

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

*Constitutional Petition No.D-2383 of 2021
(Niaz Hussain & another v. Province of Sindh and others)*

Before:-
Mr. Justice Amjad Ali Bohio,
Mr. Justice Ali Haider 'Ada'.

For hearing of CMA No. 5767 of 2016 (Contempt Application)

Petitioners : Niaz Hussain and another
through Mr. Alam Sher Bozdar,
Advocate.

Respondents: Province of Sindh and others,
through Mr. Shahryar Imdad
Awan, AAG, along with Ali
Akber Kalhoro, Director
School Education (Primary),
Sukkur Region, Muhammad
Zakria Dhandhu, District
Education Officer (Primary)
Ghotki @ Mirpur Mathelo, and
Dilyawar Soomro, Assistant
Education Officer/ Focal
Person/ Litigation Officer on
behalf of District Education
Officer (Primary) Ghotki @
Mirpur Mathelo

Date of Hearing : 20.05.2026
Date of Order : 20.05.2026

ORDER

Ali Haider 'Ada', J:- This petition was disposed of vide order dated
17.09.2024 with the following observations:-

*"After hearing both the learned Counsel at considerable
length, by consent the following order is passed:*

- i. That the Respondent No.2 would examine the case of the petitioner afresh and exclude the numbers allocated to the petitioner in respect of the degrees/ certificates found bogus by the department.*
- ii. The department would examine the case of the petitioner on the basis of the documents*

furnished at the time of submission of the application.

- iii. *If, the cumulative marks obtained by the petitioner are found to be equal or more than those of the minimum marks obtained by the appointed persons, the case of the petitioner would also be considered for appointment.*

Petition stands disposed of in the above terms."

2. The petitioners filed the instant CMA No.5767 of 2016 under Article 204 of the Constitution of Islamic Republic of Pakistan, 1973, seeking initiation of contempt proceedings against the alleged contemnors on the ground that despite issuance of various directions and communications for implementation of the Court orders, the same had not been fully complied with. It has been contended that the alleged contemnors had examined the case of the petitioners and found them entitled to reinstatement, and accordingly relevant correspondence was made in this regard. It is further stated that on 10.02.2015, the Section Officer, Judicial-II, directed alleged contemnor No.3 to implement the orders of this Court, pursuant to which necessary orders were also issued. However, when petitioner No.1 appeared before the subordinate functionaries of the Education Department on 20.02.2015 for joining his duties, the alleged contemnors failed to release his past and future salaries. It has further been averred that alleged contemnor No.2 addressed a letter to the District Accounts Officer, Ghotki, for the disbursement of salaries, while subsequently on 22.06.2015, the District Education Officer, Ghotki @ Mirpur Mathelo, also wrote a letter to alleged contemnor No.3 for the release of the same. Thereafter, on 06.07.2015, the Section Officer, Judicial-II again directed the District Accounts Officer to ensure compliance with the Court orders and disbursement of salaries. It is also stated that on 10.12.2015, alleged contemnor No.3 once again addressed correspondence to alleged contemnor No.2 for redressal of the grievance of the petitioners, but despite such repeated communications, no practical relief was extended to them. The

petitioners further submitted that they were constrained to approach the Federal Ombudsman as well as the Anti-Corruption Establishment for redressal of their grievances.

3. On the other hand, the learned Assistant Advocate General, while filing the compliance report, submitted that substantial compliance with the orders passed by this Court has already been made. He further referred to the statement filed by the District Education Officer / Respondent No.3, annexed with the compliance report, wherein it has specifically been stated that the directions issued by this Court have been complied with within the prescribed parameters. Learned AAG further contended that the grievance now raised by the petitioners pertains to a separate and independent cause of action for which they may avail an appropriate remedy before the competent forum, and as such, the instant contempt application, on the face of the record, is not maintainable.

4. Heard learned counsel for the parties and perused the material available on record with their able assistance.

5. At this juncture, it is first to be examined whether the earlier order passed by this Court, whereby the respondents were directed to consider the case of the petitioner for appointment in the light of the relevant directions, has been complied with or otherwise. In compliance thereof, a statement was filed on 16.12.2016, wherein it was specifically mentioned that the degree certificate of Niaz Hussain Channa had been declared fake/bogus by the Assistant Controller of Examinations (Verification Section) through a letter dated 07.05.2011. A careful perusal of the aforesaid order reflects that the respondents were directed to examine the case of the petitioner on the basis of the documents furnished by him at the time of submission of the application. It was further observed that if the cumulative marks obtained by the petitioner were found to be equal to or higher than the minimum marks secured by the

appointed candidates, then his case was also to be considered for appointment strictly in accordance with the law. However, no such explicit or implicit direction can be inferred from the said order compelling the respondents to appoint the petitioner in any manner whatsoever.

6. Secondly, it is observed that the alleged contemnors have submitted a detailed para-wise compliance report, the relevant portions of which have already been reproduced hereinabove. Once compliance has been reported, initiation of contempt proceedings is not warranted. Furthermore, the case of the petitioner for appointment was regretted on the ground that his B.Ed. The degree certificate had been declared fake/bogus in view of the verification letter dated 07.05.2011.

