

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit No.201 of 2016

DATE

ORDER WITH SIGNATURE OF JUDGE

1. For hearing of CMA No.7003/16 (U/S 151 CPC)
 2. For non-prosecution as summons not issued as cost not paid.
 3. For ex-parte order against Defendant No.6
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31.05.2018

Mr. Muhammad Ali Waris Lari, Advocate for Plaintiff.
Mr. Khaleeq Ahmed, Advocate for Defendants.

1. Through this application, the Plaintiff seeks direction to Defendants No.1,2 & 3 to release his salary. Learned Counsel for the Plaintiff submits that the salary of the Plaintiff has been withheld since January 2016, whereas, he has been denied access to the Office. He further submits that the action of Defendants is illegal and unlawful and so also in-derogation to the Order dated 28.01.2016, whereby, the Defendants were directed to act strictly in accordance with law and not to take unlawful action against the Plaintiff. In support he has relied upon the cases reported as **2002 CLC 601 (Arif Khan and 7others v. Federation of Pakistan and others)** & **2001 SCMR 1733 (Federation of Pakistan, Chamber of Commerce and Industry, Karachi v. Ali Ahmed Qureshi)**.

On the other hand, learned Counsel for the Defendants submits that the Plaintiff's stands compulsorily retired vide Order dated 19.01.2016, which order has not been appealed, and therefore, no question for payment of any salary for the period as claimed arises. He further submits that the Defendants have acted strictly in accordance with law and have not violated any orders as contended.

I have heard both the learned Counsel and perused the record. At the very outset, learned Counsel for the Plaintiff was confronted as to how any salary can be ordered to be granted to the Plaintiff after passing of Order of compulsorily retirement on 19.01.2016, and learned Counsel could not satisfactorily respond; however, submits that Order was never served, and therefore, the Plaintiff is entitled for salary. To this, I may observe that such stance is completely misconceived. In fact as soon as it came to the knowledge of the Plaintiff that an order for compulsorily retirement has been passed; either the same ought to have been challenged in accordance with the Services Rules or at least in this Suit by seeking amendment of the pleadings through an application, if required. The same has not been done; therefore, no question of payment of any salary at the present moment arises before the Court. The order of compulsorily retirement is in field and has not been impugned, therefore, Court would not go to an extent to even order payment of salary for the period during which the Plaintiff never remained in service. The case law relied upon by the learned Counsel for the Plaintiff is distinguishable on facts. As to order dated 28.01.2016, it may be observed that whether any unlawful action was taken by Defendants or not can only be finally adjudicated once the order of retirement is challenged successfully before the competent forum.

In view of such position, by means of a short order, in the earlier part of the day, application listed at Serial No.1 was dismissed and these are the reasons thereof.

2-3. Adjourned.

J U D G E