

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-5608 of 2014

1. For order as to maintainability of CMA No.13001/2018 (Review Appl).
2. For hearing of CMA No.7547/2019 (39 R. 1&2 CPC).
3. For hearing of CMA No.648/2019 (151 CPC).

Mansoor-ul-Haq Solangi.....Petitioner

Versus

Federation of Pakistan & another.....Respondents

Date of hearing: 22.04.2019

Date of Order: 22.04.2019

Petitioner present in person
Syed Ali Ahmed Tariq advocate for Respondent No.2 alongwith
Mr. Naeem Iqbal, Law Officer of Respondent No.2
Mr. Kashif Paracha, DAG

ORDER

The captioned Petition was disposed of vide Judgment dated

02.4.2018 with the following observations:-

"21. In the foregoing legal position of the case, we are not convinced with contention of the learned Counsel for the Respondent-Company that the Petitioner is not entitled to retiring benefits.

22. In the light of above facts and circumstances of the case, the instant Petition is hereby disposed of in the following terms:-

i) The Competent Authority of Respondent-Company is directed to take fresh decision on the issue of inclusion/calculation of service benefits of the Petitioner in accordance with law and judgment/orders passed by the Honorable Supreme Court of Pakistan and this Court as discussed at para No.10 and award post-retirement benefits/dues if any outstanding, to the petitioner (strictly excluding back benefits) without discrimination within a period of two months, from the date of receipt of the Judgment of this Court.

ii) The Petitioner is entitled to receive the amount of Rs.1,685,000/- (Rupees one Million six hundred eighty five thousand only), if not received earlier, in terms of the order dated 28.12.2016 passed by the Hon"ble Supreme Court."

2. On 13.4.2018, the Applicant filed an application under Order 47 read with Section 114 of Civil Procedure Code (CMA No.1300/2018) for review of the judgment dated 2.4.2018 passed by this court.

3. On **23.4.2018** this court directed the learned counsel for the Petitioner to satisfy this Court regarding maintainability of the review application (CMA No.13001/2018).

4. Petitioner namely Mansoor-ul-Haq Solangi, who is present in person, has referred to the paragraph 19 of the Judgment as discussed supra and argued that the aforesaid paragraph of the judgment, has not been complied with in its letter and spirit; that the claim of the Petitioner, regarding those five officials namely Mr. Ghulam Sarwar Baloch, Mr. Abdul Bari Khan, Mr. Naseem-ul-Haque Satti, Mr. Shahid Zubair and Mr. Akbar Hussain of the Respondent-Company, who received all service benefits, whereas Petitioner is denied the same. This claim of the Petitioner is refuted by the learned counsel for the Respondent-Company, the only reason, which has been put forward that the Hon^{ble} Supreme Court has declined the back benefits to the Petitioner; therefore he cannot be given the same benefits as given to other employees referred to hereinabove. An excerpt of the same is reproduced as under:-

“We are of the considered view that this is a discriminatory attitude to refuse the genuine claim of the petitioner, as the order of the Honorable Supreme Court is very clear that at the relevant time petitioner failed to produce any documentary evidence to the effect that when he was out of service, he did not work anywhere to gain financial benefits, therefore, we reiterate the observation of the Honorable Supreme Court made in the Review Petitions as discussed supra that if it is at all the Petitioner is entitled to receive his pensioner dues under the law, for which the Respondent-Company has to decide the case of petitioner for such purpose, without discrimination. In this regard while placing reliance on the dicta laid down by the Honorable Supreme Court in the case of I.A. Sharwani and others v. Government of Pakistan through Secretary Finance Division, Islamabad and others (1991 SCMR 1041). The larger Bench of learned five members Bench of Honorable Supreme Court made exhaustive scrutiny of with respect to granting of pensionary benefits to a class of retired employees of Executive Branch, who had retired within a particular period, while the same was denied to another class of employees similarly placed, who had retired in another period. Accordingly, while following the principle of law enunciated in I.A. Sherwani’s case (ibid), and in view of the peculiar facts and circumstances of the present case while invoking the jurisdiction conferred upon this Court under Article 199 of the Constitution, we hereby conclude that the Respondent-Company cannot fix two separate categories for paying the service benefits, only to be paid to the other employees of the Company, i.e. Mr. Ghulam Sarwar Baloch, Col. Retried Akbar Hussain, Abdul Bari Khan, Naseem-ul-Haq Satti and Shahid Zubair, and excluding the Petitioner is erroneous.”

