

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Syed Hassan Azhar Rizvi
Mr. Justice Adnan-ul-Karim Memon

C.P No.D-1267of 2010

(CMA No. 15021/2017 u/s 151 CPC)
CMA No. 8953/2011 (Contempt)

Zaheer Ahmed

Petitioner

Versus

Federation of Pakistan & others

Respondents

Date of hearing: 12.09.2017

Mr. Rafiq Ahmed Kalwar Advocate for the Petitioner.

Mr. Muhammad Khalil Dogar, Advocate for the Respondents a/w
Syed Nooruddin Ahmed, Coordinator /DR (Legal) FBR Camp
Karachi.

Mr. Muhammad Aslam Butt DAG.

O R D E R

ADNAN-UL-KARIM MEMON, J:- The instant petition was disposed of by this Court vide order dated 09.03.2011 with the following observations:-

“We would therefore dispose of this petition by directing that in case the petitioner meets all the eligibility criteria, he be considered for appointment to the post of Auditor (BS-14) on contract basis for two years according to the rules. However, in case he is not so selected the petitioner may be allowed to continue on his present post on the terms and conditions of his appointment. The matter shall be decided within one month from today”.

2. On 31.05.2011, the Petitioner being aggrieved by and dissatisfied with the non-action by the alleged Contemnors, filed the Application (CMA 8953/2011) under Article 204 of the Constitution, praying therein to initiate the Contempt Proceedings against the alleged Contemnors, who willfully disobeyed and disregarded the order dated 09.03.2011, passed by this Court.

3. The alleged Contemnors filed objections by way counter affidavit.

4. Mr. Rafiq Ahmed Kalwar, learned counsel for the Petitioner argued that the alleged Contemnors, despite clear directions have not complied with the above order in its letter and spirit. He further contended that directions were issued to the Respondents to consider the Petitioner for appointment to the post of Auditor (BS-14) and the matter be decided within one month; that the Respondent No.3 in respect of Petitioner's eligibility sought Report from the Commissioner Inland Revenue, HRM, RTO-III, Karachi who vide letter dated 19.04.2011 approved and recommended the Petitioner for appointment as Auditor; that the Respondent No.3 vide letter dated 29.04.2011 referred the matter to Respondent No.2 for appointment of Petitioner as Auditor, since the post of Auditor (BS-14) has now been upgraded to (BS-16) and the Petitioner is entitled to be appointed on the upgraded post as per directions contained in the order dated 09.03.2011 passed by this Court, however, to date the Respondents have failed to comply with the orders of this Court which amounts to Contempt of Court; that

this Court vide order dated 26.09.2013, while adjourning the matter, cautioned to the Respondents that if the orders of this Court are not complied with in its letter and spirit before the next date of hearing or the Respondents are not agreeable to the proposal of the Petitioners, this Court will be constrained to pass appropriate orders against alleged Contemnors for having violated the specific directions of this Court as contained in order dated 30.05.2013; that the order dated 09.03.2011 passed by this Court was not challenged. However, the Respondents impugned the order dated 26.09.2013 passed by this Court before the Hon'ble Supreme Court of Pakistan, in Civil Appeal No. 29-K of 2014. The Hon'ble Supreme Court of Pakistan vide Order dated 13.07.2015 dismissed the Appeal of the Respondents with the observation that in case the Respondents have any plausible explanation to offer about the compliance of the order dated 09.03.2011 in its letter and spirit they may undertake such exercise in the pending proceedings before this Court; that the Respondents have no plausible explanation to offer for compliance of the orders passed by this Court; that this Court vide order dated 30.05.2013 directed that the written test of the Petitioner be undertaken with regard to proficiency in English language, such test be undertaken to the extent of appointment on non-gazetted post and copy of test paper and marks obtained by the Petitioner be communicated to this Court. In case, Petitioner passes the test then the failure for implementing the Order dated 09.03.2011 would lead to issuance of Show Cause Notice to the concerned functionaries. This exercise was directed to be completed within a period of 60 days; that the

Respondents in defiance of the order dated 09.03.2011 passed by this Court, offered the Petitioner for the post of Assistant (BS-14) vide Offer Letter dated 28.08.2013, rather than the post of Auditor/Inspector, which is not in compliance of the orders passed by this Court as well as Hon'ble Supreme Court in its letter and spirit; that the Respondents again defeated the very purpose of the order passed by the Hon'ble Supreme Court of Pakistan, filed Review Application in Civil Appeal No.29-K of 2014, which was dismissed vide order dated 23.08.2016; that Petitioner filed Cr.Org Petition No. 8-K of 2016 before the Hon'ble Supreme Court of Pakistan, which was dismissed vide order 24.07.2017 with the observation that Petitioner may wait for decision of this Court, therefore, the Petitioner is agitating for his basic right and seeking indulgence of this Court for directions to the Respondents for compliance of order dated 09.03.2011 passed by this Court.

