

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P No. D-1466 of 2017, 1643 of 2007, 2773 & 2774/2010, 7004 of
2015, 897 of 2015, 693/2016, 1388 of 2017, 1740 of 2017.

Date Order with signature of Judge

For Direction

1. For hearing of CMA No. 23741/16. (Contempt application in C.P No. D-693/2016)
2. For hearing of CMA No. 16360/17. (Contempt application in C.P No. D-1643/2007/2016)
3. For hearing of CMA No. 23277/17. (Contempt application in C.P No. D-1466/2017)
4. For hearing of CMA No. 411 & 414/17. (Contempt application in C.P No. D-2773 & 2774/2010)

19.12.2017

Mr. Muhammad Haseeb Jamali, Advocate for Petitioners in C.P. No. D-1388/2017, 7004/2015 and 693/2016.

Mr. S. M. Intikhab Alam, Advocate for the Petitioner in C.P. No. D-1466/2017.

Mr. Z. U. Mujahid, Advocate in C.P. No. D-1643 of 2007

Petitioners present in person in C.P. No. D-897 of 2015.

Ms. Razia Sultana, Advocate for Respondent Pakistan Steel Mills.

Mr. M.G, Dastagir, Advocate for Pakistan Steel Mill

Mr. Muhammad Yamin Zuberi Law Officer, Pakistan Steel Mills.

Muhammad Arif Shaikh, CFO Pakistan Steel Mills.

Mr. Shaikh Liaquat Hussain, Assistant Attorney General.

Mr. Z. U. Mujahid learned counsel for Petitioner in C.P. No. D-1643 of 2007 contended that the said petition was disposed of by this Court vide Order 16.05.2011, which was assailed by the respondents before the Hon'ble Supreme Court of Pakistan in Civil Appeal No. 232-K of 2011. The Honorable Supreme Court upheld the order of this Court impugned by the Respondents. The Respondent/Pakistan Steel Mills preferred a Civil Review Petition bearing No. 164/2013, which was also dismissed by the Honorable Apex Court for non-prosecution vide order dated 04.12.2014. Pursuant to that the Respondents made an abortive attempt by filling an application for restoration Civil Review Petition, which was also dismissed by the Honorable Supreme Court. The learned Counsel further stated that several opportunities were provided to the contemnors for implementation of the Order dated 16.05.2011

passed by this Court; but, to no avail and in view of this scenario, the Petitioner has filed an application (CMA No. 16360 of 2017) under Article 204 of the Constitution Islamic Republic of Pakistan 1973 read with sections 3 & 4 of the Contempt of Court Ordinance, 2003 against the contemnors.

2. Upon notice, Pakistan Steel/the alleged contemnor No.2 filed their comments. Mr. M.G Dastagir, learned Counsel for the Respondent/ Pakistan Steel Mills stated that the Finance Department of Pakistan Steel Mills has confirmed that an amount of Rs. 74, 63,420/- towards Provident Fund and Gratuity has been paid to the Petitioner. Regarding back benefits, inviting attention of the Court to the comments filed by Pakistan Steel Mills, he narrated that Respondents are not in a position to pay these benefits to its employees due to paucity of funds; because, the Government of Pakistan is providing them funds for payment of salaries only to their existing employees. He further narrated that the respondents/Pakistan Steel Mills has requested the Government of Pakistan to provide funds for payment of Gratuity /Provident Fund / Leave encashment and other dues to its retired employees. He concluded that as soon as funds are received by Pakistan Steel Mills from the Government of Pakistan, the back benefits of the Petitioner (Mirza Hassan Ali) in C.P. No. D-1643 of 2007 will be settled and in view of this, he sought further time for compliance with the Order under reference passed by this Court.

