

# IN THE HIGH COURT OF SINDH, AT KARACHI

**Present:**

**Mr. Justice Adnan-ul-Karim Memon**

**Mr. Justice Adnan Iqbal Chaudhry**

**C.P No. D- 965 of 2016**

Abdul Qayoom Solangi.....Petitioner

V/s

Province of Sindh & others.....Respondents

**For Direction**

1. For orders on CMA No.34077/18 (Urgency granted)
2. For orders on CMA No.33732/18 (Contempt)

**Date of hearing: 08.11.2018**

Mr. Ahmed Ali Ghumro, advocate for the Applicant.

Mr. Ali Safdar Debar, Assistant Advocate General.

## **ORDER**

**ADNAN-UL-KARIM MEMON, J:-**The instant petition was disposed of vide Judgment dated 25.1.2018, with the following directions:-

**“20. In the wake of above discussion, the aforementioned Constitution Petitions are disposed of in the following terms along with pending application(s):-**

- a) Government of Sindh / Competent Authority is directed to take decision whether Petitioner’s initial appointment in (Defunct) SASO is as Junior Clerk in BPS-5, now in BPS-11 or as Assistant in BPS-11.
- b) The Competent Authority to pass an appropriate order as provided under Rule 9-A of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules 1974, and the dicta laid down by the Honorable Supreme Court of Pakistan in the case of Ali Azhar Khan Baloch & others vs. Province of Sindh & others [2015 SCMR 456], after granting Petitioner in C.P. No. 965 of 2016 a meaningful hearing within a period of two months.”

2. We have noticed that the aforesaid judgment was assailed before the Hon’ble Supreme Court of Pakistan in Civil Petition

No.325-K of 2018 and the same was disposed of vide order dated 17.7.2018, with the following observations:-

***“The Petitioner’s claim as to his appointment was under consideration before the High Court and the High Court vide impugned judgment passed the following order:-***

***“20. In the wake of above discussion, the aforementioned Constitution Petitions are disposed of in the following terms along with pending application(s):-***

***a) Government of Sindh / Competent Authority is directed to take decision whether Petitioner’s initial appointment in (Defunct) SASO is as Junior Clerk in BPS-5, now in BPS-11 or as Assistant in BPS-11.***

***b) The Competent Authority to pass an appropriate order as provided under Rule 9-A of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules 1974, and the dicta laid down by the Honorable Supreme Court of Pakistan in the case of Ali Azhar Khan Baloch & others vs. Province of Sindh & others [2015 SCMR 456], after granting Petitioner in C.P. No. 965 of 2016 a meaningful hearing within a period of two months.”***

***2. Petitioner, present in person, states that his grievance is not being redressed and the competent authority despite judgment rendered on 25.01.2018 has not rendered any hearing to decide the matter as per direction of the High Court. The learned High Court vide impugned judgment directed the competent authority to pass an appropriate order within two months. The petitioner may approach the learned High Court for non-compliance and/order action against the authority concerned as it is the High Court who is competent to implement its own judgment in accordance with law. No case for interference is made out. This petition is accordingly dismissed and leave is declined.”***

3. Record reveals that on 03.11.2018 Petitioner filed an application (CMA No.33732/2018) under Section 3 & 4 of

Contempt of Court Ordinance, 2003 read with Article 204 of Constitution, for initiation of contempt proceedings against the alleged contemnor on account of his willful, intentional and deliberate act of disobeying the above mentioned Judgment passed by this Court.

