

Special Law Secretary on deputation in Law Department for a period of 3 years and pursuant to judgment of apex Court in Petition NO.89/2011 dated 02.05.2011 plaintiff was repatriated to his parent department and thus he joined as Deputy Managing Director (BS-20) SITE but since there were directions to appoint him as OSD he assailed such directions in CP No.D-514/2014, same was disposed of by this Court on undertaking that plaintiff may continue on the post of Deputy Managing Director (BS-20). All of sudden the plaintiff has been demoted (on the pretext of judgment passed by apex Court), and thus impugned notification at page 131 is illegal, ab-initio void and not maintainable in law.

3. Learned counsel for plaintiff *inter alia* argued that SITE is a limited company hence persons working in that department are not civil servants as well such department is without statutory rules hence this suit is maintainable under the law; he relied upon case of Mubinus-Salam and has given emphasis over the paragraphs No.49, 76, 80, 86 which relate to the controversy of section 2-A of the Services Tribunal Act 1973 with regard to section 2A of civil servants Act; it is further contended that without providing opportunity of hearing to the plaintiff he was demoted, such demotion is against the scheme of law and violates the basic fundamental rights as provided under the second Chapter of the Constitution of Pakistan, particularly article 10-A (fair trial). He contends that about 4 suits have been filed wherein same office order dated 05.11.2015 issued by Managing Director has been assailed wherein *by way of ad-interim injunction* such notification has been suspended and he submits copies of such orders.

4. In contra, learned counsel for the defendants while refuting the contentions raised by learned counsel for the plaintiff, has argued that

Memorandum and Articles of Association available at page 17 are very categorical which discloses that: with a view to bring the industrial development of Sindh and in clause 6 sub-clause "a" and "b" the Managing Director and other posts *as defined will be salaried government servant appointed by government*; he further contended that plaintiff being employee of defendants was serving with the officials of Provincial government thus he was deputed as Special Law Secretary and thereafter he was sent back pursuant to the judgment of apex Court. At this juncture he also places minutes of meeting on which basis plaintiff is claiming his promotion; he emphasizes on item No.4 and contends that his name is not mentioned nor he was recommended for promotion, hence order with regard to promotion as annexed with this suit is having no legal status. He relied upon PLD 1975 Karachi 128 while referring para-10 as under:-

"10. Thus, the Sind Industrial Trading Estate Ltd., being nothing more, than a department of the Provincial Government, though clothed with juristic personality, performs the essential functions entrusted to the Province with regard to the development of trade and industries. Of necessity, therefore, the income of this body corporate is the income of the Provincial Government, and, under the various constitutional provisions referred to above, this income is not assessable to tax under the Income-tax Act, 1922."

5. Learned counsel for defendants contends that by this judgment it was observed that Sindh Industrial Trading Estate Limited is a provincial department and such judgment was assailed before the apex Court and the apex Court also affirmed the same as reported in PLD 1985 Supreme Court page 97. He also relied upon 1992 CLC 2329, para "b" being conducive is as under:-

"The executive discretion, where private rights are affected by the exercise of such discretionary executive powers, are not uncontrolled. It is now a well settled principle of our

Constitutional law' evolved through Constitutional interpretation by decisions of Supreme Court and also the High Courts that such executive discretion must be exercised justly, fairly and reasonably and not in an arbitrary or unreasonable fashion and that such actions are subject to judicial review by the Superior Courts under their Constitutional jurisdiction."

6. Record reflects that by notification dated 08.04.2015, plaintiff was transferred to law department as Special Secretary Law and pursuant to judgment of the apex Court was reverted back to his parent department with direction that he will join as OSD such order was challenged before division bench of this Court and same was suspended vide order dated 11.02.2014 at page 123 and such petition was disposed of because of comments and order dated 25.03.2014 issued by Managing Director of Sindh whereby it was observed that petitioner will continue work as Deputy Managing Director (BS-20) as per the law and service rules of SITE Limited.

7. It is pertinent to mention that the plaintiff before this Court by filing instant petition has assailed notification dated 05.11.2015 whereby 11 employees/servants were demoted while referring the judgment of the apex Court in Criminal Petition NO.85/2011 by orders of the Secretary, Government of Sindh, Industries and Commerce Department, through letter No.SO-I(IND) 1-108/2014/258 dated 10.02.2015. Learned counsel for plaintiff emphasized that plaintiff is entitled for same relief as granted in other suits. Without prejudice to legal position that the orders, referred by the learned counsel for the plaintiff, *even* passed by this Court are of no binding effect. Be as it may, an interim order *in fact* is not an **order** because *normally* the merits are not appreciated in the manner as are done in an '**order**'. Even otherwise, an interim is always subject to final determination thereof hence *legally* cannot be referred as that of '**binding effect**'.