3. Mr. Muhammad Haseeb Jamali, learned Counsel for the Petitioners in C.P. No. D-7004 of 2015, 693 of 2016 and 1388 of 2017, reiterated his arguments already made before this Court, which were recorded in the Order dated 15.05.2017 passed by this Court in C.P. No. D-1388/2017. He further added that the

Petitioners have not been paid the Provident Fund and Leave encashment since April 2013, therefore the instant petitions have been filed.

4. We have noticed that this Court on the admission of Muhammad Arif Shaikh, Chief Financial Officer (CFO) of Pakistan Steel Mills, passed Order dated 15.05.2017 and directed them to ensure payment of Gratuity to the Petitioners after scrutinizing their service record in accordance with law within 45 days and submit compliance report through M.I.T-II of this Court. Muhammad Arif Shaikh (CFO), Pakistan Steel Mills reiterated his stance already taken before this Court, but, submitted that the said benefits could not be paid to the Petitioners since 01.5.2013 and June 2015 due to serious financial crunch faced by Pakistan Steel Mills. We confronted him that this Court vide Order dated 4.2.2016 passed in Constitution Petitions No. D-7004 of 2015 directed Pakistan Steel Mills to implement the Directives of this Court and the Respondent No.2 in compliance deposited cheque for an amount of Rs. 175.185 Million with the Nazir of this Court drawn in his name and is lying with him and despite of this why the Court directives/Orders are not being complied with. The CFO of the Respondent No.2 stated that Pakistan Steel Mills is working under the Ministry of Industries and Production/the Respondent No.5 and the Respondent No.4/Provident Trust Fund is in touch with Respondent No.5 and as soon as, funds are received by the Respondent No. 04, the issue of payment of dues of retired employees of Pakistan Steel Mills/Petitioners will be resolved and the learned counsel for Pakistan Steel Mills also narrated the same position. The learned Counsel for the Petitioners further informed the Court that recently Pakistan Steel Mills has leased out Port Qasim land to the

Government of Punjab, who have paid an amount of Rs. 1.48 billion to them, such fact has been admitted by the CFO of Pakistan Steel Mills. The facts before us are that Pakistan Steel Mills in its comments have admitted claim of the Petitioners and only reason narrated before us today for non-compliance with the Court's Order is non-availability of funds with them. This contention is not sustainable in view of disclosure by the CFO of Pakistan Steel Mills and endorsed by the learned Counsel for the Respondent No. 02 that they have received an amount of Rs. 1.48 billion from the Government of Punjab as lease money.

5. Mr. Muhammad Arif Shaikh (CFO), Pakistan Steel Mills, today files compliance report along with Pakistan Steel Mills Board of Director Resolution passed in its 393rd meeting held on 12.12.2017, wherein the Court Orders were discussed coupled with the procedure for payment of dues to the Petitioners. Decision of the said resolution is reproduced below:

“The Pakistan Steel management also re-affirms that it will act in letter & spirit to comply the decision of the Honorable Sind High Court. The Pakistan Steel Management would also like to apprise the Honorable Court that Pakistan Steel is closed since 10th June 2015 due to low pressure of Natural gas and all its production activities are at a halt. PSM is therefore not in the position to generate funds to pay the employees' salaries and the dues to retired employees. The net salaries of employees are being paid by the Government of Pakistan as interest free loan.

To comply with orders of Sind High Court, PSM is trying its best to arrange the funds from Government of Pakistan as well as from its internal resources.

The Honorable Court is therefore, requested to grant sufficient time to Pakistan Steel as under to comply the directions of Honorable Court:-

- i. The Authentication of Provident Fund Accounts will be initiated after validation of rate of interest by Ministry of Finance in terms of section 227 of the Companies Ordinance 1984.***
- ii. The figures of Provident Fund, Gratuity Fund and other dues will be verified by independent Auditor***

(Chartered Accountant) of category "A" as approved by State Bank of Pakistan (SBP).

