

IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No. D – 302 of 2011

PRESENT:

MR. JUSTICE AQEEL AHMED ABBASI.
MR. JUSTICE AZIZ-UR-REHMAN.

Muntazir Mehdi S/o Khadim Hussain

Vs.

Province of Sindh and others

Petitioner: Muntazir Mehdi, in person.
Province of Sindh: through Mr. Ghulam Shabbir Shah,
Additional Advocate General Sindh.
Date of Hearing: 13.02.2018.
Date of Order: 13.02.2018.

ORDER

Aqeel Ahmed Abbasi, J. Instant petition alongwith other connected petitions, including C.P. Nos.D-301 & 308 of 2011, was finally disposed of vide common judgment dated 05.09.2012, whereas, the relevant finding of the Divisional Bench, for the purposes of subject controversy, which has been agitated by the petitioner by filing contempt application, as contained in Para-14, is reproduced as under:-

“14. This brings us to last contention of Mr. Abdul Salam Memon as he stated that between Rs.10,000/- to Rs.50,000/- there is much more difference than between Rs.50,000/- and Rs.75,000/-.This certainly is a matter which should be seriously considered by the Department of Law, Government of Sindh but it is not for this Court to pass order laying down or modifying the allowance. We certainly do expect that the Provincial Government shall give its due consideration to this aspect.”

2. Record shows that pursuant to aforesaid judgment, petitioner continued to express his grievance for inaction on the part of respondents who did not make payment of the special allowance to the petitioner, who filed contempt application, however, the same was disposed of vide order dated 14.04.2016, in the following terms:-

“14.04.2016.

Malik Naeem Iqbal, advocate for the petitioner.

Mr. Sibtain Mahmood, AAG.

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Mohsin Ali, Deputy Accountant General, present in Court, has submitted statement duly signed by Accountant General Sindh. He further submits that enhancement of special allowance is being paid on current basis but so far as the arrears with effect from the date of approval of summary is concerned, the payment will be made after submission of bill by the petitioner with effect from the date of summary. Learned counsel for the petitioner submits that without prejudice to his right, he will submit bill and if he found aggrieved, for the arrears from the date of induction, he may avail appropriate remedy in accordance with law. Payment will be made within 20 days from date of submission of bill with effect from the date of approval of summary by the petitioner. Contempt application is disposed of.”

3. Petitioner still feeling aggrieved, filed the listed application, CMA No.22643/2017, under Section 3 & 4 of the Contempt of Court Ordinance, 2003, read with Article 204 of the Constitution of Pakistan, 1973, wherein, it has been stated that above order dated 14.04.2016 is being violated and the petitioner is being discriminated, as according to petitioner, the order passed by the Chief Minister Sindh on the summary dated 26.12.2015, duly communicated through letter dated 06.01.2016 issued by Law Department, relating to Special Allowance for Prosecutor General, Additional Prosecutor General (BS-19), Deputy Prosecutor General (BS-18), and Assistant Prosecutor General (BS-17), etc, is being misinterpreted by the alleged contemnor i.e. Accountant General Sindh, who is not releasing the arrears of special allowance to the petitioner

from the date of appointment, whereas, such arrears have been paid from the date of approval of summary dated 26.12.2015.

4. Notice of contempt application was issued, pursuant to which, comments have been filed, wherein, it has been stated that the order passed by this Court has not been violated as amount of Rs.25000/- towards special allowance is being paid to petitioner with the monthly salary from the date of approval of summary, whereas, there is dispute with regard to interpretation of letter dated 06.01.2016, issued by the Law Department, which is silent about arrears from the date of appointment. It has been further submitted that in response to a query made by Audit Department, it has been stated by the Law Department that petitioner alongwith other Assistant Prosecutor General, are entitled to the arrears of Special Allowance from the date of approval of summary and not from the date of appointment.

5. Learned Additional Advocate General, was inquired as to whether Deputy Prosecutor Generals are being paid an amount of Rs.50,000/- towards Special Allowance with effect from their date of appointment, or from the date of approval of summary as referred hereinabove, in response to which, learned Additional Advocate General, has candidly conceded that they are being paid Special Allowance from the date of appointment and not from the date of approval of summary. It appears that the issue regarding payment of Special Allowance to various officers of Prosecutor General Sindh, including Additional Prosecutor General (BS-19), Deputy Prosecutor General (BS-18) and Assistant Prosecutor General (BS-17) was taken up for consideration before the worthy Chief Minister of Sindh, which was duly considered in the aforesaid summary and the following order was passed:-

“If the Dy: Prosecutor General is getting special allowance of Rs.50,000/- there is all fairness Asstt: Prosecutor may be given Rs.25,000/-. But the special allowances to Addl: Dy and And Asstt: Prosecutors General may be performance based.

Law Department should get monthly report through Prospector General of their performance.”

6. It appears that summary was put up before worthy Chief Minister of Sindh, to examine the entitlement of various officer in Prosecutor General Office to the special allowance and to see as to how officers of Prosecutor General Sindh, shall be treated at par with the officers of Prosecutor General Office of other provinces, whereas, pursuant to the decision of a Divisional Bench of this Court, if the Deputy Prosecutors (BS-18), were being paid Special Allowance, therefore, Assistant Prosecutors (BS-17), were required to be treated at par. Since, it has been conceded by the learned Additional Advocate General that other officers of the Prosecutor General Sindh have been paid the Special Allowance from the date of their appointment, therefore, we see no reason that as to why, similar treatment may not be extended to the petitioner Assistant Prosecutor (BS-17), currently working as Deputy Prosecutors (BS-18), alongwith other similarly placed petitioners/Asstt: Prosecutors (BS-17). Perusal of the summary approved by worthy Chief Minister of Sindh it is clear that there has been no cutoff date which may suggest that such persons will not be entitled to arrears with effect from the date of their appointment.

7. In view of hereinabove facts and circumstance, we are of the view that the summary of the worthy Chief Minister of Sindh, contains no ambiguity, according to which, all the officers of Prosecutor General Sindh, including the petitioner, are entitled to be treated at par without any discrimination, hence are liable to be paid arrears of special allowance of Rs.25000/- from the date of their appointment like other officers of Prosecutor General Sindh Office. Accordingly, listed appellation, CMA No.22643/2017, is disposed of with the directions to the respondents to make payment of the arrears of Special Allowance to the petitioner and other Assistant Prosecutor General (BS-17), who are party in the aforesaid petitions, with effect from the date of their

appointment, preferably within a period of two months from the date of this order.

Let copy of this order be supplied to the Additional Advocate General Sindh, cover-in-hand, who shall communicate the same to all concerned, particularly, Accountant General Sindh, who shall expedite the matter without further loss of time.

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