

# IN THE HIGH COURT OF SINDH AT KARACHI

Present: Mr. Justice Irfan Saadat Khan  
Mr. Justice Adnan-ul-Karim Memon

## C.P No. D-1415 of 2015

Ghulam Ali & others .....Petitioners

Versus

Government of Sindh and others .....Respondents

### **Direction:-**

- 1. For order on CMA No. 15930 of 2018.**
- 2. For hearing of CMA No. 15924 of 2018.**
- 3. For hearing of CMA No. 15925 of 2018.**

## C.P No. D-1820 of 2015

Shahid Ali Bhutto & others .....Petitioners

Versus

Province of Sindh and others .....Respondents

### **Direction:-**

- 1. For hearing of CMA No. 15927 of 2018.**
- 3. For hearing of CMA No. 15928 of 2018.**

### **Date of hearing: 08.05.2018**

Mr. Sarfraz Ali Metlo Advocate for the Applicants.  
Mr. Shahryar Mehar Assistant Advocate General.

### **CMA No. 15930 of 2018.**

Let notice be issued to the Respondents as well as learned AAG.

### **CMA No. 15924 of 2018.**

### **CMA No. 15925 of 2018.**

### **CMA No. 15927 of 2018.**

### **CMA No. 15928 of 2018.**

## **ORDER**

The Petition bearing No. 1820 of 2015 was disposed of vide order dated 19.10.2016 with the following observations:-

***“As a result of above discussion, this petition is disposed of with the directions to the respondent NO.2 to forward the names of petitioners to the Chief Secretary, Government of Sindh, so that their cases may be sent for consideration to the Scrutiny Committee constituted to deal with the cases of regularization under the Act, 2013. This exercise shall be completed within sixty days. At this juncture the learned AAG argued that sixty days’ time will be reckoned from the date of sending names by the Respondent NO.2, which argument seems to be logical and approved. The Chief Secretary, Government of Sindh shall ensure that as soon as the names are received from Respondent NO.2, he will pass on the same to the Scrutiny Committee constituted to deal with the cases of regularization for their consideration and the petitioners be intimated accordingly.*”**

The petition bearing No. 1415 of 2015 was disposed of in terms of paragraph 4 of the aforesaid order dated 19.10.2016 with the following observations:-

***“As a result of above discussion, this petition is disposed of in terms of paragraph-4 of the order dated 19.10.2016 passed by this Court in C.P. No. 1820 of 2015. One Miscellaneous Application No. 10294 of 2015 is also fixed under Order 1 rule 10 C.P.C filed by Mr. Malik Naeem Iqbal but learned counsel submits that at present he does not want to press this application and submits that the intervener will avail appropriate remedy in accordance with the law. The C.M.A No. 10249 of 2015 is dismissed as not pressed, accordingly.*”**

***Copy of this order may be transmitted to the learned A.A.G.”***

This Court vide order dated 25.04.2018 disposed of the Contempt Application filed by the applicants in both the petitions with the following observation:-

***As per report furnished by respondent No.2 / Automation of Stamps and Registration Board, cases of Ghulam Ali, Zahid Hussain Chandio and Suhail Ahmed were examined and were found to be correct, authentic and are accordance with law. The principal Secretary to the Chief Minister is directed to expedite the matter of the above-named petitioners so that they could be regularized in accordance with law. However, so far as the cases of 4 persons, namely Noman Khan, Singhar Ali, Umer***

***Din and Kamran Anwar are concerned their documents were found to be fake and forged. The department is at liberty to initiate action against them in accordance with law. So far as the case of the Mehboob Alam is concerned, the department is directed to process the same within a period of one month. With these directions the instant contempt application is disposed of.”***

The present applicants, who are also the Petitioners in the two petitions being aggrieved and dissatisfied with the aforesaid observations made in the order dated 25.04.2018 filed the present applications under section 12(2) CPC on the premise that the order passed by this Court has been procured by the Respondents by way of fraud and misrepresentation of facts. The applicants/Petitioners have also filed applications for recalling of the aforesaid order.

Mr. Sarfraz Ali Metlo, learned counsel for the Applicants has argued that the applicant No.1 Umer Din Saand (Petitioner No.9) in C.P. No. D-1415 of 2015 and applicant Kamran Anwer (Petitioner No.10) were appointed on the basis of I.T certificates issued by different institutions; that they have a legitimate right for regularization of their service as per the orders passed by this Court in the aforesaid Petitions; that the applicant's documents are not fake and forged, as observed by this Court vide order dated 25.04.2018; that the Respondents are misinterpreting the order passed by this Court and have declined to regularize the services of the applicants; that the Respondents are bent upon to initiate action against the applicants in the light of findings given by this Court; that the applicants have been condemned unheard in violation of Article 10-A of the Constitution; that the basic rights of the applicants are at stake at the hands of Respondents, who have obtained the order dated 25.04.2018 passed by this Court through

misrepresentation of the facts. In support of his contention he also placed reliance on the decision 2012 PLC (C.S) 241 Administrator District Council Larkana & others Vs. Ghulab Khan & others. He lastly prayed for allowing the listed applications.