Petitioner next added that this court vide order dated 08.4.2019 directed the respondent No.2 to decide the case of the petitioner only to the extent of the direction as referred in

paragraph-19 of the judgment within a period of two (02) weeks' time after affording fair opportunity of hearing to the petitioner but nothing has been done. Petitioner has submitted that despite clear directions in the above said Orders the respondent No.2 has not complied with the same in its letter and spirit; that the Petitioner has been discriminated by the respondents by allowing all the back benefits of the intervening period to the colleagues of the Petitioner, who retired from their respective services, whereas denied to the petitioner; that the Respondents have failed to justify the service benefits given to five officials namely Mr. Ghulam Sarwar Baloch, Mr. Abdul Bari Khan, Mr. Naseem-ul-Haque Satti, Mr. Shahid Zubair and Mr. Akbar Hussain of the Respondent-Company in his order dated 17.4.2019; that the respondent No.2 has maneuvered the facts by justifying his illegal actions; that the decision taken by the Chief Executive Officer (CEO) of PACO (Defunct) is in violation of the orders passed by this Court in the aforesaid proceedings; that no personal hearing was given to the Petitioner while passing the impugned order. Petitioner has reiterated his submissions as made in the final disposal order and counter affidavits/rejoinders filed in the aforesaid proceedings by him. He next argued that the stance taken by the CEO in his decision dated 17.4.2019 is erroneous and based on mala fide intention; that discriminatory treatment has been meted out with him as no plausible explanation has been given in the decision regarding non-payment of his retirement benefits including back benefits as given to the officials discussed in paragraph-19 of the judgment passed by this Court.

5. We asked from the Petitioner to justify the grounds of review application, he reiterated his submissions as made in the review application and finally said that the judgment passed by this Court is erroneous on various factual as well as legal aspects, which

needs to be reviewed. He lastly prayed for reviewing the judgment dated 02.4.2018 passed by this Court with directions to the Respondents to clear his all pensionery benefits in accordance with law.

6. We posted another question to the Petitioner that since the paragraph No.22(i) of the judgment dated 2.4.2018 and order dated 16.3.2019 passed by this Court has been substantially complied with by the Respondent No.2 by rendering the decision dated 17.4.2019, which is now a separate cause of action and he has the remedy as provided under the law. He in reply, to the query has submitted that the aforesaid decision without hearing is nullity in the eyes of law; therefore, the same is not sustainable and can be called in question in the present proceedings.

7. Conversely, Syed Ali Ahmed Tariq, learned counsel representing the Respondent No.2 supported the decision passed by the CEO PACO (Defunct) and argued that the case of the Petitioner has been thoroughly examined and the competent authority found him not entitled for any further benefit as the same has already been paid to him in accordance with the judgment passed by the Honorable Supreme Court as discussed in the main judgment passed by this court. He lastly prayed for allowing the CMA No.648/2019 (151 CPC), filed on behalf the respondent-company, which is for condonation of delay in passing the final order by CEO of PACO and prayed for dismissal of both the applications filed by the Petitioner.

8. Mr. Kashif Paracha, learned DAG also supported the stance of the learned counsel representing Respondent No.2.

9. We have heard the Petitioner, who is present in person and learned counsel for the Respondent No.2 and perused the material available on record.

10. We have gone through the paragraph No.22 (i) of the judgment dated 2.4.2018, order dated 16.3.2019 and order dated 08.4.2019 passed by this Court, whereby the competent authority of respondent No.2 was directed to decide the case of the petitioner only to the extent of the direction as referred in paragraph-19 of the judgment within a period of two (02) weeks' time after affording fair opportunity of hearing to the petitioner. It was further directed that decision should be filed along with personal affidavit of the concerned authority on or before next date of hearing.