5. Mr. Muhammad Khalil Dogar, learned counsel for the alleged Contemnors has referred to (CMA No.15021/2017) filed by the Respondents and contended that the order of this Court dated 09.03.2011 has been complied with in letter and spirit in view of observation given by Hon'ble Supreme Court in Civil Appeal No.29-K of 2014 vide its order dated 13.07.2015; that earlier the post of Auditor was in BS-14, but subsequently on 10.11.2010 the same post was upgraded from BS-14 to BS-16, much before the order dated 9.3.2011 passed by this Court, therefore, the alleged Contemnors have no authority to offer appointment of the post of Auditor or Inspector (BS-16) to the Petitioner under the law/rules,

as the same post falls within the purview of Federal Public Service Commission, as the order dated 09.03.2011 of this Court is that the Petitioner be considered for appointment to the post of Auditor (BS-14) on contract basis for two years according to the rules; that in compliance of the orders passed by this Court, the Petitioner was offered for the post of Assistant (BS-14) on 28.08.2013, which was refused by the Petitioner twice although the same were offered upon the proposal given by the learned counsel for the Petitioner before this Court vide order dated 26.09.2013; that the Respondent No.3 attempted to request the Competent Authority to create a post of Assistant BS-14 to give effect to the order of this Court by appointing the Petitioner on that post but the Petitioner was adamant for the post of Auditor/Inspector which is in BS-16; that the Respondents No.2 and 3 have complied with the orders of this Court as well as Honorable Supreme Court and never imagined to disobey the same in any manner whatsoever. He lastly prayed for dismissal of CMA No. 8953/2011 and allowing the CMA No.15021/2017 filed by the Respondents.

6. Mr. Muhammad Aslam Butt, learned DAG representing Respondent No.1 has adopted the arguments advanced by Mr. Muhammad Khalil Dogar learned counsel for the alleged contemnors.

7. We have heard the learned counsel for the respective parties on the listed applications and perused the material available on record.

8. This Court while disposing of the instant Petition vide order dated 09.03.2011, directed the Respondents that if Petitioner meets the eligibility criteria he may be considered for appointment to the post of Auditor (BS-14) on contract basis according to the Rules.

9. Perusal of record shows that the Respondents did not challenge the order dated 09.03.2011 passed by this Court before any forum under the law and the same has attained finality. However, this Court passed several orders for compliance, but nothing could be done however the Respondents assailed the order dated 26.09.2013, before the Hon'ble Supreme Court of Pakistan in Civil Appeal No.29-K of 2014 and the Hon'ble Supreme Court vide order dated 13.07.2015 dismissed the Appeal of the Respondent / FBR with the following observations:-

“We have heard learned ASC for the appellants and perused the case record. He strongly contends that in compliance of earlier order dated 09.3.2011, whereby C.P No.D-1267 of 2010 was finally disposed of, the appellant No.1 through its Chief Commissioner had issued appointment order No. Admn-I/CCIR/RTO-III/2013-14/954, dated 28.08.2013, for the appointment of respondent No.1 as an Assistant (BPS-14), but he instead of accepting this post, has filed contempt proceedings against the appellants by moving such miscellaneous application in the disposed off case, wherein interim order impugned herein has been passed.

When we asked a specific question to him, as to whether order dated 9.3.2011 was ever challenged by the appellants before any forum, he candidly answered in the negative. This being the position, the appellants cannot be allowed to make any further submissions as regards the merits and demerits of such order, which remained unchallenged and thus attained finality.

In case respondent is of the view that compliance of order dated 9.3.2011 has not been made by the appellants in its letter and spirit and the appointment order referred to above

issued to him is violative of such order, he has every right to agitate such grievance before the High Court by filing proceedings against the appellants, therefore, no exceptions can be taken to such course followed by him.

This being the position, this appeal is dismissed, but with the observation that in case the appellants have any plausible explanation to offer about the compliance of the order dated 9.3.2011 in its letter and spirit, they may undertake such exercise in the pending proceedings before the High Court, wherein the impugned order has been passed.”

10. In the light of above averments, the Petitioner in his Contempt Application has highlighted the violation of the order dated 9.03.2011 passed by this Court. Now, the question before us as to whether in the Contempt Proceedings, we can enlarge the scope and allow the Parties to argue the matter on merits of the case? We are of the view that since the Petitioner challenged the order dated 26.09.2013 before the Honorable Supreme Court in Civil Appeal No.29-K of 2014, which was dismissed and Review Application was also dismissed. It has also been pointed out by the learned counsel for the alleged Contemnors that the post of Assistant (BPS-14) was offered to the Petitioner on 28.08.2013, which he refused. We have also gone through the Contempt Application, the reply of the alleged Contemnors to the effect that it had complied with the aforesaid order of this Court in its letter and spirit.

11. We are cognizant of the fact that this Court while disposing of the matter directed the Respondents (FBR) that in case the Petitioner meets all the eligibility criteria, he be considered for appointment to the post of Auditor (BS 14) on contract basis for two years according to Rules. This Court further directed that in

case the Petitioner is not so selected he may be allowed to continue on his present post on the terms and conditions of his appointment.

12. The explanation offered by the Respondents vide CMA No. 15021 of 2017, prima facie, is tenable under the law as the Petitioner was offered the post of Assistant (BS 14) by the Respondents in compliance of order passed by this Court dated 09.03.2011; but the same was refused by the Petitioner, who is continuing against the post, which he was holding at the time of decision of this Court on 09.3.2011.

13. In view of the facts and circumstances of the case and for the reasons alluded as above, we are satisfied with the explanation offered by the alleged Contemnors that substantial compliance of the order dated 09.3.2011 passed by this Court has been made in its letter and spirit, therefore at this juncture, no case for initiating Contempt Proceedings is made out against the alleged Contemnors. It is well settled principle of law that Contempt Proceedings is always between the Court and the alleged Contemnors. Thus, we are not minded to proceed with any further on the listed application bearing CMA No.8953/2011, having no merits, is accordingly dismissed. CMA No.15021/2017 under Section 151 CPC is disposed of accordingly.

JUDGE

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