- iii. After Authentication / audit PSM will get approval from Board of Directors and then submit the proposal for payment of dues of retired employees of PSM to Ministry of Industries & Production of onward submission to Privatization Commission for final approval of ECC of the cabinet.**

The payment procedure resolved by Pakistan Steel Mills Board through the same Resolution is as follows:-

"On availability of funds, the PSM management will disburse the liabilities of retired employees on the basis of following priority/ order subject to authentication of dues by an independent accountant/auditor.

- First Priority in disbursement of dues be given to the deceased employees.**
 - Once the dues of deceased employees have been settled, the outstanding dues of retired employees be paid in order of their date of retirement and submission of No Demand Certificate (NDC) i.e. the employee who has retired earlier be paid the dues first."**
 - The employees who have retired upto June 2015 have been paid their PF dues as per interest rate assumption of 12.5% per annum; using a different rate of interest for the other employees will be unfair and discriminatory and may lead to complications and litigation. As such, the PF for all employees be calculated at the rate of 12.5% per annum from 2010 to 2015. For the period 2016 and 2017 the rate of interest be calculated by referring the Provisions in Section 227 of Companies Ordinance 1984. The above shall be subject to validation by the Finance Division Government of Pakistan.**
- i. The Board further directed the PSM management that the outstanding Gratuity, PF and other dues of employees who have retired or will retire upto 30th June 2018 shall be authenticated by an Independent Auditor to be hired by PSM management from among A-category chartered accountant as per SBP List and having global affiliation and the authenticated data be submitted to the Board for its approval.**

- ii. The Board observed that the salaries of officers as revised in 2011 and those of staff as revised in 2012 have been in force since 2011 and 2012 respectively. This has accrued a right to the employees which cannot be withdrawn at this stage notwithstanding the questionable conduct of then PSM management which revised the pay-scales and implemented them without approval of the Board.**
- iii. The Board requested the Ministry of Industries and Production to appoint an enquiry committee to probe into the reasons for not implementing the Board decision in BoD meeting held on June 09, 2014 and taking action against those responsible for approving the CBA Agreement of 2010 and implementing through notification issued by PSM the revised pay scales without approval of the Board.**
- iv. The Board directed that the pay scales for officers as revised in 2011 and pay scales for the staff as revised in 2012 shall be considered while calculating the PF, Gratuity and other dues of the retired employees.”**

6. We are constrained to observe that this Court passed several Orders and directed the Respondents (Pakistan Steel Mills, Ministry of Industry and Production, Privatization Commission) for resolving the Petitioners' payments problems as decided by the Court. But, after disclosure of an amount of Rs. 1.480 billion received by Pakistan Steel Mills from the Government Punjab as lease money and perusal of the compliance report filed by the CFO, Pakistan Mills today and non-serious approach demonstrated by the Respondents in past, we reach at the conclusion that the Respondents do not intend to implement the Court's Orders, which cannot be tolerated. The Petitioners and the representatives of the Respondents were present in the Court when the petition bearing C.P No.D-7004 of 2015 was disposed of vide Order dated 4.2.2016 and C.P No.D-693 of 2016 was

disposed of vide Order dated 29.04.2016. This Court also passed various orders in pending/disposed of petitions on 15.5.2017, 23.8.2017, 28.9.2017, 14.11.2017 and 7.12.2017 with consent of the parties.

7. We are not convinced at all with reasons advanced by the Respondents for non-implementation of Orders of this Court and observe that the Petitioners have prima facie made out the case for contempt proceedings against the contemnors. Therefore, we decide to continue with the contempt proceedings on the listed applications under Article 204 of the Constitution of Islamic Republic of Pakistan, 1973 read with section 3 and 4 of Contempt of Court Ordinance 2003 against the alleged contemnors for disobeying the Orders of this Court and direct the office to issue show cause notices to the alleged contemnors within a period of 15 days.

The matter is adjourned to be fixed after 15 days.

JUDGE

Karachi
Dated:-19.12.2017.

JUDGE

Shafi Muhammad P.A