11. On 7.2.2019, Petitioner filed another application (CMA No. 7547/2019) under Sections 148 and 151 CPC read with Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 for interim relief i.e. sanctioning an amount of Rs.10 Million to him on account of his salaries. Now, the question before us as to whether through the listed application, we can enlarge the scope of a disposed of matter and allow the Parties to argue the matter on merits of the case?

12. Perusal of record shows that nobody assailed the judgment dated 02.4.2018 passed by this court, before the Honorable Supreme Court and the same has attained finality.

13. In the light of above averments, the Petitioner in his Applications has highlighted the violation of paragraph No. 19 of the judgment dated 02.4.2018 and orders passed by this Court in the present proceedings.

14. Record reflects that in compliance with the aforesaid order the Respondent No.2 filed statement dated 19.4.2019, whereby the competent authority of PACO (Defunct) finally decided the matter of the Petitioner on 17.4.2019 in the light of paragraph-19 of the judgment passed by this court, which is supported by an affidavit of CEO, with the following observation: -

“9. In view of the above said reasons no discrimination has been done while assessing/calculating the retirement benefits of Mr. Mansoor-ul-Haq Solangi as the same benefits have been extended to all other officers cited by him, although the amounts so received by those officers certainly differed to the amount received by Mr. Mansoor-ul-Haq Solangi but purely due to the fact that those officers were retired after the retirement of Mr. Mansoor-ul-Haq Solangi and were on higher Grade/designation with enhanced pay scales, hence were better placed at the time of their retirement as compared to Mr. Mansoor-ul-Haq Solangi and for obvious reasons in the light of the principles enunciated by the Honourable Supreme Court in the case of I.A. Sherwani mentioned supra, as all officers retired after the retirement of Mr. Mansoor-ul-Haq Solangi whereas in the meantime their privileges & benefits got improved and the same were not applicable retrospectively to earlier retired employees including Mr. Mansoor-ul-Haq Solangi.”

15. We have also gone through the contents of the Applications filled by the petitioner, the reply of the respondents to the effect that they had complied with the aforesaid judgment and orders of this Court in its letter and spirit.

16. We have noticed that the review of the order can only be made by the party, if there is mistake or error apparent on the face of the record as provided under Order XLVII (Section 114 CPC). The Petitioner through the review application has attempted to call in question the validity of the judgment dated **02.4.2018** and orders passed by this Court without assailing the same before the Appellate Forum.

17. In our view, this is a disposed of matter and the decision taken by the Respondent No.2 can be called in question in another proceedings with all just exceptions and not in a disposed of matter, if the Petitioner is at all aggrieved by the aforesaid decision. At this stage the applicant has emphasized that his fundamental rights have been infringed by not paying him the retirement/back benefits by the Respondent No.2, therefore, these proceedings are still alive and this Court can take cognizance of the matter by giving appropriate directions to the Respondent No.2 to clear his all legal dues as owed by them.

18. Be that as it may, the grounds taken by the Petitioner in the review application were considered at the time of hearing of main

petition and the request of the Petitioner regarding back benefits was declined vide judgment dated 02.4.2018 on merits. Therefore, the question of reviewing the judgment does not merit consideration.

19. For the aforesaid reasons, we are not persuaded by the contention of the Petitioner that any case of review is made out. Therefore, the review application merits dismissal, which is accordingly dismissed as, in our view, the judgment dated **02.4.2018** passed by this court was based on correct factual as well as legal position of the case and we do not find any inherent flaw floating on the surface of the record requiring our interference. Consequently, the applications bearing CMA No.13001/2018 and CMA No.7547/2019 are dismissed. CMA No.648/2019 (151 CPC) filed by the respondents is disposed of in the light of final order dated 17.4.2019 passed by the respondent No.2.

JUDGE

JUDGE