

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-4422 of 2017

(CMA No.14238/2018 (Contempt))

Syed Irtaza Raza Naqvi & others Petitioners

Versus

Federation of Pakistan & others Respondents

Date of hearing: 21.08.2019

Date of decision: 26.08.2019

Malik Naeem Iqbal and Mr. Faizan Hussain Memon, advocates for the Petitioners.

Mr. Muhammad Nishat Warsi, DAG.

Mr. Asim Iqbal a/w Mr. Farmanullah Khan for alleged Contemnor No.2.

O R D E R

ADNAN-UL-KARIM MEMON-J. Through a common judgment dated 19.1.2018, this Court directed the Respondent-Company to consider the cases of Petitioners for regularization of their service in accordance with law. Subsequently the said judgment was affirmed by the Honorable Supreme Court Vide Order dated 12.3.2018 passed in Civil Petitions No.67-K & 68-K of 2018 with the following observation:-

“4. Mr. Azim Iqbal, ASC while referring the Uniform Recruitment and Promotion Policy submitted that only those contract employees who could obtain 60% marks in the prescribed test were regularized and since the respondents could not achieve the targeted percentile, therefore, their services were not regularized. It was submitted that policy prescribed for regularization comprised of 35% PMS rating, 35% aptitude test, 20% interview evaluation and 10% service tenure and a successful candidate had to obtain 60% marks. Counsel further referred to the Summary of NTS results showing that none of the respondents have attained 60 marks. However, perusal of NTS result sheet reflects that except Muhammad Sumair Gul Ansari, all the respondents had achieved more than 35% marks in the aptitude test conducted by NTS. So far as PMS rating, interview evaluation, service tenure respectively having 35, 20 and 10 marks, nothing has been placed before us to show that the respondents could not achieve the targeted percentile.

5. In the circumstances, no case of interference is made out. These petitions, as a consequence, are dismissed and leave declined.”

2. The Petitioners have filed the Application (CMA No.14238/2018) under Article 204 of the Constitution read with Section 3 & 4 of the Contempt of Court Ordinance, 2003 praying therein for initiation of

Contempt Proceedings against the alleged Contemnors, for willful disobeying, disregard and non-compliance of the above mentioned judgment dated 19.1.2018.

3. Mr. Malik Naeem Iqbal, learned counsel for the Petitioners has argued that the alleged Contemnors despite clear directions have not complied with the above judgment in its letter and spirit. He further contended that directions were issued to the Respondents to consider the cases of the petitioners for regularization of their services in accordance with law. He further submitted that though the service of the Petitioners have been regularized, except Petitioner No.4 namely Muhammad Sumair Gul son of Gul Muhammad Ansari on the premise that he did not meet the criteria as held by this Court in Para-16 of the Judgment on the ground that petitioner No.4 secured only 30 marks. Learned counsel further submitted that the Petitioner No.4 is entitled to be considered for regularization in the light of Judgment dated 19.1.2018 passed by this Court as well as order dated 12.03.2018 passed by the Hon'ble Supreme Court in Civil Petitions No.67-K & 68-K of 2018. He next submitted that the Respondents have adopted a discriminatory attitude towards Petitioner No.4 by regularizing the service of other petitioners, whereas ignored petitioner No.4 on the pretext that he secured 30 marks and failed in the NTS test held in the year 2017 as noted by this Court in Para-16 of the Judgment dated 19.1.2018. He further submitted that the Petitioners have established a prima facie case for contempt proceedings against the contemnors. It is further added by the learned counsel that the Petitioners are seeking enforcement of their basic right by seeking indulgence of this Court for directions to the Respondents to comply with the Judgment dated 19.1.2018 in its letter and spirit. Learned counsel for the Petitioners while referring to the compliance report refuted the claim of the Respondent-

Company on the ground that regularization of service of the Petitioner No.4 with the Respondent-Company was required to be made in accordance with law and the judgments passed by the Hon'ble Supreme Court, thus the policy framed by the Respondents for regularization of the services of the contract employees is against the law and judgment passed by this court hence not applicable to the case of petitioners.