4. Mr. Ahmed Ali Ghumro, learned counsel for the Petitioner submits that the alleged Contemnor is not bothered to comply the directions given by this Court, even after lapse of considerable time. He next submitted that the Hon'ble Supreme Court has directed to approach this court for implementation of the Judgment dated 25.1.2018 passed by this Court. At this stage, Mr. Ali Safdar Debar, learned AAG has intervened and submitted that in pursuance of the Judgment dated 25.01.2018 passed by this Court, the alleged Contemnor has complied with the aforesaid judgment of this Court in its letter and spirit and decide the matter of Petitioner vide order dated 10.08.2018. He attempted to justify the action of the alleged Contemnor by referring the order dated 10.08.2018 passed by the Chief Secretary, Government of Sindh. He next submitted that Petitioner was heard on the issue referred to him by this Court and the Competent Authority relieved him from Excise & Taxation Department to join his parent department i.e. Agriculture Supply & Prices Department. An excerpt of the aforesaid order is reproduced as under:-

***No.SO(LR) SGA&CD-11(38)2008  
Government of Sindh  
Services, General Administration  
& Coordination Department***

***Karachi dated the 10<sup>th</sup> August, 2018***

**ORDER**

***In pursuance of judgment dated 21.12.2017 passed by Honourable High Court of Sindh in C.P. No.D-965 of 2016 filed by Mr. Abdul Qayoom Solangi and with the approval of Competent Authority i.e. Chief Minister Sindh, this Department's order of even No. dated 26.08.2008 and 27.09.2008 regarding declaring Surplus and absorption in respect of Mr. Abdul Qayoom Solangi, ex-surplus employee of defunct SASO (Larkana & Sukkur) as Excise & Taxation Inspector (BS-14), in Excise and Taxation Department is hereby cancelled/withdrawn and declared as ab-initio being (out of cadre) and he stands relieved from the Excise & Taxation Department to join his parent department i.e. Agriculture Supply & Prices Department immediately.***

**II**

***Mr. Abdul Qayoom Solangi, Junior Clerk (BS-11), ex-surplus employee of defunct SASO, is hereby repatriated to his parent Department i.e. Agriculture Supply & Prices Department and Administrative Department is hereby directed to accommodate him to the vacant post of Junior Clerk (BS-05) now upgraded in BS-11 or any other equivalent post in its one of lower formation, as SASO does not exist now and also to grant him back dated seniority, on the same analogy as has been done in the case of Mr. Ali Azhar Khan Baloch. Meanwhile, the Petitioner may also be afforded personal hearing by the Secretary, Agriculture Department in line with judgment of the Honourable High Court of Sindh at the date and time as convenient to him.***

**MAJOR ® AZAM SULEMAN KHAN  
CHIEF SECRETARY**

5. Learned counsel for the Petitioner was confronted with the above factual position of the case; he in reply argued that this is not a true compliance of the Judgment passed by this Court, which is required to be complied with in its letter and spirit.

6. We have heard learned counsel for the petitioner as well as learned Assistant Advocate General, Sindh and perused the material available on record.

7. The grievance of the Petitioner is that he has not been heard by the Competent Authority in pursuance of the Judgment dated 21.12.2017 passed by this Court. Record reveals that the alleged Contemnor has passed order dated 10.08.2018, whereby Petitioner was relieved from Excise & Taxation Department to join his parent department i.e. Agriculture Supply & Prices Department. We are cognizant of the fact that Petitioner belonged to (Defunct) SASO, and its employees were not Civil Servants, therefore, we observed in the Judgment dated 25.01.2018 that his absorption/retaining him in Excise and Taxation cadre was not sustainable in law. Prima-facie, the Respondents have rightly relieved him to his parent department vide order dated 10.08.2018.

8. In the light of above averments, the Petitioner in his Contempt Application has highlighted the violation of the Judgment dated 25.01.2018 passed by this Court. In the Contempt Proceedings, we cannot enlarge the scope of disposal order dated 25.01.2018 passed by this Court and allow the parties to argue the matter on merits of the case or refer the matter to the respondents for further deliberation on the issue.

9. The explanation offered by the respondents vide order dated 10.08.2018, prima facie, is tenable under the law as the case of petitioner was considered by the Competent Authority on the aforesaid issue and submitted compliance report, which is without exception.

10. In view of the facts and circumstances of the case and for the reasons alluded as above, we are satisfied with the explanation furnished by the alleged contemnor that substantial compliance of the Judgment dated 25.01.2018 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 contemnor. Thus, we are not inclined to continue with any further on the listed application bearing CMA No.33732/2018, having no merits, is accordingly dismissed.

JUDGE

JUDGE