8. At this juncture, it is material to refer that operative part of the judgment of honourable Supreme Court of Pakistan in the case of PIA Corporation v. Syed Suleman Alam Rizvi & Others (2015 SCMR 1545) wherein it was held that matters *qualifying the terms of 'master & servant'* will leave the aggrieved to file a suit for redressal of his grievance. The operative part is reproduced hereunder:-

*'8. there is a plethora of judgments to the effect that no petition lies in the matters pertaining to the terms and conditions of service of employees of a Corporation, where **such terms and conditions are not government by statutory rules.** It is an admitted position that the terms and conditions of the employees of the appellant Corporation are not government by any statutory Rules, and is now well settled that the relationship between the appellant Corporation and its employees is that of a 'master and servant'.*

Keeping in view the above, suffice to say that, the plaintiff though attempting to seek an exception to maintain the suit but still claims continuity of his service as Deputy Managing Director (BS-20) which *per Memorandum of Association* shall be '**salaried**' government servant, appointed by Government. While responding to the plea regarding **civil services or otherwise**, a perusal of Memorandum of Association at page 17, being material is made herender:-

"The Directors shall be :

- (a) Ex-Officio, the Finance Secretary, Secretary Agriculture and Industries Department, and the Director of Industries,
- (b) (b) the Managing Director, who will be a salaried government servant, appointed by Government.
- (c)"

Further the scope of SITE is discussed in paragraph 10 of judgment in case of Sindh Industrial & Trading Estate Limited vs. Central Board of Revenue and 3 others (reported in PLD 1975 Karachi 128. Such judgment was maintained by the Apex Court whereby it was categorically mentioned that *it is*

department of Province of Sindh as well as it is mentioned that *Managing Director would be a salaried government servant appointed by government.*

Learned counsel for plaintiff has relied upon case law while arguing that plaintiff is not falling within such scope, but facts and circumstances as paced by plaintiff as well as other side, it appears that plaintiff falls within such category of civil servant and is serving in the department which is under the Sindh Government. The issue, involved i.e promotion to a post requiring '*salaried government servant, appointed by Government*' cannot be appreciated by closing eyes to ordinary meaning of the terms '**salaried government servant**' & '**appointment by government**' which if attempted may prejudice the absolute and exclusive domain of the Tribunal. Thus, I have no hesitation in saying that declaration to such effect *in my opinion* will definitely require appreciation of Terms & Conditions for such post i.e '**salaried government servant, appointed by Government**' which *legally* cannot be undertaken particularly with reference to case of Ali Azhar Khan Baloch & Others v. Province of Sindh & Ors (2015 SCMR 456). This count alone takes away the matter of petitioner out of the scope of the jurisdiction of this Court.

9. Besides, plaintiff has challenged the notification while claiming it to have been passed **on the pretext** of direction of the apex Court hence plaintiff may approach the apex Court so as to seek clarification thereof if any illegality is committed by defendants in name of judgment of Apex Court or even if the plaintiff complains the same (judgment of Apex Court) requiring any interpretation. At this juncture, I would refer to the case of Mirza Shaukat Baig v. Shahid Jamil (PLD 2005 SC 530) wherein it is held that:

30.that the judgments of this Court being apex Court are binding upon the learned High Court in the view of the provisions as enumerated in Article 189 of the Constitution of Islamic Republic of Pakistan which, *inter alia*, provides that any decision of the Supreme Court shall, to the extent that it decides a question of law or is based upon or initiate a principle of law shall be binding on all other Courts in Pakistan and the learned Lahore High Court is no exception to it. It is well-entrenched legal proposition that “the ultimate responsibility of interpreting the law of the land is that of the Supreme Court. Therefore any decision of the Supreme Court shall to the extent that it decides a question of law or is based upon or enunciates a principle of law is binding on all other Courts in Pakistan. ... Law declared by Supreme Court becomes the law of the land and is binding not only on all Courts in Pakistan but also on all functionaries of the Government.’. (PLD 1971 SC 324, PLD 1985 SC 228. It is worth mentioning here that ‘where a judgment of Supreme Court has become effective as from a specified date, it would be binding not only on High Courts and Courts subordinate to it but also on all other Courts of Pakistan from that date. Therefore, High Court rightly preferred Supreme Court decision over decision of Full Bench of High Court. The decision of Supreme Court cannot be ignored on the ground that certain grounds were not argued before Supreme Court.’.(PLD 1987 Lah.71, 1981 SCMR 520, PLD 1973 Lah. 1). ‘Apart from the Constitutional obligation imposed upon the Courts even the propriety demands that the Courts must follow such a law without any hesitation. Unless the law so declared is altered or overruled by the Supreme Court itself, the High Court has no option but to follow it. “PLD 1975 Lah.65, PLD 1964 Peshawar 250).

It is not the domain of this Court (*Civil Court*) to examine applicability of the Judgment of Apex Court while questioning the legality of the order, impugned, which directly or *least* indirectly involves a question , falling within domain of Tribunal.

10. In addition to this, the perusal of the prayer clause of instant plaint categorically indicates that plaintiff is seeking a declaration to the effect that impugned office order of demotion is illegal and he was validly promoted therefore that may be restrained, but here it is matter of record that the minutes of meeting shows that in said meeting plaintiff was not recommended for such promotion.

11. Thus, in view of what has been discussed above, it appears that plaintiff has no cause of action and *even* instant suit is barred by the law. Resultantly, instant plaint is rejected along-with listed application.

Imran/PA

JUDGE