4. We queried from the learned Counsel for the Petitioners as to how he is claiming regularization of the service of the petitioner No.4 namely Muhammad Sumair Gul Ansari when he has failed to secure 35% marks in the aptitude test conducted by National Testing Service. Learned counsel replied that this Court while allowing the captioned petition directed the respondents for regularization the service of all petitioners in accordance with law and dictum laid down by the Hon'ble Supreme Court in the aforesaid matters but, the respondents have again applied their policy-2017 in the case of Petitioner No.4 just to non- suit him from the benefit of regularization.

5. next we inquired from the learned Counsel that how petitioner No. 4 is entitled for regularization of service when Honorable Supreme Court vide order dated 12.3.2018 passed in Civil Petitions No.67-K & 68-K of 2018 has held that Petitioner No.4 namely Muhammad Sumair Gul Ansari failed to secure 35% marks in the aptitude test conducted by NTS? To this Learned Counsel replied that the Hon'ble Supreme Court vide order dated 12.3.2018 has affirmed the findings of this Court, therefore, the respondents are required to implement the judgment passed by this Court which is now merged into the order of the Hon'ble Supreme Court as discussed supra. He emphasized that the Hon'ble Supreme Court has concluded that "nothing has been placed before us to show that the respondents could not achieve the targeted percentile". The observation of

the Hon'ble Supreme Court is binding upon the Respondent-Company; as such they cannot take resort by relying upon NTS result.

6. Mr. Asim Iqbal, learned counsel for the alleged Contemnors has denied the allegations and referred the Counter Affidavit and compliance report submitted on behalf of Acting Managing Director of Respondent-Company and contended that the judgment passed by this Court dated 19.1.2018 has been complied with in letter and spirit and the Respondents never imagine to disobey the same in any manner whatsoever; that the alleged contemnors cannot be punished for contempt of Court for disobeying an order of Court, except when the disobedience is established beyond reasonable doubt that the petitioners have failed to place before this Court sufficient material to establish willful disobedience of the order passed by this court, therefore, this Court will not be justified in punishing the alleged contemnor. In support of his contention he relied upon the documents attached with the Counter Affidavit by the alleged contemnor No.2 and annexures attached with the compliance report of the judgment dated 21.5.2019 passed by this Court.

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

8. Perusal of record shows that the Respondents implemented the judgment dated 19.1.2018 passed by this Court by regularizing the service of the Petitioners except petitioner No.4 namely Muhammad Sumair Gul Ansari for the reasons assigned by the Respondents in paragraph No.6 of the Counter Affidavit that the petitioner No.4 has failed to clear the NTS, therefore was not absorbed in the Respondent-Company.

9. Learned counsel for the petitioners has made an abortive attempt by agitating that the Petitioner No.4, though secured 30 marks in NTS,

is still entitled to be considered for regularization as per judgment dated 19.1.2018 passed by this Court. We are not inclined to affirm the assertion of the learned Counsel for the simple reason that the judgment passed by this Court is now merged into the order dated 12.3.2018 passed by the Hon'ble Supreme Court as discussed supra. The compliance report as well as counter affidavit filed in this regard do depict that substantial compliance has been made, which prima-facie suggests that proceedings cannot be initiated against the alleged contemnors under Article 204 r/w Section 3 & 4 of Contempt of Court Ordinance 2003. In our view, relief for regularization to the Petitioner No.4 was subject to law. The Hon'ble Supreme Court in paragraph No.4 has clarified the status of petitioner No.4; therefore, no other view can be formed. Prime facie the explanation offered by the alleged contemnor is tenable under the law.

10. After considering the facts and circumstances of the case in totality, and for the reasons alluded above, we are satisfied with the explanation offered by the alleged contemnor that substantial compliance of the judgment dated 19.1.2018 passed by this Court read with the order of Hon'ble Supreme Court dated 12.3.2018 in CP No.67-K and 68-K/2018 has been made in its letter and spirit. Therefore, prima facie, it is not proved beyond reasonable doubt that the alleged contemnor is guilty of committing the Contempt of Court for willfully disobeying the judgment dated 19.1.2018 of this Court. In view of the above, the listed application bearing CMA No.14238/2018 is found without any merit and is accordingly dismissed.

JUDGE

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