7. At this stage, the limited question before this Court is whether the present contempt applications are maintainable after the disposal of the main petition. The record reveals that the directions issued by this Court have been complied with, and a compliance report has duly been submitted; thus, the matter stands concluded to that extent. In case the petitioner is aggrieved by any decision taken by the competent authority, the same cannot be agitated through contempt proceedings, as the scope of contempt jurisdiction is limited to examining whether the order of the Court has been complied with, and does not extend to adjudicating the merits of subsequent decisions. For ready reference, Article 204 of the Constitution of the Islamic Republic of Pakistan, 1973, is reproduced hereunder:

"[204. (1) In this Article, "Court" means the Supreme Court or a High Court.

(2) A Court shall have power to punish any person who – (a) abuses, interferes with or obstructs the process of the Court in any way or disobeys any order of the Court ;

(b) scandalizes the Court or otherwise does anything which tends to bring the Court or a Judge of the Court into hatred, ridicule or contempt;

(c) does anything which tends to prejudice the determination of a matter pending before the Court; or

(d) does any other thing which, by law, constitutes contempt of the Court.

(3) The exercise of the power conferred on a Court by this Article may be regulated by law and, subject to law, by rules made by the Court.]”

8. The law relating to contempt of Court has changed over time. Initially, the Contempt of Court Act, 1926, provided punishment for contempt, including imprisonment for up to six months or a fine. Later, this law was replaced by the Contempt of Court Act, 1976, which also dealt with punishment for committing or abetting contempt of Court. Afterwards, the Contempt of Court Ordinance, 2003, repealed the 1976 law and introduced a more detailed framework. Section 3 of the Ordinance explains what acts amount to contempt of Court, while Sections 4 and 5 deal with punishment and allow an accused person to submit an apology at any stage, subject to the satisfaction of the Court. In this regard, Section 3 of the said Ordinance is relevant and is reproduced hereunder for ready reference:

3. Contempt of Court.---Whoever disobeys or disregards any order, direction or process of a Court, which he is legally bound to obey; or commits a willful breach of a valid undertaking given to a Court; or does anything which is intended to or tends to bring the authority of a Court or the administration of law into disrespect or disrepute, or to interfere with or obstruct or interrupt or prejudice the process of law or the due course of any judicial proceedings, or to lower the authority of a Court or scandalize a Judge in relation to his office, or to disturb the order or decorum of a Court, is said to commit 8 “contempt of Court”. The contempt is of three types, namely, the “civil contempt”, “criminal contempt” and “judicial contempt.

9. The Supreme Court of Pakistan in *Ch. Zahur Ilahi, M.N.A. v. Zulfikar Ali Bhutto and 2 others* [PLD 1975 SC 383] held that contempt is an extraordinary power, to be exercised with caution

and only when necessary in the public interest. In *Saadat Khialy, Staff Reporter ("Kohistan" Daily) and others v. The State and another* [PLD 1962 SC 457], it was held that contempt proceedings are sui generis, sharing civil and criminal elements but bound by neither, though the accused must have a fair opportunity of defence. These principles were reaffirmed in *Syed Masroor Ahsan and others v. Ardeshir Cowasjee and others* [PLD 1998 SC 823], *Shahid Orakzai v. Pakistan Muslim League (Nawaz Group) and 8 others* [2000 SCMR 1969], and *The State v. Khalid Masood* [PLD 1996 SC 42]. In *Syed Ahmad Shah and Feroze Din v. The State and another* [PLD 1967 SC 42], the Court emphasized that contempt proceedings are summary in nature and must be exercised with care, on clear proof. Thus, contempt proceedings are extraordinary, sui generis, and primarily aim to uphold the dignity of the Court and the administration of justice (*Ch. Zahur Ilahi*, [PLD 1975 SC 383]). The question, therefore, is whether the actions taken were beyond the scope of the Court's order.

10. It is a settled principle that proceedings to enforce an order like mandamus are permissible only where such mandamus is of an absolute character. In matters involving considerations such as terms and conditions of service, the same fall exclusively within the domain of the relevant executive authorities. Such issues require careful examination and involve the exercise of discretion and judgment in relation to complex factors. Therefore, enforcement of such matters through contempt proceedings, particularly by way of committal, has been disapproved. In this context, reliance is placed upon the case of *The State of Pakistan and another v. Mehrajuddin* (PLD 1959 SC 147).

11. Further, the primary object of initiating contempt proceedings is not personal proof, but to uphold the dignity and honour of the Court and to preserve the integrity of the judicial process. In the case of *Mst. Farhat Agha v. Government of Sindh through Secretary and*

others (2017 CLC Note 232, DB-Sindh), it has been observed that contempt proceedings cannot be initiated merely at the desire or whim of a litigating party. The Court must first be satisfied that the alleged contemnors have committed an act falling within the mischief of contempt law. Where a petitioner fails to satisfy the Court regarding the maintainability of a contempt application, such application is liable to be dismissed in the circumstances.

12. In these circumstances, we are of the considered view that none of the respondents has, either intentionally or unintentionally, committed any contempt of this Court. Even otherwise, there is nothing on record to suggest that the respondents acted with any contumacious or defiant intent towards the orders of this Court. The record also does not show any ill will, default, or deliberate intention to commit contempt; therefore, the contempt proceedings are not maintainable. Support in this regard is drawn from the case of *Muhammad Zahid and another v. Director of Schools and Literacy, N.-W.F.P., Peshawar and others* (2006 CLC 1576, Peshawar High Court, Division Bench).

13. In view of the foregoing reasons and discussion, it is abundantly clear that the present case does not attract the jurisdiction of contempt proceedings. Accordingly, the contempt application (CMA No.5767/2016), being devoid of merit, is hereby dismissed.

JUDGE

JUDGE