the petitioner the pensionary benefits under the law, keeping in view ratio of the judgments as discussed supra. He also prayed for the issuance of notification of retirement of the petitioner in BPS-20. In the alternative, he prayed that the petitioner may be treated at par with his batchmates.

We have scrutinized the compliance statement and the documents attached thereto submitted on behalf of the alleged contemnors; prima-facie record reflects that the petitioner joined WAPDA in 1987 as Junior Engineer (Civil) and his services were transferred to Sindh Government and subsequently, he was relieved by the

Sindh Government vide notification dated 05.7.2018 in compliance with the judgment passed by this Court dated 04.3.2021 and he was allowed to join the duty by the respondent-WAPDA vide notification dated 22.11.2021 with effect from 10.07.2018 and in the meanwhile, he stood retired from service of WAPDA on 22.5.2021. In principle, the explanation offered by the respondents vide compliance statement dated 30.11.2021 to the extent of the joining of his service as discussed supra is tenable under the law, however, we have the reservation to the extent of allowing him to join the service in the same grade i.e. BPS-17 when he was initially appointed in the year 1987, this treatment meted out with the petitioner, in our view, is not tenable under the law. Prima-facie the compliance report is just an eyewash that negates the basic spirit of the order dated 29.10.2021 passed by the Hon'ble Supreme Court. *Prima-facie*, they have failed to look into the basic spirit of the orders as discussed supra and the length of service of the petitioner, therefore, the same report to the above extent is rejected.

At this stage, the petitioner has pointed out malice on the part of alleged contemnors to take action against the alleged contemnors under Article 204 of the Constitution, who have failed and neglected to accept the joining of the petitioner from the date he was erroneously transferred to Sindh Government as observed by the Honorable Supreme Court as discussed supra. Primarily the petitioner ought to have been treated as a permanent employee of the wapda and his joining report ought to have been accepted from the date when he was transferred to Sindh Government, thus his seniority, promotion ought to be at par with his colleagues including retirement notification in that pay and scale as per his seniority, thus, we are left with two options; either to initiate proceedings for contempt against the alleged contemnors under the provisions of Contempt of Courts Ordinance, 2003 read with Article 204 of the Constitution or to direct the Competent Authority of respondent-wapda to implement the judgment passed by this Court merged into the order of the Hon'ble Supreme Court of Pakistan in letter and spirit, expeditiously, without any delay and with reasonable dispatch.

We are of the considered view that the interest of justice would be best met if the competent authority of respondent-wapda including the alleged contemnors is granted the last opportunity to comply with the direction of the Honorable Supreme Court as well as this Court in the instant matter without fail within two (02) weeks and to submit a compliance report to this Court on the next date of hearing, failing which show cause notice shall be issued to alleged contemnors on the next date of hearing.

To be listed on **28.01.2022** at **11:00 a.m.**, when alleged contemnors shall be present in Court along with their compliance report.

JUDGE

JUDGE