Mr. Shahryar Mehar, learned Assistant Advocate General has reiterated his earlier submission and referred the compliance report dated 25.04.2018 submitted before this Court by the Respondents and argued that so far as cases of four persons namely Noman Khan, Singhar Ali, Umer Din, and Kamran Anwer in C.P. No. D-1415 of 2015 are concerned their documents were found to be fake and forged insofar and in so far as applicants namely Shahid Ali, Muzzafar Ali, Abdul Majid, Safdar Ali, Sajid Hussain, Akhtar Ali and Zulfiqar Ali in C.P. No. D- 1820 of 2015 are concerned their documents were also found to be fake and forged by the Sindh Technical Board of Education Karachi. He further contended that the Respondent department is bound to take legal action against the delinquent persons involved in the forgery, who have furnished forged and fake documents, while obtaining the job in the Respondent department. He lastly prayed for dismissal of the listed applications in both the petitions being not maintainable and misconceived.

We have heard the learned counsel for the parties on the listed applications and perused the material available on the record and the decision relied upon by the learned counsel for the applicants.

Upon perusal of the order dated 19.10.2016 and 19.12.2016 passed by this Court in both the petitions, it transpires

that the Respondent No.2 was directed to forward the names of the applicants to the Chief Secretary, Government of Sindh so that their cases may be sent for consideration to the Scrutiny Committee constituted with the cases of Regularization under the Act 2013. The Respondents have submitted the compliance report, which clearly show that the cases of eligible candidates, whose documents were verified and authenticated by the Sindh Board of Technical Education Karachi had finally been processed for the purpose of regularization of their services after approval of the Competent Authority. Report further reveals that strict action has been proposed against the present applicants, whose documents were found to be forged and fabricated as per the letter dated 22.03.2018 issued by the Sindh Board of Technical Education Karachi.

Upon perusal of the letter dated 22.03.2018 issued by Deputy Secretary II Sindh Board of Technical Education Karachi, which reveals that they have verified the authenticity of the documents of the applicants Noman Khan, Singhar Ali, Umer Din and Kamran Anwer in C.P. No. 1415 of 2015 and applicants Irfan Ali, Akhtar Ali, Abdul Majid, Safdar Ali, Sajid Hussain, Shahid Ali, and Zulfiqar Ali in C.P. No. 1820 of 2015, whose documents were found to be forged on verification by the Sindh Board of Technical Education Karachi.

We have perused the contents of the application filed under section 12(2) read with 151 CPC. An excerpt of section 12(2) CPC is reproduced as under:-

***“12. Bar to further suit--(I) Where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a suit in***

***respect of such cause of action in any Court to which the Code applied.***

***(2) Where a person challenges the validity of a judgment, decree or order on the plea of fraud, mis-representation or want of jurisdiction, he shall seek his remedy by making an application to the Court which passed the final judgment, decree or order and not by a separate suit.”***

The question which arises in the present matter is whether in the present proceedings application of section 12(2) CPC is applicable in a disposed of matter? Whether the Respondents have procured the order dated 25.04.2018 by way of fraud and misrepresentation?.

It is clarified that this Court vide order dated 25.04.2018 recorded the contention of the parties and have not made any observation against the applicants in both the petitions. Both the petitions have already been disposed of on the basis of the averments made by the Respondents that they have scrutinized the documents of the applicants which were found to be forged and fabricated.

In the light of the foregoing, we are of the considered view the Respondents have complied with the order dated 19.10.2016 and 19.12.2016 passed by this Court in both the petitions and furnished their report in this regard, upon perusal of which the aforesaid picture emerged, which has been noted while disposing of the contempt application.

Since the parties now have raised disputed question of facts, which in our view cannot be adjudicated by this Court in a disposed matter more particularly in a Constitution Petition, therefore the assertion of the applicants are found to be wholly misconceived. The decision relied upon by the leaned counsel is

found to be quite distinguishable from the facts obtaining in the instant matter.

We are cognizant of the fact that fraud vitiates every act and this Court possesses inherent powers to set aside its own judgment/decreed or final order, fraudulently or collusively obtained. The report submitted by the Respondents, which prima facie show that they have acted upon the letter dated 22.03.2018 issued by the Sindh Board of Technical Education Karachi, submitted report before this Court which contention of the parties were recorded in the order dated 25.04.2018. During the course of argument we have also been informed that the applicants have not challenged the letter dated 22.03.2018 issued by the Sindh Board of Technical Education Karachi before any competent forum.

With these observations, the listed applications bearing CMA No. 15924 of 2018 and 15925 of 2018 in C.P. No. D-1415 of 2015. and CMA No. 15927 of 2018 and 15928 of 2018 in C.P. No. 1820 of 2015 are found to be wholly misconceived and are accordingly dismissed. The applicants however would be at liberty to avail the remedy as provided them under the law.

JUDGE

Karachi  
Dated:-08.05.2018.

JUDGE